



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section(s): 3000, 3044, 3269, 3269.1, 3335-3344

Number:

15-04

Publication Date:

June 19, 2015

Effective Date:

June 1, 2015

INSTITUTION POSTING REQUIRED

This Notice announces the amendment of Sections 3000, 3044, 3269, 3269.1, and 3335 through 3344 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning Segregated Housing.

IMPLEMENTATION: Immediately.

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the **close of the public comment period August 7, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **August 7, from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, North Building, Sacramento CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office, not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. Certification of Posting, CDCR Form 621-A, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual sections 12010.5.7 and 12010.5.8 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail at RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to James Robertson, Chief, Classification Services Unit, at (916) 322-2544.

/ Original Signed By /

SCOTT KERNAN
Undersecretary, Operations

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC section 5054, proposes to amend Sections 3000, 3044, 3269, and Subchapter 4, Article 7, of the California Code of Regulations (CCR), Title 15, Division 3, concerning Segregated Housing.

PUBLIC HEARING:

Date and Time: August 7, 2015 from 10:00 a.m. to 11:00 a.m.
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

INFORMATIVE DIGEST

In this regulatory action, the Secretary proposes to amend and adopt regulatory provisions pertaining to the physical separation (i.e., segregation) of inmates from the general prison population, with particular emphasis on classification and placement matters.

Circumstances occur during an inmate's incarceration that require change in their housing and status, wherein, they are no longer appropriate or safe to be housed or program within the inmate general population (GP). Oftentimes, this is a result of felonious behavior, victimization concerns or any presence of factors indicating the inmate is a threat to institutional safety and/or security. Consequently, these circumstances result in the need for segregation.

Over the past several years, the process of segregation has been refined as a means of compliance with litigated outcomes, increased provision of due process, streamlined procedures, and accumulated operational experience that has afforded better insight to operational efficiencies.

These refinements such as; technological improvements to inmate data collection and records keeping, recently adopted regulations concerning Non-Disciplinary Segregation (NDS) and Security Threat Group (STG) management, and overall concerns regarding inmate mental health and physical disability welfare with due process encounters such as segregation; have resulted in the earlier release to the GP of eligible segregated inmates and reduced the number of segregated cases within the Department. The Department determined that a substantial reordering and renumbering of its existing regulation text governing segregation was also needed.

This action provides the following:

- Affords inmates and staff increased guidance regarding the segregation process.
- Removes existing obsolete language which confuses the administrative segregation placement and classification process.
- Places operational refinements which have taken place over time within the CCR.

- Revises certain discretionary options available to institution heads and other officials that have proven in practice to be unwieldy.

POLICY STATEMENT OVERVIEW

The anticipated benefits of the proposed regulations will bolster the current process of managing the segregated population within institutions by reducing the number of segregated cases, reducing the time or duration of segregation, standardize methodology of operating and implementing Segregated Program Housing Units, and includes additional procedural safeguards ensuring efficient transition into and out of segregated housing.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to segregated housing within CCR, Title 15, Division 3 and determined that these proposed regulations are not inconsistent or incompatible.

LOCAL MANDATES:

The Department has determined that these regulations do not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: none
- Cost or savings to any state agency: none
- Other nondiscretionary cost or savings imposed on local agencies: none
- Cost or savings in federal funding to the State: none

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

These regulations are directed at the internal management of State prisons and do not impose any obligations, duties, fees, costs, responsibilities, reporting requirements, etc. on California businesses, large or small. No economic impacts have been brought to the attention of the Department. The Department has therefore concluded that these regulations will have no impact on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California. Regarding benefits, these regulations will protect the health and safety of California residents, worker safety, and the State’s environment by providing a safe environment that will encourage visitation for families, which will have a positive impact on inmates, and increase worker safety.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:
Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Anthony Carter
Regulation and Policy Management Branch
Telephone (916) 445-2220

Questions regarding the substance of the proposed regulatory action should be directed to:

James Robertson
Classification Services Unit
Division of Adult Institutions,
California Department of Corrections and Rehabilitation
(916) 358-1677

WRITTEN COMMENT PERIOD:

The public comment period will close August 7, 2015 at 5:00 p.m. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action (by mail, by fax, or by e-mail) to CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text, any documents incorporated by reference, and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, documents incorporated by reference, and Notice of Proposed Regulations will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons will be available on the Department's website at <http://www.cdcr.ca.gov>, and may also be obtained from the Department's contact person.

Initial Statement of Reason

This rulemaking action is a revision of existing California Department of Corrections and Rehabilitation (CDCR) regulations pertaining to the physical separation (i.e., segregation) of inmates from the general prison population, with particular emphasis on classification and placement matters. These proposed amendments will affect the current regulatory language of Title 15, Division 3, Subchapter 4, Article 7, of the California Code of Regulations (CCR). The Department determined that a substantial reordering and renumbering of its existing regulation text governing segregation was needed in addition to the important revisions to the rules that are discussed below. In order to preserve textual consistency and cross referencing throughout the CDCR's Rules and Regulations as whole, conforming changes in other parts of Division 3 are being made as well.

Circumstances occur during an inmate's incarceration that require change in their housing and status, wherein, they are no longer appropriate or safe to be housed or program within the inmate general population. Oftentimes, this is a result of felonious behavior, victimization concerns or any presence of factors indicating the inmate is a threat to institutional safety and/or security. Consequently, these circumstances result in the need for segregation.

The CDCR uses two types of Segregated Program Housing Units (SPHU) when an inmate's behavior creates the need for a more secure and controlled housing situation. When an inmate must be removed from the "General Population" (GP), the CDCR assigns the inmate to a Security Housing Unit (SHU) or to an Administrative Segregation Unit (ASU) setting. SHU's and ASU's are specialized housing units inside an institution where inmates have restrictions on their movement, privileges and work group status.

The majority of inmates placed in ASU include those with a history and/or occurrences of in-prison violence who, if allowed to remain within the GP, present an immediate threat to the safety of the inmate or others and/or the security of the institution. An inmate can be immediately removed from an institution's GP and placed in an ASU when their presence creates an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity. This may be accomplished by confinement in a designated ASU or, in an emergency, to any single cell unit capable of providing secure segregation. An inmate initially placed in ASU is considered to be temporarily housed in that unit pending the outcome of an investigation or Rules Violation Report (RVR), and until a determination can be made for an appropriate longer term housing assignment for the inmate.

Pursuant to state law, an inmate can earn his way into the SHU by committing a serious or violent offense while in prison. This includes murder, attempted murder; drug trafficking, arson and extortion. An inmate found guilty of specified offenses serves a determinate term in the SHU; the maximum term is 60 months. The SHU is specifically designed to house offenders whose conduct endangers the safety of others or the security of the prison. Inmates in SHU are released to

the GP if they complete their SHU terms without committing additional acts of misconduct.

There is no “solitary confinement” in California prisons and the SHU is not “solitary confinement.” Many SHU inmates in fact have cellmates. The conditions of confinement in CDCR facilities, including the SHU, have been reviewed and monitored by external agencies, including the Office of the Inspector General; federal courts and monitors in class action lawsuits including *Madrid, Coleman, Plata, Armstrong, Clark*, etc.); the national accrediting agency, the American Correctional Association; and members of the California legislature.

Over the past several years, the process of segregation has been continually refined as a means of compliance with litigated outcomes, increased provision of due process, streamlined procedures, and accumulated operational experience that has afforded better insight to operational efficiencies and structural soundness.

This purposeful and deliberate approach comes on the heels of a variety of significant events that have produced the need to methodically update the existing rules:

- The recent introduction of the Strategic Offenders Management System (SOMS) has introduced some welcome technological improvements to inmate data collection and records keeping that have significantly reduced the amount of paper/forms required in the segregation process.
- Concerns regarding inmate welfare have encouraged the department to pay particular attention to inmate mental health as well as physical disability throughout the segregation process and during any due process encounter.
- Non-Disciplinary Segregation (NDS) status was recently introduced in regulations by the CDCR to recognize those inmates requiring segregation through no fault of their own (such as investigations into safety/security concerns unrelated to misconduct or criminal behavior), to which provisions were incorporated for them to maintain privileges more closely associated with a general population inmate rather than a segregated inmate.
- Recent changes to CDCR’s Security Threat Group (STG) management policy have changed the way in which CDCR identifies STG members/associates, as well as how and when they are segregated. Those existing regulations pertaining to STG and the Step Down Program have not been revised, merely renumbered and relocated.

The recent implementation of several of these refinements have resulted in the earlier release to the GP of eligible segregated inmates and reduced the number of segregated cases within the Department. As an example, the number of segregated inmates statewide has been reduced from 9,860 to 8,692 since January 2014, which is an approximate 12% reduction during the calendar year since employing many of these changes.

The many changes to the segregation process have resulted in the need for a restructured organization emphasizing orderly timelines and a simplified process. These revisions are also necessary in order to incorporate, as regulations,

insights and policy refinements gained from accumulated operational experience. Additionally, the department seeks improvement upon current text to clarify and streamline the administration of its penal institutions. For example:

- Refine regulations to afford inmates and staff increased guidance regarding the segregation process.
- Obsolete language exists confusing the administrative segregation placement and classification process.
- Operational refinements that have taken place over time need to be included within the CCR.
- Certain discretionary options available to institution heads and other officials have proved in practice to be unwieldy.

Benefits of the Regulations:

The changes proposed will bolster the current process by standardizing the CDCR's management of the segregated population within its institutions, while remaining in line and in compliance with the California Penal Code and governing case law. Accordingly, while some of these revisions represent self initiated improvements and adjustments in general management practice based on evolving correctional standards and procedures, other changes are narrower. Please consider the following benefits:

- Reduction in the number of segregated cases.
- Reduction in the time or duration of segregation.
- Standardized methodology of operating and implementing Segregated Program Housing Units.
- Removal of textual redundancies, as well as, antiquated and conflicting language.
- Reorganization and structure for ease of understanding and application.
- Inclusion of additional procedural safeguards ensuring efficient transition into and out of segregated housing.

The major components of this proposal can be summarized as follows:

- The Minimum Eligible Release Date (MERD) from SHU has been redefined to be 50% of the maximum MERD rather than 75%. This will result in shorter SHU terms for those inmates who are discipline free while in SHU called Clean Conduct Credit.
- Administrative Segregation (commonly known as AD SEG) rules have been detailed and expanded, repositioned or revised as needed to capture numerous changes in existing procedure, practices and safeguards for inmates. Outdated language has been removed as it applied to form revisions and processes no longer in practice.
- The SHU Term Assessment Chart has been significantly amended to align more closely with the Penal Code relative to consistent nomenclature; less serious offenses have either been removed or reduced; and SHU term ranges have been modestly adjusted to recognize and better distinguish the more serious offenses from the less serious.
- The SHU Time Computation Table, CDCR Form 629D, has been removed as SHU term calculations are no longer manually completed and are now

completed electronically via SOMS. Detailed explanation of how a SHU term is calculated can now be found in subsection 3341.9(f).

- Additional specialized attention is devoted to the Security Housing Unit (SHU) as the most significant SPHU. Consistent with the operational significance of SHU classification and placement, many provisions have been reevaluated, reorganized and re-designated, to include mandated 180 day classification hearings for nearly all SHU inmates, while delegating the Institution Classification Committee (ICC) as the sole quorum to conduct classification hearings on segregated inmates.
- Aggravating/Mitigating factors, as they apply to SHU assessment, have been modestly revised/enhanced to include additional direction for uniform application by staff.
- Language has been added narrowing the scope and application of the Consecutive SHU term.
- The entire article is renamed 'Segregated Housing.' This new designation more accurately captures the broadened content and scope of the following text.
- Inmates are now able to serve administrative and determinate SHU terms concurrently, rather than consecutively.

These SPHU regulations will be effective on the date of certification of adoption. Inmates subject to department SPHU determinations after the effective date of these regulations will have their SHU and ASU placements decided under these revised regulations. Inmates who are currently serving a determinate SHU Term or are assessed a determinate SHU Term prior to the effective date of these regulations are subject to the assessments in place under the prior rules. The regulations will not be applied retroactively and such cases will not be subject to reassessment under the terms of these regulations. Inmates who are currently serving an Administrative SHU Term due to STG behavior or disciplinary issues are currently being reviewed by a Unit Classification Committee (UCC), every 180 days. These regulations will now require this population be reviewed every 180 days by the Institutional Classification Committee (ICC); however, the procedure and review process will otherwise remain the same as current practice.

Consideration of Alternatives:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

Economic Impact Analysis

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

The Department has determined that the proposed revision will have no impact on the creation, expansion, or the elimination of existing jobs and/or new or existing businesses within California because those jobs or businesses are not affected by the internal management of prisons.

Reports Relied Upon

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

Significant Adverse Economic Impact On Business

The Department has made an initial determination that the proposed language of these regulations will not have a significant adverse economic impact on business because they are not affected by the internal management of prisons, and the regulations place no requirements or restrictions on businesses.

Specific Purpose and Rationale for Each Section Per Government Code 11346.2(b)(1)

Table of Contents will be amended to reflect title changes.

Section 3000: The following terms are being included in the 'definition' section of the Secretary's Rules:

- Classification Staff Representative (CSR) is included because of repeated reference to this staff member responsible for enforcing the Director's classification rules as a whole.
- Clean Conduct Credit is included to to define the term and avoid confusion with Good Time Credit.
- Minimum Eligible Release Date (MERD) is included based on repeated reference throughout the new article to the 'MERD' as the earliest established date for release from a determinate SHU term.
- Same and Similar Behavior is included to provide defined parameters in the utilization of aggravating and mitigating factors when assessing a SHU term.

Subsections 3044(b)(5)(A) and 3044(f)(1)(A) are amended: As a result of changes made to section 3269 below, wherein the requirement for more restrictive housing was stricken; existing administrative remedies related to inmate work group/privilege group have been enhanced to include inmates who refuse to accept housing assignments. Specifically, inmates refusing to accept housing assignments will now be considered a program failure and subject to existing provisions under subsections 3044(b)(5)(A) and 3044(f)(1)(A); and although corrective in nature, this change is far less restrictive than placing inmates in ASU or SHU.

Subsections 3269(g), 3269.1(b)(5) and 3269.1(e) are amended: In 2007-8, the CDCR implemented changes to the CCR to address concerns related to inmates refusing to share a cell with other inmates resulting in unnecessary housing pressures within the institutions and obvious difficulties in population management and efficiencies. The reasons for the refusals weren't always immediately identifiable, but oftentimes may have been the result of ethnic differences or, perhaps, social/case factors that may have resulted in perceived conflicts with other cellmates. As a result, the existing rules have required inmates who refuse to comply with the 'double cell' policy or refuse to cell with inmates of different ethnic backgrounds, to be issued disciplinary violations with the potential to be housed in more restrictive housing such as an ASU or SHU.

Recent population reduction efforts within the Department have mitigated the impact that these housing refusals have had on institutional operations and safety. Additionally the need to utilize ASU/SHU beds for inmates who refuse housing assignments appears unnecessary when other administrative remedies exist, with others being proposed, to address these specific violators. As a result, any language requiring the placement of inmates in alternative, restricted or segregated housing on this basis has been stricken in subsections 3269(g), 3269.1(b)(5) and 3269.1(e).

Additionally, previous textual errors in subsections 3269(g) and 3269.1(e) have been corrected. Specifically, subsections 3269(g) and 3269.1(e) incorrectly referenced subsection 3323(f)(6), instead of 3323(f)(7). Furthermore, subsection 3269.1(e), incorrectly referenced the subsection 3005(c) as 'obeying orders,' rather than 'refusing to accept assigned housing.'

The heading of Article 7 is amended to read "Segregated Housing" to more accurately capture the broadened content and scope of the following text.

Section 3335 is a substantial rewrite and is amended. All the existing text is deleted and replaced with alternative wording. Administrative Segregation (ASU) is the physical removal and separate housing of an inmate away from the institution's general prison population. The core reasons set forth in existing 3335(b) for the administrative segregation of an inmate remain unchanged; however, they are now incorporated as a presentence to section 3335. Also included in the presentence is an essential option affording the department flexibility in those instances where severe constraints in available ASU bed space would otherwise inhibit achieving the objectives of this section and would allow for segregated 'status,' absent placement in a secure segregated setting.

Existing subsection 3335(b) has been renumbered as subsection 3335(a) as new and expanded provisions are added to subsections 3335 (b) through (d) respecting documentation in general, documentation of the specific reasons for segregation, preparation of a segregation profile, and the rescission of a segregation notice. Numerical sequencing has been modified to accommodate recent departmental direction clarifying that the Institution Classification Committee (ICC) must confirm an inmate's Non Disciplinary Segregation (NDS) status as described in new subsection 3335(a)(2). Additionally, any case so

designated by the ICC and included in the Mental Health Services Delivery System (MHSDS), shall be transferred to an appropriate institution within 72 hours of the ICC confirmation; thereby maintaining the overall spirit and integrity of the NDS process as described in new subsection 3335(a)(2)(A).

The reasons for ordering an inmate's administrative segregation shall continue to be documented on an Administrative Segregation Placement Notice. However, this provision has been relocated to subsection (b) from existing 3336(a). Details are newly added in 3335(b) and (b)(1) through (3), in order to more fully describe the process by which an inmate may be placed in an ASU setting. Subsection (b)(1) provides that the inmate will have sufficient and timely information to respond to the segregation decision, while subsection (b)(2) & (3) delegates the authority to place an inmate in ASU and issue the inmate a copy of the Administrative Segregation Placement Notice. With respect to entirely new provisions, subsection (b)(3) notably changes timelines for providing the inmate a copy of the placement notice from 48 hours to upon placement. This is intended to expedite the existing administrative process to the advantage of the inmate and correctional processes alike. Subsection (b)(3)(A) establishes that special effort, through effective communication, shall be made by the segregating authority to ensure that the inmate understands the housing change, the reasons for segregation and the process going forward. Additional guidance is provided in subsection (b)(4) with respect to certain circumstances that may trigger the need for an updated segregation notice and others which do not.

In addition, subsection (c) specifies that inmate segregation profiles shall be prepared on all segregated inmates, where the segregation authority or designee is now required to complete a CDCR Form 114-A1, Inmate Segregation Profile.

The subsection (d) option of rescinding or withdrawing an Administrative Segregation Placement Notice at this stage has been moved forward from existing 3339(a) and reworded for added emphasis.

These changes were made in the interest of significantly improving the clarity of regulatory language, establishing a chronological methodology, streamlining organizational processes, and appropriately affording inmates procedural protections. Other minor changes in existing text are required for editorial clarity, while major deletions are made because text pertaining to 'temporary segregation' and CSR referral has been superceded and replaced by other revisions discussed in greater detail below. The changes in section 3335 outline procedural safeguards for inmates consistent with the spirit and letter of past litigated outcomes and the operational refinements in documentation are intended to assist correctional personnel in the management and protection of segregated inmates.

Existing Section 3340, pertaining to exclusions, is repositioned in the order of appearance in the article, renumbered 3335.5, and amended. Such repositioning is desirable to improve the logical sequence of topics contained in this article.

Overall, the exclusions that already exist to an inmate's segregation from the general population are retained, except for the following refinements: In the presentence, the term 'removal' is utilized rather than 'separation' when referring to the specific exclusions, to better distinguish the change in housing/program. Additionally, general population is referred to as GP for conciseness, while 'under the circumstances' was removed for redundancy.

In subsection (a), the term 'involuntary' is removed as inmates may willingly or unwillingly be removed from the general population by order of healthcare staff. Again, GP is substituted for general population for conciseness. A notable modification is exchanging the term 'medical' for 'healthcare,' to more suitably identify both medical and/or mental health associated concerns as it relates to inmates removed from the GP, while exchanging the term 'hospital' for 'medical' to consider the various healthcare settings an inmate may be placed in. Because personnel other than medical staff are no longer permitted to place inmates in administrative segregation for reasons related to apparent medical or psychiatric problems, existing text pertaining to such decisions is deleted from subsection (a). Language was also stricken from this subsection identifying circumstances where inmates may be segregated for reasons related to medical or psychiatric problems, as the reasons inmates may be placed in ASU must be in accordance with section 3335. It is clarified that inmates with medical or mental health concerns may be on ASU status for the reasons set forth in section 3335; Clarification is also provided that these and other ASU designated inmates shall remain on ASU status, regardless of housing.

Subsection (b) distinguishes the difference between orientation and lay-over inmates by removing the reference to orientation inmates in subsection (b) and re-introducing them in new subsection (c). This modification was necessary to recognize the difference between the two types of inmates and how they should be addressed. Some text was stricken from this subsection for syntax and editorial clarity. To ensure that a lay-over case is not indefinitely held in ASU, text has been added to ensure that the procedural process—and inherent safeguards—of this Article will be immediately applied in accordance with Article 7, as well as section 3375.

Orientation inmates are introduced separately in subsection (c), noting they are no longer being combined with lay-over cases. Recognizing that orientation inmates have reached their final destination and may be placed in ASU for a variety of reasons to include safety, lack of available/appropriate housing, or other security reasons, language has been added to ensure all due process rights and procedural safeguards are provided immediately in accordance with Article 7, as well as section 3375.

Existing subsection (c) has been relocated to (d) as a result of the adoption of subsection (c) above. This proposal substantially divorces the disciplinary hearing process from that of administrative segregation, therefore cross-referencing language contained in existing subsection (c) linking the two is deleted for consistency.

Existing subsection (d) has been relocated to (e) as a result of the adoption of subsection (c) above; however, remains unchanged in content.

Finally, language contained in existing subsection (e) pertaining to the general applicability of this article to administratively segregated inmates who commit disciplinary offenses has been deleted because it is replaced by new sections with greater specificity as discussed below.

Section 3336 is a substantial rewrite and is amended. All the existing text is deleted and replaced with alternative wording. Existing text identifying who has the authority to order and document administrative segregation placements is superceded by the new text of 3335. Identifying the need for and designation of individuals as Staff Assistants has been extensively revised and included below; hence, the existing text is deleted and replaced as discussed below. Finally, since the process by which an Administrative Segregation Placement Notice is authorized, completed and issued to the inmate has been significantly revised in the manner discussed above, additional existing text found in subsection (d) must be deleted from this section.

New and or rewritten language with added specificity concerning the administrative review of an inmate's administrative segregated status and or ASU placement is proposed as follows: The heading of the section is changed to more accurately portray the processes discussed therein. The informational basis upon which the case will be reviewed is detailed and, if necessary, who will endorse the review. This is done to provide added administrative safeguard in subsections (a) and (b). The purpose of the initial review and the process required as a part of the review is also explained in subsections (b) and (b)(1) through (3) for the same reason. Likewise, in subsections (b)(4) through (6), the possible review outcomes—release or retention from segregated status—must be included at this point in the text.

Subsection (c) expands the expectations of the administrative review process and ensures that various procedural safeguards are afforded inmates placed in segregated housing in anticipation of an ICC hearing. Likewise, the administrative reviewer's responsibilities regarding the inmate's requests for witnesses and evidence set forth in 3336(c)(2) have been revised and moved forward from existing 3337(b). New and revised text regarding the need for staff assistance, investigative assistance, and effective communication accommodation is also contained in subsection (c) and (c)(1) through (3) and linked to the proposed new provisions of 3340. Revised text is moved forward (and deleted) from existing 3337(a) and (c). Finally, non-substantive revisions have been made to improve overall content clarity.

Section 3337 is a substantial rewrite and is amended. All the existing text is deleted and replaced with alternative wording. Existing text pertaining to the administrative review process is superceded by the new text of 3336. Section 3337 now addresses the Institution Classification Committee (ICC) level of review of inmate placement in administrative segregation, a topic originally—in a more abbreviated form—contained in 3338.

Presently, the retention of inmates in administrative segregation is decided by a classification hearing that may be conducted by a single classification officer. Now, this will be exclusively a committee review decided at the ICC level in proposed section 3337(a). Key existing provisions regarding hearing process, scope, review timelines, and CSR role are retained, but have been revised. The inmate's ability to postpone the hearing beyond ten days is expressly prohibited in the new text of subsection (a)(1) so that ICC can review the case at the earliest possible review time. Likewise, inmates are provided additional timeline protections in subsection (a)(2) and (3) with respect to the preparation of their response and the receipt of documentation relevant to the ASU placement. However, (a)(4) does allow the inmate to waive the 24 hour review period, but that waiver must be documented. New subsections (a)(5) and (6) regarding 'in absentia' hearings improves and supercedes the existing language in subsection 3338(c), (e) and (g), while improving clarity and conciseness. Subsection (a)(7) recognizes the potential for inmate absences at committee hearings and adds a significant safeguard for the inmate requiring the presence of the staff assistant even if the inmate declines to appear.

The proposed new text of subsection (b) is an improved abbreviated version of portions of existing 3338 (d), (e), (f) and (i). Because the matters discussed are more fully addressed throughout the section and elsewhere in this article, obsolete wording has been deleted. In addition, duplicative language about departmental forms and processing detail has been removed to improve textual clarity. The subsections detail the ICC review process of an inmate's temporary ASU status.

Proposed subsection (b) provides a deliberate account of the fundamental considerations of ICC. Ensuring that the Administrative Segregation Placement Notice contains sufficient justification for administrative segregation placement, the ICC is directed to consider all applicable information in determining placement. Operational refinements intended to assist in the management and protection of inmates has been added in subsection (b)(1) and (2) to provide further guidance in determining the appropriate cell status and yard assignment, progressively, during each ICC review. Applicable procedural safeguards shall be ensured by the ICC in its review of inmates placed in administrative segregation.

Removing the obsolete provision of temporary segregation in existing 3335(c) has necessitated some of the revisions in the case review process. Newly adopted 3337(b) enables the ICC to review yard assignment and cell status as early as possible. Finally, other revisions are intended to further guard against arbitrary or indefinite inmate placement in administrative segregation.

The intent of existing text—currently located in 3338(i)—pertaining in particular to providing inmates copies of the documentation upon which ICC determinations are relied upon, have been relocated to proposed 3337(b).

Moreover, existing CSR administrative segregation responsibilities are relocated from existing 3335(e), to subsection (c) as are the existing follow-up CSR review provisions. CSR responsibilities and timeframes have been mildly amended in

this proposal for better integrity and clarity of the CSR process. This is a logical and desirable addition to the administrative process that helps safeguard against an inadvertent 'indefinite' retention in administrative segregation.

New subsection (c) clarifies that any case retained in ASU must be presented for CSR review within 30 days of the initial ICC review. This minor change provides for the ICC to process and present the case to the CSR within 30 days rather than simply refer the case. Additionally, subsection (c) includes reference to the 'projected MERD' which further directs the ICC to evaluate and review the case at the earliest possible time.

Proposed subsection (c)(1) through (4) adopts, in large part, the existing language from subsections 3335(e)(1) through (3) to protect against inadvertent 'indefinite' administrative segregation with established timelines that the ICC will have to satisfy when reviewing the continuing status of ASU inmates. Subsection (c)(1) mirrors existing subsection 3335(e)(2), requiring ICC reviews no less frequently than every 180 days. However, the proposed language includes all SHU assessable rules violations that have been postponed pending District Attorney (DA) review, rather than only division A and B offenses. This change reflects the ICC independent case evaluations and case factor considerations, including the projected MERD and earliest possible review time. Additional language was included to clarify that inmates who have postponed their RVR pending the DA review or court proceedings, shall not be retained in ASU past their projected MERD unless ICC believes other circumstances exist which jeopardize the security of the institution or persons. In these cases, a new Administrative Placement Notice shall be issued. New subsection (c)(2) separately incorporates existing subsection 3335(e)(1) requiring 90 day reviews on cases pending transfer to an alternate general population. Recognizing that any SHU assessable rules violation that has not been postponed pending DA review can be heard within established timeframes, new subsection (c)(3) requires ICC review no less frequently than every 90 days. This change from existing subsection 3335(e)(1) is significant in that cases in ASU under these circumstances can be resolved much quicker. The remainder of reasons an inmate may be placed in ASU are now captured in subsection (c)(4) and mirror the existing logic in 3335(e)(3) detailing pending investigations into safety and security concerns. As with existing language, the requirement that all cases are returned to ICC within 14 days of resolution remains a well defined mandate.

Stricter timeline guidance is provided in proposed subsection (d), clarifying that all cases with a prior CSR extension shall be returned to the CSR prior to exhaustion of the established expiration date and ensure responsible case management. As ASU cases transition to Security Housing Unit (SHU) status, inmate classification continues to mirror the existing process. New subsection (e) contains refined language of existing subsection 3335(h) requiring SHU inmates to be classified in accordance with established timeframes as outlined in the SHU classification section, below.

Section 3338 is a substantial rewrite and is amended. As discussed above, most of the existing text of section 3338 has been rewritten and relocated to section 3337. The proposed new content of amended section 3337 concerns the

retention of inmates in administrative segregation for other reason(s) following the resolution of the initial reasons for such placement.

To reflect the noted content change, the section heading of new section 3338 is amended. This section, decides what happens when the initial reasons for segregation are resolved, but the inmate continues to be ineligible for return to the general inmate population. Direction is provided on how the process is established detailing the authoring, processing, documenting, procedural safeguards, and various ICC responsibilities with respect to the preparation of a new Administrative Segregation Placement Notice as set forth in 3338(a) through (c). New subsection (a) details the requirement to initiate a new Administrative Segregation Placement Notice when the original reasons for ASU placement have been resolved and new reasoning exist warranting continued retention, which conforms to the procedures already set forth in 3335(b) and 3337. A significant change introduced in subsection (a)(1) is the removal of the Administrative Review process. As previously established, ICC has the delegated authority to affect housing and placement decisions on ASU cases. Any Administrative Review on an existing segregated inmate bears no effect on the case as the Administrative Reviewer is rendered powerless. Consequently, by removing the Administrative Review process as it pertains to re-issued Administrative Segregation Placement Notices, additional safeguards and protections are established protecting the integrity of the case and the inmate. The defacto result now reflected in subsection (a)(2) requires the official ordering retention to ensure all procedural safeguards are provided, thereby conforming to the procedural safeguards already set forth in 3336(c), above. Subsection (c) affirms ICC's delegation as the only body permitted to make placement determinations.

Further detail is provided in subsection (b) outlining the scope of information in the new Administrative Segregation Placement Notice. Specifically, subsection (b)(1) through (3) require language resolving the previous reasons for segregation, the new reasons for segregation and that effective communication is documented.

Following the direction laid out in section 3337 above, new subsection (c) confirms that ICC hearings will be held within 10 days after a retention determination is made and will follow the same committee processes and timelines as set forth for an initial Administrative Segregation Placement Notice. In an effort to provide additional clarity and conciseness, superceded text is deleted throughout.

These changes are all made in the interest of improving the clarity of existing regulatory language, improving organizational processes and, just as importantly, affording inmates added procedural protections to ensure that such placement will be administratively limited, temporary in nature and for the shortest amount of time consistent with safety and security. Moreover, the current retention regulation is predicated on 'definite terms of confinement for disciplinary reasons,' which confuses disciplinary detention with administrative segregation pursuant to this article. With the deletion of this confusing text, the retention

safeguards originally set forth must also be revised and updated to ensure a clear and efficient process.

Section 3339 is a substantial rewrite and is amended. As discussed above, most of the existing text of this section has been relocated elsewhere in the article. The substance of existing subsection (b) has been rewritten and incorporated into the new text of 3338. The procedural safeguards and substance of existing 3339 (b)(1)—(b)(5) have been upgraded and are now incorporated in subsections of 3338 (and elsewhere) in the manner previously detailed.

Because the content of the section is topically collapsed—from consideration of administrative segregation release and retention to that of release only—some of the changes in subsection (a) are merely edits (deletions and additions, as needed) in the wording of existing text. Likewise, the heading of this section is revised—namely with deletion of the phrase ‘Retention in Administrative Segregation’—so as to more accurately portray the amended subject content.

Because the department wishes to revise the rescission process, existing text is being substantively deleted and re-worded. Appearing in subsections (b)(1) through (3) for the first time in these regulations is a discussion of the steps to be taken prior to or in conjunction with release (or ‘rescission’ of administrative segregation placement) into the inmate general population, including: consultation with the receiving facility, written justification, providing inmates a copy of the relevant paperwork, and the administrative processing of the relevant documentation. These provisions shall apply when inmates are released prior to the ICC hearing, and subsequent to placement or retention by the segregating authority or administrative reviewer, respectively.

Subsection (c) is newly adopted to clarify that inmates released from ASU are to be considered general population inmates and immediately released; however, clarifies if immediate release is unfeasible for reasons outlined in section 3335, a new Administrative Segregation Placement Notice shall be immediately issued.

Currently, rules contain few regulatory provisions that anticipate and plan for the specific steps of returning an inmate to the general population. Inmates subject to the provisions of the new language are afforded procedural safeguards. In addition, changes improve inmate management practices.

Existing section 3340 has been relocated, renumbered 3335.5 and amended. See discussion above for explanation.

Existing Section 3341 is renumbered 3340 and substantially rewritten. Existing text relating to the assignment and duties of a Staff Assistant (SA) is expanded, while further detailing other assistive elements such as witness, evidence and an Investigative Employee (IE). The process of such assistance, with respect to administrative segregation, is separate, distinct and in addition to that provided in a disciplinary hearing. The reasons for such assistance and the responsibilities of those assigned duties are more fully spelled out to provide greater guidance to staff. Furthermore, inmate programming concerns, including

medical and mental health, shall be considered when evaluating an inmate's assistance needs. Finally, the provisions of this section operate in conjunction with those contained in the proposed new 3336(c) pertaining to initially determining the need for a SA and/or IE assignment.

The heading of the renumbered section is edited to maintain numerical sequencing. A new operational sentence is added in order to more clearly express the intent of the section, while existing language is reworded and superceded language deleted as needed for textual consistency.

The 'new' added text of this section—pertaining to the assignment and responsibilities of a SA and IE—has been borrowed and/or adapted from existing language contained primarily in sections 3315 and 3318 of the current Director's Rules, and therefore does not represent a significant change in promulgated policy, and is detailed as follows: The need for a SA for the specific purpose of illiteracy is addressed in subsection (a)(1); The need for language interpretation is detailed in subsection (a)(2). The SA assignment for issues characterized as complex in nature are described in subsection (a)(3). Provisions applying specifically to inmate recipients of mental health services, developmentally disabled or exhibiting bizarre or unusual behavior are established in subsections (a)(4). New subsection (a)(4)(A) clarifies the existing practice wherein the ICC, in collaboration with the clinical assessment, shall assess the ongoing appropriateness of the SA assignment following the initial ICC review.

This improved SA assignment process has borrowed and refined text from subsection 3315(d)(2) and takes into account scheduling conflicts or involvement in the circumstances surrounding segregation as specified in subsection (b). The ability for an inmate to continually refuse the assignment of a SA is disallowed by the language of subsection (c), where a SA, when appropriate, will be assigned in order to ensure hearing fairness.

The elaborated text relative to the SA assignment is necessary to provide guidance to staff to ensure that all required elements of the assignment are met and to assist the inmate's comprehension of the administrative segregation process. Subsection (d) provides a detailed account of the fundamental duties and requirements of a staff member assigned as a SA to include: meeting with inmate 24 hours prior to the committee hearing, explaining the classification process and providing effective communication as indicated in subsections (d)(1) and (d)(2). Subsection (d)(3) ensures that the assigned SA is present during any IE engagement. Mandated due process elements are outlined in subsections (d)(4) through (d)(4)(D) to include: 72 hour notice, right to a fair and impartial hearing, the right to call witnesses and/or present evidence and the right to receive a written decision. Subsections (d)(5) through (d)(8) further detail the role of the SA describing the duty to assist the inmate in the preparation of the hearing, confidential information disclosure parameters, and the admissibility of disclosed information in court if charges were filed with the District Attorney. The critical functions of the SA are outlined in subsections (d)(9) through (d)(12). Text is added affirming the SA assists the inmate in presenting their position at committee, makes a reasonable effort to ensure the inmate's position is

understood, and the inmate understands the decisions reached. Additionally, the SA shall perform these same functions at all classification hearings.

Significant procedural integrity is provided in subsection (e) which requires that the SA to attend the classification hearing must be the same one that met with the inmate 24 hours preceding that hearing. The provision for assignment of an IE is made specific to the circumstances of administrative segregation in subsection (g), to which the delineated SA duties are distinguished and will be also performed in conjunction with all classification reviews as set forth in subsection (d)(3).

Because the initial reasons differ at such basic levels, the details relating to the assignment and responsibility of an IE for administrative segregation purposes set forth in proposed subsections (g) through (k) diverge from some of those which apply to IE duties carried out in association with disciplinary charges as found in subsection 3315(d)(1). In determining the initial need for an IE contained in subsections (g)(1), the inmate's administrative segregation must be for non-disciplinary reasons. Further detail is provided in subsection (g)(1)(A) requiring the Administrative Reviewer to evaluate IE requests for non-disciplinary cases granting them the authority to deny the request absent legitimate penological interest. Text is included in subsection (g)(1)(B) disallowing the assignment of an IE for disciplinary based administrative segregation cases, clarifying that the services of the IE and additional evidentiary information shall be reserved for the disciplinary hearing.

New subsection (h) continues to permit the inmate to present witnesses and documentary evidence unless the chairperson determines it would compromise the safety and security of the institution. The provision for a SA assignment is made specific to the circumstances of administrative segregation in subsection (d), to which the delineated IE duties are distinguished and will be also performed in conjunction with permitting classification reviews as set forth in subsection (i).

The deliberate and refined text found in subsection (j) takes into account possible IE conflicts or involvement in the circumstances surrounding segregation. The ability for an inmate to continually refuse the assignment of an IE is disallowed by the language of subsection (j), where an IE, when appropriate, will be assigned in order to ensure hearing fairness. The course of action followed by the Administrative Reviewer is required to be clearly documented on the Administrative Segregation Placement Notice whether an IE is granted, modified or denied.

The detail included in new subsection (k) is necessary to guide staff to ensure that all required elements of the IE assignment are met and to provide the classification quorum all available information and/or evidence to effect the most appropriate decision. Subsections (k)(1) through (2) outline the IE's initial responsibility of attending to any SA requirements and to appropriately address and document any effective communication needs. Significant expanded language is added to subsection (k)(3) explaining the essential need to investigate, develop questions, interview and report on any information, confidential or otherwise, that would be a benefit to the classification committee and their decision-making process. The assignment of an IE is to develop

information, wherein subsection (k)(4) identifies the inmate's responsibility to cooperate with the IE and provide relevant information. Subsections (k)(5) through (6) affirm the requirement for the IE to document their findings and to provide the inmate a copy at least 24 hours prior to the ICC hearing. Subsection (k)(7) reiterates the existing practice where ICC reserves the authority to grant or deny witnesses based on safety and security. As similarly established within the disciplinary section, subsection (k)(8) reaffirms that, although the IE provides assistance to the inmate relative to the classification hearing, the IE shall do so as a representative of the official or chairperson of the ICC.

In consideration of some duplicative language from section 3315, the necessary detail offered in the proposed changes is essential to distinguish and differentiate between the functions of the SA and IE involving disciplinary and classification functions. Although similar in nature, the functions described herein are separate and distinct and must be recognized accordingly.

Section 3341 is newly adopted. The rewrite enhances text and renumbers existing section 3341.5. The section is renumbered to maintain the proposed numerical resequencing of the article. In new subsection (a), the existing word, 'special' is deleted and replaced with 'Segregated,' which is already used in the heading of the section and more accurately captures the content of this and the sections to immediately follow. Recognizing the restricted nature of SPHU's, subsection (b) now requires ICC review no less frequently than every 180 days for administrative SHU inmates or no less frequently than every 180 days following their initial annual SHU review for determinate SHU inmates; or as directed by CSR to determine if SPHU housing continues to be the least restrictive housing option, consistent with the inmates case factors.

Additional language is added in subsection (c) naming of the Departmental Review Board (DRB) as a referral authority in special or exceptional circumstances.

In new subsection (d), additional direction is provided to institutional staff considering an inmates' release from a Segregated Program Housing Unit (SPHU) to ensure no unnecessary delay of an inmate's release back to the general population, as appropriate.

Existing Subsection 3341.5(a) is renumbered 3341.1 and amended. The Department revised, expanded and reordered all of the existing text relating to inmate placement in protective, psychiatric services and security housing units. The remainder of existing 3341.5 is broken into nine separate and distinctly enumerated subsections. In general, the changes are self-initiated improvements reflecting correctional practice developments that have emerged since the most recent revisions of these rules.

Accordingly, new subsection 3341.1 pertaining to Protective Housing Units (PHU) is proposed to replace existing 3341.5(a). Presentence language defining the PHU is mildly altered to provide a clearer understanding of the PHU program, while subsections (a) through (a)(6) detail the placement criteria. Textual changes within the criteria are minimal in scope or dictated solely by the need to maintain textual clarity, with the following exceptions: Existing 3341.5(a)(2) is deleted because the absence of 'serious psychiatric or medical condition' criteria has proven, by experience, immaterial to protective housing placement. As a result, existing subsections (a)(3) and (a)(4) are renumbered to (a)(2) and (a)(3).

Additionally, existing subsection (a)(5) has been renumbered to (a)(4). Consequently, existing subsections (a)(6) and (a)(7) have been renumbered to (a)(5) and (a)(6).

Existing language in subsection (a)(8) was slightly reduced to eliminate redundancy noting new subsection (a)(4) includes any duplicative language. The remaining language from subsection (a)(8) is now included in subsection (b). Discrete subsections were established to provide greater clarity and guidance.

New subsection (c) requires DRB authority for placement into PHU, with DRB maintaining sole responsibility for transferring an inmate out of PHU. In consideration of the number of PHU inmates statewide and the sensitivity of their case factors, this change allows the Department additional oversight of these unique cases.

Existing Subsection 3341.5(b) is renumbered 3341.2 and amended. A new section number (3341.2) and heading revision regarding housing units specifically dedicated to the Psychiatric Services Unit (PSU) replaces existing 3341.5(b). In new subsection (a), specific criteria are identified for program placement. In new subsection (a)(1), these criteria include: diagnosis of a mental disorder requiring treatment at the enhanced outpatient level of care, and SHU status; while new subsection (a)(2) describes inmates included in the Developmental Disability Program (DDP) at the DD3 designation, and SHU status.. The new language refines department practice and affords a significant new safeguard for mentally ill and developmentally disabled inmates as well as assists the Department in administering to individuals so afflicted.

Subsection (b) recognizes the critical need for treatment within this population and provides exception to expected classification practices. This enables earlier intervention, treatment, and accelerated program placement.

Further clarification and documentation of any outstanding classification matters is outlined in subsection (c) to ensure the accelerated process promoting resolution of any outstanding case considerations.

New subsection (d) details that PSU cases shall be classified no differently than SHU cases, as explained in subsection 3341.8. Minor repositioning of existing text in the body of the subsection is also necessitated by the above-noted changes.

Existing subsection 3341.5(c)(2)(A)1 is moved forward and renumbered to subsection 3341.8(a). As most of the existing subsection 3341.5(c) has been renumbered to 3341.3, subsection 3341.5(c)(2)(A)1 has been relocated to 3341.8(a) and further discussed below.

Existing subsections 3341.5(c) through 3341.5(c)(2)(B)5 are renumbered 3341.3 and amended. A new subsection number (3341.3) and the addition of a heading entitled Security Housing Unit (SHU) amends existing 3341.5(c). In addition, substantial portions of the existing text of the referenced sections are expanded, revised and/or edited, with additional detail as follows: existing

operational language has been streamlined, detailed and reorganized following expected operational practices. The existing SHU criteria for both determinate and administrative placement status are expanded in new subsections (a)(1) through (a)(2)—and obsolete language is deleted from existing subsections (c)(1) through (c)(2)(B)5 and (c)(10)—in order to provide greater content clarity and procedural guidance.

The proposed added, amended, repositioned and reworded text of 3341.3 through 3341.9 and the textual revisions and deletions of existing 3341.5(c)(2) through (10); were made to conform with contemporary standards of correctional practice and apply department operational experience.

A presentence is added to new subsection 3341.3 refining the existing language found in subsection (c). The proposed text of 3341.3(a)(1) through (2) clarifies the distinction and reasons for determinate and administrative SHU segregation. Additionally, it eliminates the existing vagueness implicit in the superceded text of 3341.5(c),(c)(2)(A) and (c)(2)(B).

Recognizing the fundamental differences between determinate and administrative SHU segregation, new subsection (a)(1) distinguish administrative SHU as indefinite SHU placement of inmates whose conduct endangers the safety of any person or the security of the institution.

Where existing language justifies administrative SHU placement solely on the basis of a single separate standard—endangering the safety of the inmate, others or the security of the institution; subsections (a)(1)(A) through (a)(1)(F) further detail and adopt several clarifications the Department has recognized justify such placement as a means of enhancing the safety of both inmates and staff. New Subsection (a)(1)(A) recognizes that inmates with a significant history of in-prison violence, drugs and criminal acts should be classified differently. Consequently, the Department shall strive to identify established patterns of behavior and make decisions designed to protect the staff and inmate population from inmates unwilling to conform to departmental rules and regulations. Inmates who are approaching completion of a determinate SHU term shall have their past five years of incarcerated behavior evaluated by the ICC to determine whether administrative SHU placement would be more suitable.

Where the Department is charged with maintaining the safe custody of inmates from all walks of life, new subsection (a)(1)(B) recognizes that administrative SHU placement may be appropriate for an inmate with case factors of such magnitude or with such overwhelming and convincing evidence that would persuade a reasonable person that the inmate would pose a threat to the security of the institution or the safety of others. For example: some criminal acts such as a murder committed while in prison may justify administrative placement.

New subsection (a)(1)(C) refines existing language found in subsection (c)(3)(C), providing the ICC with the necessary discretion to consider and substantively justify an inmate's request to remain in segregation on administrative SHU status.

As noted in existing subsections 3341.5(c)(2)(A)2 through 3341.5(c)(2)(A)2c and 3341.5(c)(2)(A)3 through 3341.5(c)(2)(A)3d administrative SHU placement continues to be appropriate for inmates validated as STG affiliates as relocated in new subsections 3341.3(a)(1)(D) through 3341.3(a)(1)(E)4 based upon the threat to the safety of others or the security of the institution. These subsections further define and clarify the categorical differences between the various STG SHU placements. New subsection (a)(1)(F) recognizes that the DRB often makes decisions on the most difficult and complicated cases and maintains the authority to place an inmate on an administrative SHU term.

Determinate SHU segregation is fundamentally distinguished from that of administrative SHU segregation based upon the establishment of a defined term. A rules violation committed while in prison is documented on a RVR and—if found guilty of a specified serious offense—a determinate SHU term is assessed as described in new subsection (a)(2). Such a rules violation must be specifically listed in subsection 3341.9(e), discussed below.

Likewise, proposed 3341.3(a)(2)(A) through (D) supercedes existing 3341.5(c)(2)(B)1 through (B)3, adding additional detail and clarity. The majority of existing text pertaining to determinate SHU term computation, SHU term reviews, CSR responsibilities, and forfeiture of clean conduct credits has been relocated in slightly rewritten form in subsequent sections as noted below. Rewritten subsection (a)(2) describes the assessment of determinate SHU terms on the basis of rule violations for which the inmate has been found guilty and by which, ICC has made a determination that the inmate continues to pose a threat to the security of the institution and/or the safety of others.

Reference is made in new subsection (a)(2)(A) to the computation of the determinate SHU term. Detail is provided to the reader guiding them to the SHU Term Assessment Chart found in new subsection 3341.9(e) which lists those qualifying offenses mandating SHU term assessment, while clarifying the assessment of the expected term in the absence of aggravating and/or mitigating factors.

Another existing ambiguity is addressed in new subsection (a)(2)(B) clarifying the effective date of a determinate SHU term. Direction is provided establishing the effective date of the SHU term as the date of administrative segregation for the misconduct or the date of discovery of the information leading to the disciplinary charge; whichever occurs first. This clarification provides guidance and establishes consistency with varying methods of assessing SHU terms.

New subsection (a)(2)(C) adds text specifying that determinate SHU terms shall be assessed when inmates on administrative SHU status commit a ‘SHU-able’ offense. This section further clarifies circumstances wherein a determinate term is assessed and either imposed or suspended while an inmate is on administrative SHU status. Specifically noting, the determinate term and administrative status run concurrently to each other, and at the MERD, the administrative status will continue. Finally, an existing reference to subsection (c)(7) within existing subsection (c)(2)(B)2 is eliminated because it is a textual error.

Past departmental practice established the requirement that all violations outlined in subsection 3341.9(e) be addressed for SHU assessment, regardless of when the misconduct took place. The Department has since recognized the lack of relevance associated with misconduct older than five years. New subsection (a)(2)(D) formalizes this process, introducing only that misconduct warranting SHU assessment within the past five calendar years, need be addressed. Additional detail is also provided on the options available to ICC when assessing the SHU term relative to their determination on the circumstances and the threat the inmate currently poses to institutional safety and security. In addressing the SHU term, clarifying language has been added providing the ICC with the available and appropriate options. All misconduct described in 3341.9(e) shall be addressed by ICC and a SHU term assessed within the provisions herein. Once assessed, ICC has the option to impose the SHU term. Once this occurs, the inmate is considered on SHU status. Depending on the circumstances or age of the misconduct, ICC may impose a portion of the SHU term while suspending the remainder, which provides for some leniency, while holding the inmate accountable for a portion of the SHU term. However, the ICC would have the authority to re-impose any remaining time suspended if there is subsequent serious misconduct occurring before the established MERD. The third option is to suspend the entire SHU term which holds the inmate even less culpable, yet continues to allow ICC to re-impose the SHU term with subsequent serious misconduct occurring before the established MERD. The final option is to commute the SHU term. Exercise of this option is intended for cases where ICC determines in consideration of overwhelming evidence that, although the inmate was found guilty of the misconduct, the circumstances and history surrounding the misconduct mitigate the behavior to such an extent that ICC essentially suspends the entire SHU term without the option to ever re-impose.

A new operational efficiency is introduced in subsection (b) where inmates can now serve both an administrative and determinate SHU term concurrently. This circumstance occurs when there is the presence of a determinate SHU term based upon a guilty finding for an offense listed in subsection 3341.9(e) at the same time an administrative SHU term is in place for STG membership/association. Where prior practice precluded this option, the department recognizes the importance of recognizing both critical case factors simultaneously, while realizing a process improvement.

New subsections (c) and (d) provide guidance on relatively obscure and/or exceptional SHU matters. Subsection (c) clarifies that inmates must serve SHU terms in departmentally approved SHU facilities or ASU when exceptional circumstances exist. However, there are inmates with medical and/or mental health concerns that may also have an active SHU term. Therefore, authorization is provided to allow these cases to serve their SHU term in medical/mental health settings when deemed clinically necessary. Subsection (d) addresses the documentation of SHU decisions, including providing inmates timely copies. Finally, operationally redundant language with respect to CDCR Forms and processing detail is deleted from the section wherever possible.

Existing subsection 3341.5(c)(2)(B)3, 4 and 6 are renumbered 3341.4 and amended. A new subsection designation (3341.4) and the addition of a new heading regarding Initial, Concurrent and Consecutive SHU terms amends and significantly augments the text of existing 3341.5(c)(2)(B)3, 4 and 6. While maintaining the existing SHU provisions, past experience has established that additional detail is warranted further clarifying terminology and the different types of determinate SHU terms. The content of this and the three proposed sections that follow also originate with the direct operational experiences of the Department and organizational interest in refining the current regulatory text.

Remedies include the following: an existing provision for imposition of a 'consecutive' determinate SHU term—subsection (c), which is a re-designation of the above noted existing subsection with editing refinements—anchors new preceding language which distinguishes it from an 'initial' determinate term and a 'concurrent' SHU term in newly introduced (a) and (b) subsections. These modifications are necessary to provide greater clarity.

New subsection (a) defines an initial SHU term as the first SHU term established and the SHU term that changes the inmate's status from ASU to SHU. Additional direction is provided to utilize the SHU Term assessment worksheet to calculate the appropriate SHU term and addresses the initial SHU term as the controlling SHU term, absent another SHU term that is later assessed with a more distant MERD or the presence of an administrative SHU term.

Concurrent SHU terms are specifically addressed in new subsection (b). Defined as an independent SHU term running simultaneously to another SHU term, concurrent SHU terms shall be calculated on the SHU Term assessment worksheet. For misconduct that occurred prior to the assessment of an existing SHU term, a concurrent SHU term shall be assessed. For misconduct that occurred after the initial SHU assessment, the ICC has the discretion to effect either a concurrent SHU term or a consecutive SHU term, which is discussed below.

New subsection (c) discusses consecutive SHU terms which are described as successive SHU terms that begin following the maximum MERD of an initial or previously assessed SHU term. Consecutive SHU terms shall be calculated using the SHU Term assessment worksheet in the manner discussed above. For misconduct described in subsection 3341.9(e) that occurs following the assessment of a previous SHU term with an unexpired MERD, ICC has the discretion to assess the subsequent SHU term as either consecutive or concurrent, which is clarified in new subsection (d).

New subsection (d) provides clarity by detailing how ICC has the discretion to assess a qualifying serious misconduct as either a concurrent or consecutive SHU term. It is the Department's intention to broaden this existing regulatory provision to permit ICC imposition of 'concurrent' terms so that essentially, inmates may have any number of determinate SHU terms in effect at the same time. The 'controlling' term shall be the one with the most distant MERD. Moreover, it shall be the option of the committee which of the two (concurrent or consecutive) to impose based on the committee's evaluation of the perceived

degree of threat the inmate would pose to institutional safety and security should they be returned to a general population. Further detail is provided directing the ICC to clearly document their reasoning for their decision on the Committee Classification Chrono This discretionary detail affords the ICC the tools to more effectively manage the incorrigible sub-set of its inmate population in the most legitimate penalogically based method possible.

The detail contained within subsection 3341.4(a) through (d) is the result of an overall departmental need to clarify the application of these rules. The clarity provided is essential to the comprehensive understanding of the rules on behalf of both inmates and staff, as well as fair and consistent enforcement.

Existing subsection 3341.5(c)(2)(B)7 and 9, are renumbered 3341.5 and amended

The existing determinate SHU suspension provisions have been retained with modified language and increased detail to improve editorial consistency and explanation. Underlying any SHU suspension decision by the ICC shall be the presumption that the inmate in question no longer poses a threat to others or the institution. New subsection (a) allows for the ICC to consider the current case factors, including medical and mental health considerations, in determining an inmate's current threat to institutional safety and security. Subsection (a) brings forward much of the content of existing subsection (c)(2)(B)7 adding that SHU terms may be suspended when deemed clinically necessary.

Further clarification is added in new subsection (a)(1) directing ICC to suspend any portion of a SHU term during periods the inmate was not on segregation status. So long as the inmate continues in departmental custody, time remaining on a SHU sentence shall, in effect 'continue to run,' and not 'erased' by a suspension of the term, regardless of housing as captured in subsection (a)(2). Subsection (a)(3) adds additional detail for ICC to consider when suspending SHU terms. Specifically, when SHU suspensions take place, ICC must consider placement and refer cases, as appropriate, to the CSR. In such circumstances, ICC has the authority to release the inmate to a GP or ASU within the same institution pending CSR/C&PR review, as appropriate.

The suspension of the remaining SHU term of a paroled inmate shall be automatic as described in new subsection (b). The time remaining on the SHU term at the time of parole is stayed and is to be recalculated upon return. In reference to the preceding subsection 3341.3(a)(2)(D), these recalculations are required on misconduct occurring with the past five calendar years so long as the inmate maintains the same CDCR identification number. Similarly, new subsection (c) addresses the circumstance where an inmate paroled prior to assessment of a determinate SHU term, to which ICC is again directed to calculate and address, as mentioned above. Any recalculation of a SHU term must be presented for CSR review purposes.

Section 3341.6 is adopted. An entirely new section devoted to the re-imposition of a SHU term is proposed and appropriately reflected in section sequencing and heading title. Such language establishes for the first time the procedures that the Department will follow when a suspended SHU term is re-imposed by the ICC.

New subsection (a) describes the ICC option to re-impose a suspended SHU term whenever the inmate commits a serious rule violation prior to the expiration of the established MERD and it is determined that the inmate now poses such a threat that SHU placement, as a control measure, is justified. Clarifying language has been merged from existing subsection 3341.5(c)(2)(A)3 describing SHU terms suspended based solely on the need for inpatient medical or mental health treatment, may be re-imposed without subsequent misbehavior if the inmate continues to pose a threat to the safety and the security of the institution.

New subsection (a)(1) clarifies that any ICC decision to suspend a SHU term shall be appropriately recorded on the Classification Committee Chrono. Additional detail was added noting that if multiple SHU terms are eligible for re-imposition, only the SHU term with the most distant MERD need be addressed. In the past, existing practices have required staff to address each and every active SHU term which is often cumbersome and time consuming. This added change will streamline the process with validation of ICC's actions and thought process included in the classification chrono. Existing text from subsection 3341.5(c)(2)(B)4 has been refined and merged into subsection (a)(2) providing ICC with direction on addressing subsequent misconduct; such as assessing forfeiture of clean conduct credit or a consecutive or concurrent SHU term. One important clarification added confirms that clean conduct credit may be forfeited for serious misconduct occurring prior to the expiration of the established MERD; however adjudication did not occur until after. Additionally, strong direction is provided clarifying that reimposition of a previously suspended SHU term based upon subsequent serious misconduct is permitted only if the inmate is placed in ASU immediately following the subsequent misconduct.

Likewise, the matter of any SHU term that may have been automatically, rather than deliberately, suspended when an inmate paroled shall be taken up by the ICC upon the return to custody of the same inmate, provided such incarceration continues on an existing CDCR identification number. New subsection (b) addresses this circumstance and requires ICC to evaluate whether the SHU term is determinate or administrative. For administrative cases, re-imposition shall follow the direction provided in new subsection 3341.3(a)(1) describing the process and requirements necessary for assessment of an administrative SHU term. Thoughtful detail has been added to this subsection recognizing existing subsection 3341.5(c)(2)(C) and the omission of additional language clarifying this process. For a determinate SHU term, ICC is required to address the unexpired SHU term and appropriately calculate on the SHU Term assessment worksheet. Clarification is provided for cases involving more than one unexpired SHU term, noting that only the most distant MERD be addressed. Consequently, ICC is directed to effect the assessment and either the imposition, suspension or commutation of the SHU term.

New subsection (b)(1) confirms that the re-imposed SHU term shall not exceed the period of time remaining on the original SHU term, while new subsections (b)(2) and (3) require the ICC action to be appropriately documented on a classification committee chrono and issued to the inmate with any new SHU calculations referred to the CSR for audit and approval. Factors specific to MERD calculation shall include the possibility of extension based on forfeiture of

clean conduct credits, imposition of a concurrent SHU term or imposition of a consecutive SHU term for any new offense serving to justify re-imposition of a suspended term.

Language contained in new subsection (c) through (c)(3)(A) are carried over in their entirety from existing subsection 3341.5(c)(11) – (c)(11)(C)

Section 3341.7 is adopted. An entirely new subsection devoted specifically to forfeiture of clean conduct credits while serving a determinate SHU term is proposed and reflected in section sequencing and heading title. Language significantly elaborates upon the existing procedures located in deleted subsections 3341.5(c)(2)(B)4 and 5. The process described is that which the department follows when contemplating inmate serious misconduct, beyond what is outlined in subsection 3341.9(e), that occurs while serving a determinate SHU term. An option currently available to the ICC is ordering a forfeiture of ‘clean conduct’ credits the inmate may have already earned or could earn in the future relevant to their MERD. Specifically, for those offenses listed in 3341.9(e), inmates are assessed a determinate SHU term. In assessing the SHU term, ICC recognizes both a maximum SHU term and a Minimum Eligible Release Date (MERD). The maximum SHU term can be thought of as the maximum amount of time an inmate can be confined on a determinate SHU term for a given offense, while the MERD can be thought of as fifty percent of the maximum. Similar to sentencing laws, SHU terms are assessed with an incentive to behave and comply with established behavioral guidelines, to which the interval of time between the maximum SHU term and MERD can be forfeited. Consequently, for subsequent misconduct as described above, up to 45 days of credit can be forfeited for each serious disciplinary violation insufficient to warrant imposition of a new SHU term.

While retaining the existing provisions with subtle changes in wording for editorial consistency, new language is added for purposes of additional elaboration. Serious offenses other than those specified in the SHU Term Assessment chart are established as the standard for measuring ‘serious’ misconduct justifying such credit forfeiture. As a result, new subsection (a) specifies that any misconduct as described above that occurs following the commission of any offense listed in subsection 3341.9(e) and prior to a projected or established MERD, may result in such forfeiture of credits. In such an event, subsection (a)(1) indicates that up to 45 days may be forfeited for each violation and that such an adjustment to the MERD shall be calculated on the SHU Term assessment worksheet. Newly introduced in this subsection is the requirement that any such recalculation shall be presented to a CSR for approval. Where this referral was absent in the past, any recalculation of a MERD may have a suppression effect, to which the added review provides an additional safeguard to the inmate as well as the ICC. Subsection (a)(2) now clarifies that the forfeiture of clean conduct credits may be considered for any unexpired MERD or projected MERD, even if the MERD had been previously suspended.

New subsection (b) reiterates existing standardized practices requiring the ICC to document and clearly articulate the assessment of any credit forfeitures on the Classification Committee Chrono, where subsection (c) expands and clarifies that

forfeitures may be assessed against clean conduct credits already earned or future clean conduct credits. However, to clarify that ICC may assess from 0 to 45 days of credit forfeiture per violation; such forfeitures may not exceed the maximum release date which has been assessed or projected for the offense subjected to SHU assessment.

Existing subsections 3341.5(c)(2)(B)10 through 3341.5(c)(8) and 3341.5(c)(2)(A)(1) are reordered, renumbered 3341.8 and substantially rewritten. As explained above, the Department is significantly revising, expanding and reordering all the existing regulatory text of 3341.5 into a consolidated treatment of matters specific to SHU classification review processes. This entails reordering some current material together with textual deletions, additions and augmentations and, finally, creation of new subsection headings to replace most of what now remains, of the original text of 3341.5. Accordingly, a new numerical designation (3341.8) and heading is proposed in order to capture the topical content of this particular portion of the rewritten and restructured article with an added presentence now requiring the ICC to conduct all classification hearings. Any existing processes where unit classification committee hearings are referred to, either directly or indirectly are being superseded for ICC review. This enhancement was added to the existing methods to provide a meaningful and more robust classification hearing for those inmates housed in SHU/PSU.

As a combination of relocated, renumbered and augmented text, there are no substantial departures from existing Departmental policy pertaining to administrative SHU status reviews contained in the language of proposed 3341.8(a). However, new subsection (a) now requires all administrative SHU/PSU inmates to receive ICC hearings no less frequently than every 180 days. Additionally, all determinate SHU/PSU inmates shall receive ICC hearings no less frequently than every 180 days following their initial SHU Annual Review. This significant improvement was to afford the ICC the opportunity to evaluate SHU/PSU cases for release at least twice a year. The intent behind the additional reviews is to conduct thorough assessments of any demonstrated behavior changes manifested by the inmate and/or the inmate's expressed willingness to conform to CDCR rules for release consideration or case updates, as appropriate. STG affiliates assigned to SHU/SDP will continue to follow the committee schedule pursuant to section 3378.3(b)(1) through 3378.3(b)(3) as previously noted in subsection 3341.5(c)(2)(A)1. New subsection (a)(1) continues in the context provided in existing subsection 3341.5(c)(3), requiring each SHU/PSU case expected to be retained more than 360 days, to receive a new Administrative Segregation Placement Notice explaining the continued reasons for retention preceding the Annual SHU Review. Additionally, all administrative SHU cases will further require ICC to refer to the CSR for review and approval. Further detail is provided in new subsections (a)(2)(A) through (C) outlining those conditions that must be present for the ICC to retain on SHU status beyond 360 days which include the following: The inmate has an unexpired MERD; Release of the inmate would endanger the safety and security of the institution; and the inmate has voluntarily requested continued retention in segregation. Significant text has been retained from existing subsections (c)(3)(A) through (C); however, additional detail has been added for editorial clarity and understanding.

Existing subsections 3341.5(c)(4), (c)(5) and (c)(6), as related to STG affiliates, have been renumbered to 3341.8(a)(3), (a)(4) and (a)(5) and remain unchanged.

Matters relating to the MERD date are relocated, and more elaborately treated, in a new separate subsection, 3341.8(b). This section addresses various aspects of planning required for contingencies subsequent to the expiration of the MERD, among which options may be the inmate's transfer to administrative segregation status. New subsection (b) now officially recognizes a long standing Departmental practice requiring classification hearings on inmates nearing their MERD. The Pre-MERD review is a classification hearing required to normally occur 120 days prior to the established MERD, to not only recognize the nearly expired MERD, but more importantly, to lay out a future program for the inmate. Understanding that classification actions often require time to effect, the Pre-MERD review is a hearing proposed to possibly consider an inmate's early release from SHU, and if not, to consider placement following the SHU term, without delay, once the MERD expires. If it can be anticipated that the inmate may be retained in SHU/PSU prior to the Pre-MERD, new subsections (b)(1) and (2) require a new Administrative Segregation Placement Notice be issued and that once the MERD expires and there is no administrative SHU term in place, the inmates SHU status reverts to administrative segregation.

Because of superceding language appearing in newly proposed subsection 3340(e), the provision which specifies that an IE will not be assigned during the 180-day periodic reviews in section 3341.5(c)(2)(A)1 has not been relocated. Finally, accompanying the changes in text noted above are the numerical reordering and re-designations required to maintain the logical subject consistency of the sections content.

In consideration of the substantial rewrite of section 3341.5, there are no substantial departures from existing Departmental policy while the majority of existing language was incorporated, rewritten and augmented with elaboration and repositioning to improve the logical topic order.

Existing subsections 3341.5(c)(10) is reordered, renumbered 3341.9 and substantially rewritten. New section 3341.9 is being adopted to detail the nature of how SHU terms are assessed, inclusive of several refinements to existing practice. Now with an appropriate heading, the regulations provide direction on how SHU terms are calculated in accordance with the assessment chart found in 3341.9(e), discussed sequentially below.

New subsection (a) adopts the content and scope currently found in subsection 3341.5(c)(10), explaining that all SHU terms shall be set at the expected range absent any mitigating and/or aggravating factors. In establishing determinate terms of SHU confinement, mitigation or aggravation shall continue to be considered with the potential for and the imposition of lesser or greater periods of confinement. New subsection (a)(1) reiterates that both aggravating and mitigating factors shall be considered; however, clarifies that factors considering past behavior shall only be considered over the past five calendar years. The SHU Term Assessment Chart contained in new subsection 3341.9(e) is

referenced in new subsection (a)(2) affirming that the total period of SHU confinement shall be no less than nor greater than the range outlined. Expansive language is added in this subsection requiring the ICC to not only review the circumstances of the offense, the inmate's behavioral history and any other case factors identified within the scope of aggravation/mitigation as detailed below, and determine the specific amount of time deviating away from the expected SHU term provided on the chart. Further detail is provided directing the ICC to clearly document their reasoning for their decision and any deviation on the Committee Classification Chrono, SHU Term assessment Worksheet and to provide a copy of each to the inmate. New subsection (a)(3) expounds on the requirement to not only consider both aggravating and mitigating factors, but to adjust the SHU term in consideration of both. Additionally, strong language has been added ensuring both aggravating and mitigating factors are uniformly applied, in an effort to ensure fundamental fairness when assessing such terms. With the insertion of 'Institution,' opposed to the obscurely stated 'committee,' additional specificity is provided with respect to which classification committee has the responsibility for considering such factors. All existing language referring to 'base offense' and the use of 'lesser offenses' to increase the term of confinement are eliminated from these regulations, as being unnecessarily complicated and counterproductive to the factoring process contained in this section.

The addition of one factor increases both the existing list of mitigation factors from five to six in total and the existing list of aggravation factors from four to five in new subsection (b) and (c). Existing factors in mitigation have been retained in whole with minor textual clarity added to simplify application. Subsection (b)(1) recognizes existing subsection 3341.5(c)(10)(A)1, clarifying that the inmate's disciplinary free history should be considered in mitigation following the first year of CDCR incarceration. Historically, a 'minor or no prior disciplinary' record has been inconsistently applied as a mitigating factor, to which the refined language is added to assist in its application. New Subsection (b)(2) contains the fundamental language included in existing subsection 3341.5(c)(10)(A)2, adding a five calendar year cap in consideration of this mitigating factor. New subsections (b)(3) through (5) are all brought forward from existing subsections 3341.5(c)(10)(A)3 through 5, with additional language requiring the ICC to document and reference the information relied upon justifying the application of each factor. Newly added to the list of mitigating factors in new subsection (b)(6) is the use of the CDCR Form 115-MH, Mental Health Assessment Request. In recognizing the role that mental health can have in rules violation reports and inmate behavior, ICC can now utilize the 115-MH to better assess and evaluate the circumstances of the rules violation and consider mitigation in the assessment of a SHU term under those circumstances warranting completion of said form.

As mentioned above, new subsection (c) now has five aggravating factors, an increase from the four currently listed in subsection 3341.5(c)(10)(B). New subsection (c)(1) continues to describe the inmate's prior behavior as a means for aggravation, but clarifies that such behavior must have occurred within the past 5 calendar years. The language in new subsection (c)(2) has been fundamentally adopted from subsection 3341.5(c)(10)(B)2, with the added

refinement requiring the ICC to document and reference the information relied upon justifying the application of this aggravating factor. Recognizing the significant impact that STG affiliates have on both the security of the institution and the safety of inmates and staff, a new aggravating factor has been introduced as subsection (c)(3) authorizing ICC to aggravate a SHU term if the misconduct was committed on behalf of a STG and can be clearly documented and referenced. New subsection (c)(4) mirrors existing subsection 3341.5(c)(10)(B)4, wherein the SHU term may be aggravated if it can be verified the offender influenced others to commit the serious misconduct. Similar to above, additional language has been added requiring ICC to document and reference the information utilized to support the application of this aggravating factor. Oftentimes, the serious misbehaviors warranting SHU assessment result in the injury of more than one victim. New subsection (c)(5) now recognizes this as an aggravating factor and authorizes ICC to consider, so long as the application can be supported by documentation and reference.

The addition of some clarifying text and minor changes required for editorial consistency achieves further efficiency and streamlining in the language used in this section. Causing injury to multiple victims by the inmate's own hand specifically replaces 'a finding of guilty for more than one offense.' Currently found in 3341.5(c)(10)(B)3, this rarely used factor was often found to be inappropriately used and confusing to understand. Changes are required to conform to litigation or are self-initiated improvements arising out of the Department's experience and more effectively capture the Department's objectives.

New subsection (d) outlines specific direction for the ICC to refer each SHU assessment to the CSR for review and approval. A CSR is a departmental official charged with numerous responsibilities to carrying out the Director's classification policies and procedures. The classification will be defined in section 3000 for the reasons previously explained. Existing elements found in 3341.5(c)(2)(B)4 and 7 are to be superceded as follows: CSR approval of the assessment of a SHU term and review of referred suspensions and placement recommendations shall continue. However, Pre-MERD and initial SHU placement actions are added to this list and the scope of responsibility expanded to review and confirmation, insofar as the case requires placement review or endorsement. All such audits and endorsements shall ensure that the term assessed is consistent with the findings contained in the applicable rules violation report. The detection of procedural errors may necessitate referral of the case back to the originating Chief Deputy Warden or deferral to the ICC. Expanding these CSR review responsibilities are made in the interest of improving organization processes and ensuring that inmates receive added procedural safeguards.

Existing subsection 3341.5(c)(9) is renumbered 3341.9(e) and amended. The length of time inmates will spend in determinate SHU confinement is calculated by ICC using an assessment chart. As previously identified, this chart—organized by offense and the 'low,' 'expected' and 'high' number of months of a typical term—is used when establishing the specific length of determinate confinement. These provisions apply only to those inmates found

guilty of serious misconduct during the period of time they have been sentenced to the custody of the Department.

With the following modifications, this chart is retained, but with greater prominence and the incorporation of key revisions: A new subsection number (3341.9(e)) and heading more accurately reflects the importance of the chart; The subsection citation numbers have been adjusted; The word 'fixing' is replaced with 'calculating' to more correctly capture the purpose of the chart; Finally, a number of revisions in the 'offense' and 'typical term' portions of the chart are made, including both increases and decreases in the table of months of a typical term and additional offenses largely to distinguish 'attempts' from existing offenses. Modifications to the SHU term ranges were done so to establish parity between the time intervals separating the expected from the high and the expected from the low. Subtle range modifications have been implemented to remove existing ambiguities, address parity between offenses and reflect more serious offenses with higher SHU terms and less serious offenses with a lesser SHU term.

For 'homicide,' deletions and relocation simplify existing text and is now cited under subsection (e)(1). Existing subsections (A)(1) and (2) related to murder have been renumbered (e)(1)(A) and (B). Although the ranges for new subsection (A) remain the same, subsection (b) has been increased from 15, 26 and 36 months to 24, 36 and 48 months in recognition of the seriousness of the murder of an inmate and to extend the intervals between 'murder' and 'battery on an inmate resulting in serious injury.'

With respect to 'violence against persons,' existing subsection (9)(B) has been renumbered to (e)(2). To conform to penal code standards, 'assault' will remain in the SHU chart as identified in subsections (2)(B), (E) and (H) and recognized as an 'attempted battery.' Additionally, 'battery' will now also be included in new subsections (2)(A), (D), (G) and (I) on the SHU chart and addresses those offenses where physical harm was committed against another person. The phrase 'physical force insufficient to cause' is deleted from subsection (9)(B)3 and 4, and the relevant sentences more simply worded with the addition of a single word, 'without,' in new subsection (2)(G) and (I). Augmented language was added to 'batteries causing serious injury,' to include throwing 'caustic substances,' which is relocated from existing subsection (9)(B)5, along with the phrase 'or other fluids capable of causing serious or mortal injury or physical force causing serious injury.' New subsections (2)(C) and (F) introduce the charge of rape, sodomy, or oral copulation' on a non-inmate and inmate alike, or any attempts—with the provision of 'against the inmate's will' added, which lengthens the list of such acts covered by the chart. Considering the batteries resulting in serious injury, rape/sodomy and gassing offenses against non-inmates, as described in new subsection (2)(A) and (C); increases in the low and midrange SHU ranges to 18 and 30 months, with a reduction to the high to 42, are proposed recognizing the parity between the offenses as well as the gravity of the crime. In new subsection (2)(G), the SHU ranges for the non-injurious and non-inmate batteries have resulted in no change. As committed against inmates, the proposed SHU range changes for inmate serious batteries, rapes and gassings in new subsections (2)(D) and (F), have been amended to increases to

the low and expected ranges to 12 and 18 months, while the high range remains at 24 months. Similarly, the SHU ranges for the non-injurious inmate batteries have resulted in no change to the low and high range, with a proposed one month increase to the expected, as described in new subsection (2)(I). Additionally, a significant change to new subsection (I)(2) now allows for batteries on an inmate without serious injury to be 'SHUable' only in the circumstance where there is a direct STG nexus or the inmate was found guilty of 2 or more RVR's of this nature within a 12 month period. This improvement was considered necessary in recognizing inmates who have established a pattern of Batteries on Inmates rather than a single isolated incident. Furthermore, any assault on an inmate is no longer 'SHUable,' noting that attempts of this nature were determined not to meet the threshold or spirit of SHU placement. Absent from existing language and now included in the proposed text is the recognition of attempts (specifically identified as assaults) at committing violence against another person under the charges discussed above. Consequently, such attempts retain existing theory and practice in that SHU assessment ranges for proven attempts are calculated at one half of the established range for that offense. However, only those 'assaults' listed shall qualify for SHU assessment. Any assault not specifically identified against a person shall no longer qualify for SHU assessment.

Concerning threats of violence in new subsection (e)(3), there are numerous revisions in the existing text. The 'taking' of hostages is added to 'use' of hostages. 'Of violence' newly modifies the word 'threat' throughout this portion of the chart. New subsection (3)(A) for non inmate hostage taking reflects no change to the low, but increases the expected and high ranges to 30 and 42 months respectively. Threats of violence to non-inmates remains in new subsection (3)(B) with a subtle decrease to the SHU range as follows: Threat of violence to non-inmate remains unchanged other than a one month decrease to the high. In recognizing that assaults on inmates are no longer 'SHUable' as described above, and to maintain congruence relative to uniform practice and application; existing subsection (9)(C)3 for Threat to an Inmate has been removed from the SHU Term Assessment Chart.

Additions dominate revisions in 'weapon' possession in subsection (4). 'Possession or manufacture of an' explosive device is added to new subsection (4)(A). The low range specified for such acts remains unchanged; however, the expected and high ranges have increased to 30 and 42 months. Likewise, 'manufacture' is added to possession of a weapon. Moreover, 'weapon' is broadened in subsection (4)(B) to include materials altered from their original state or purpose and capable of being made into such a weapon with further elaboration including 'the obvious intent or capability of inflicting serious injury and which is under the immediate or identifiable control of the inmate.' The existing range for this offense is 6, 10 and 15 months; however, is being reduced to 4, 8, and 12 to maintain a sequential order of seriousness of SHU offenses and to balance the existing SHU chart.

Deletions and substitutions dominate the existing 'drug trafficking' text in new subsection (5), beginning with the topical subheading, where 'trafficking' is changed to 'distribution of controlled substances as defined in section 3000.'

With such an improvement in textual specificity, textual redundancies can be deleted. Likewise, the 'low' range remains unchanged; however, the expected and high ranges were increased to 12 and 18 months in recognition of habitual offenders and the violence that often accompanies such offenses.

Deletions and substitutions also dominate the existing 'escape' text beginning with the topical subheading in new subsection (6). The term 'escape' is retained and the modifying phrase 'with force or attempted escape with force' is relocated. 'With force against a person' is relocated to (A) of the subsection text, with noticeable SHU chart increases of 12, 24 and 36 months respectively, recognizing the threat to public safety. New subsection (B) is added, to read 'from any departmental prison or institution other than a camp, MSF or reentry facility,' and now reflects SHU ranges of 6, 12 and 18 months, indicative of half the range of an escape with force.

New subsection (7) retains the current text found in existing subsection (9)(G), as it relates to disturbance, riot or strike. New subsection (A) retains the exact text from the existing regulatory language. However, new subsection (B) contains only a portion of existing subsection (G)2 as it relates to an active participation in a disturbance, riot or strike and was modified to isolate and distinguish those offenders who participate in large scale disturbances. Additionally, this offense was augmented to allow SHU assessments only in the circumstance where there is a direct STG nexus or the inmate was found guilty of 2 or more RVR's of this nature within a 12 month period.

This improvement was considered necessary in recognizing a pattern of behavior rather than a single, isolated incident. Newly added subsection (C) provides for the remaining language from existing subsection (G)2 to stand on its own merit and isolates those inmates who volitionally act out in such a way as to incite others and/or escalate the magnitude of an event to a point threatening institutional safety and security. Although the SHU chart range for leading a disturbance, riot or strike remains unchanged; the active participation in a riot or attempting to cause conditions likely to threaten institution security has become an increasingly serious problem, often resulting in the serious injury of others. Consequently, the SHU chart range has been increased in all three ranges to 3, 6 and 9.

The offense of harassment is mirrored from existing text in new subsection (8). Additionally, the SHU ranges of 6, 12, and 18 remain unchanged.

The 'Arson, Theft, Destruction of Property' subsection heading is deleted in existing subsection (9)(I) and simplified as a topical heading in new subsection (9). The remaining text is largely unchanged with the exception of the word 'arson,' which was removed as serious arson violations are implied in the 'destruction of state property.' In addition, SHU ranges specified for such acts remain unchanged at 2, 8 and 12 months, respectively.

Newly added to subsection (10) is the topical heading, 'Extortion or Bribery.' The text 'extortion and bribery' is modified from existing subsection (9)(J) with the insertion of the word 'or,' and deletion of the word 'and.' New subsection (10)(A) mirrors existing text in subsection (9)(J) with an increased range of 4, 8 and 12

relative to the SHU chart. Introduced in new subsection (10)(B) is the extortion or bribery of an inmate with a newly established SHU chart range of 2, 3 and 4 months, respectively. This newly added subsection recognizes the offenders that prey on the inmate population, often against inmates susceptible to victimization concerns.

Existing text in subsection (9)(K) has been renumbered in new subsections (11), (11)(A) and (11)(B), and brought forward in whole. For offenses related to sexual misconduct, to include sexual disorderly conduct and indecent exposure, existing SHU chart ranges remain unchanged.

The current text found in subsection (L) relative to Refusal to Accept Assigned Housing has been deleted in its entirety and permanently removed from the SHU schedule, noting offenses of this nature have not demonstrated an ongoing threat to the safety and security of the institution, do not meet the threshold of violence/criminal behavior otherwise cited and by which other administrative remedies remain available to address such behavior.

Existing subsection (M) is now found in new subsection (12) in its entirety with added language for clarity. Although significant detail has been added to the SHU Assessment Chart relative to 'Assaults,' the existing language remains appropriate to address less common 'attempts' to commit any of the offenses not otherwise listed. However, in establishing clarity, the 'attempts' identified herein, are separate and distinct from 'assaults' against a person. Consequently, any offense warranting SHU assessment related to an assault on a person, are listed individually on the SHU Term Assessment Chart. The 'attempts' described in new subsection (12), are intended to address offenses other than those related to assaults against a person.

Currently, inmates conspiring to commit the offenses listed receive the term specified for the offense itself. The addition of 'solicitation of another person to commit' is added as one of the listed offenses in new subsection (e)(13).

Finally, accompanying the changes in text noted above are the numerical reordering and re-designations required to maintain logical subject consistency in the content of this section.

Existing subsection 3341.5(c)(10) is moved forward to Section 3341.9, renumbered subsections 3341.9(a) through (c) and amended. These changes have been explained above.

Existing 'SHU Time Computation Table' shown within the text of subsection 3341.5, is deleted. The SHU Time Computation Table has historically been a guide to assist caseworkers in the manual calculation of a SHU term. In the past, caseworkers would manually calculate a SHU term utilizing, now retired, SHU assessment forms, where the SHU Time Computation Table was utilized as a reference in determining either 25% or 75% of the number of SHU months that were to be assessed. As this system of calculation no longer exists and has been replaced with the newly automated SOMS

calculation process, this form and the information contained within, is no longer necessary and has become obsolete.

Subsection 3341.9(f) is adopted. New subsection 3341.9(f) introduces the methodology and definitions of the terms utilized and referenced in the calculation of a SHU term. Greater detail is provided to identify the required elements and aid inmates and staff understanding of the SHU assessment process and its terminology. This new subsection introduces the common terms utilized in such a classification action, as well as the definitions and explanations. Additionally, in assessing a SHU term, the new language clarifies that each SHU term shall be calculated by assessing the appropriate number of months, followed with any remaining days computed by adding actual calendar days.

Inmates found guilty of offenses listed in new subsection 3341.9(e) are required to be assessed a SHU term. Each violation carries a specific amount of time, designated in months as indicated on the SHU Term Assessment Chart. New section (f)(1) defines the length of a month as 30 days relative to SHU assessment. The Minimum Eligible Release Date or 'MERD' is addressed in new subsection (f)(2), defining the MERD, while explaining the fifty percent of clean conduct credit that is built into every SHU term assessed. . Furthermore the clean conduct credit built into the SHU term has been increased from twenty-five percent to fifty percent to provide additional incentive for positive behavior and compliance with established behavioral guidelines. Although this change in clean conduct credit will reduce the established MERD, it continues to provide a period of observation in a secure setting after the inmate is found guilty of specific violations and allows for continued placement in a segregated setting if the inmate's continued behavior necessitates this placement. Clarification is provided in new subsection (f)(2)(A) where the established MERD is the date the SHU term ends and the date the inmate is no longer considered to be on SHU status. The information provides guidance. New subsection (f)(3) further explains the meaning and application of 'clean conduct credit,' and the ability the inmate has to earn up to 50% off the maximum assessed SHU term.

Existing subsection 3341.5(c)(11) through (c)(11)(C) has been relocated and renumbered.

Existing subsections 3341.5(c)(11) through (c)(11)(C), as related to STG affiliates, have been renumbered to 3341.6(c)(1) through (3)(A), and remain unchanged.

Existing Section 3342 is amended. Section 3342 remains largely unchanged. Reference to the CDC Form 114-A in subsection (a) is mislabeled and appropriately re-titled as 'Inmate Isolation Segregation Record,' along with the most recent revision date. Additional language was added including the form by reference.

Existing section 3343 is amended. The Department recognizes a variety of institutional programs that are segregated from the general inmate population. To further comply with litigated outcomes and programming quality and integrity, a new presentence has been added to section 3343 to clarify the meaning of

special purpose segregated housing to include administrative segregation units, as well as segregated housing program units.

Nonsubstantive additions and subtractions in subsections (a) through (m) are desired to improve content clarity or required in order to maintain textual consistency with changes made elsewhere. Subsection (a) adds clarifying language by specifying that Administrative Segregation Units (ASU) and Segregated Program Housing Units (SPHU) primarily compose those programs referenced as special purpose segregated housing units. For further clarification and conciseness, 'ASU' and 'SPHU' replace 'special purpose segregation housing.'

Subsection (b) is amended and clarified by replacing 'administrative segregation' with 'ASU or SPHU' for greater specificity. Similarly, subsection (c) contains the same modification and further replaces the word 'will' for 'shall' for added consistency and conformance with existing language, confirming its mandatory nature.

Current text in subsection (d) and (e) contain non-specific reference to administrative segregation with loose reference to other special purpose segregated housing. For clarity and conciseness, the reference was stricken and replaced with 'ASU or SPHU.' Additionally, for contextual clarity and consistency, 'shall' replaces 'will,' confirming its mandatory nature.

The rewording of subsection (f) continues to ensure that inmates placed in segregated housing shall be permitted the same visiting conditions and privileges enjoyed by the general population, unless general visiting provisions appearing elsewhere—such as in Article 7 of Subchapter 2, beginning with section 3170—specifically state otherwise. Similar to above, non-specific reference to segregated housing with exceptions is stricken and replaced with 'ASU, SHU and PSU.' In addition, an existing numerical cross-reference to 3341.5 is stricken as it appears confusing and irrelevant. Instead, cross reference to section 3170 is used to better capture the allowances and or restrictions of visits for ASU, SHU or PSU inmates. Additional language is stricken in the remainder of this subsection based on unnecessary redundancy already addressed in the cross reference to section 3170.

Similarly as described above, current text in subsections (g) through (m) contain non-specific reference to administrative segregation with loose reference to other special purpose segregated housing. For clarity and conciseness, the reference was stricken and replaced with 'ASU or SPHU.' Additionally, for contextual clarity and consistency, 'shall' replaces 'will,' confirming its mandatory nature and subsection 3000.5. Subsection (k) also interchanges 'will' for 'may,' noting that ASU or SPHU programs all provide mandatory services but may not all provide the exact or same services.

In addition to what is indicated above relative to subsection (l), additional language was also added to affirm staff responsibility to provide immediate notification at such time any inmate is demonstrating any indication of medical or mental health distress.

Existing Section 3344 is amended. As discussed in existing subsection (a), reference to the CDC Form 114 is mislabeled, wherein the current form title is stricken and replaced with 'Isolation Log'. New subsection (a) also replaces 'will' for 'shall,' noting the mandatory nature of the rule. For clarity and conciseness, ambiguous language referring to special purpose segregated units was replaced with 'ASU and SPHU.' Additionally, incorrect language referring to the CDC Form 114 as an Administrative Segregation Log was stricken and replaced with the correct name or terminology, 'Isolation Log.'

Amended subsection 3344(b) is augmented with new text in order to continue the priority of appropriate baseline documentation during the period of segregated confinement, but with greater emphasis. Replacing 'will' for 'shall,' occurs in three circumstances throughout this subsection, noting the mandatory nature of the rule. Specific reference to 'SHU and PSU' replaces 'special purpose segregated units,' for increased clarity. Repetitive and incorrect reference to the CDCR Form 114-A was stricken, recognizing the form was previously introduced and appropriately referenced in subsection 3342 above. Recognizing the significance and importance of documentation, detail and refinement was placed on describing the information required for the CDCR Form 114-A. Such clarifications mutually protect and benefit inmate and staff alike because they add greater specificity and detail about what must be documented and noted. Minor editorial or grammatical refinements have also been made for textual clarity.

Existing section 3345 is unchanged. While all other existing sections of this article are revised, amended or augmented in the manner discussed above, this particular section—pertaining exclusively to the responsibilities and duties of the custodial officer in charge of segregated housing units—remains unchanged.

TEXT OF PROPOSED REGULATIONS

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

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

Subchapter 4. General Institution Regulations

Article 7 Title and Sections are amended to read:

Article 7. ~~Segregated~~ Housing

Section

§ 3335 **Administrative Segregation**

§ 3335.5 Exclusions

§ 3336 ~~Segregation Order~~ Administrative Review of Administrative Segregation Unit Placement

§ 3337 ~~Review of Segregation Order~~ Classification Hearing of Administrative Segregation Placement

§ 3338 ~~Hearing on Segregated Housing Order~~ Change of Reason for Segregation

§ 3339 ~~Release from Administrative Segregation and Retention in Administrative Segregation~~

§ 3340 ~~Exclusions~~ Assistance to Inmates for Administrative Segregation Hearings.

§ 3341 ~~Staff Assistance~~ Segregated Program Housing Units

§ 3341.1 Protective Housing Units

§ 3341.2 Psychiatric Services Unit

§ 3341.3 Security Housing Units

§ 3341.4 Security Housing Unit Terms-Initial, Concurrent, and Consecutive

§ 3341.5 ~~Segregated Program Housing Units~~ Suspending Security Housing Unit Terms

§ 3341.6 Re-imposed Security Housing Unit Terms

§ 3341.7 Forfeiture of Clean Conduct Credit

§ 3341.8 Security Housing Unit /Psychiatric Services Unit Classification Hearings

§ 3341.9 Security Housing Unit Term Calculation and Assessment

§ 3342 Case Review

§ 3343 Conditions of Segregated Housing

§ 3344 Administrative Segregation Records

§ 3345 Officer in Charge

3000. Definitions.

Section 3000 is revised to add, amend, and alphabetically merge the definitions below with those that already exist.

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*

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.

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.

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.

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.

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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; Section 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; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.5. Credits

Section 3044. Inmate Work Groups

Subsections 3044(a) through 3044(b)(5) remain unchanged.

Subsection 3044(b)(5)(A) is amended to read:

(5) Work Group C: Disciplinary unassigned. Zero credit.

(A) Any inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment₁, or who is deemed a program failure as defined in section 3000, shall be placed in Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s).

Subsections 3044(b)(5)(B) through 3044(f)(1) remain unchanged.

Existing Subsection 3044(f)(1)(A) is amended to read:

(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 assignment₁, or who is deemed a program failure as defined in section 3000.

Subsections 3044(f)(1)(B) through 3044(j)(3) remain unchanged.

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: 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).

Subchapter 4. General Institution Regulations

Article 1.6. Inmate Housing

Section 3269. Inmate Housing Assignments.

Section 3269 through subsection 3269(f) remains unchanged.

Subsection 3269(g) is amended to read:

(g) If an inmate refuses to be housed as determined to be appropriate to this section, the inmate shall be subject to the disciplinary process, ~~with the potential to be housed in alternative and more restrictive housing.~~ Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, subsection 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the performance of Duty (CCR subsection 3323(f)(6)). Subsequent acts of the above listed offense will result in the issuance of additional disciplinary reports. ~~and consideration for placement in more restrictive housing such as an ASU or a SHU.~~

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

Section 3269.1. Integrated Housing.

Section 3269.1 through subsections 3269.1(b)(4) remain unchanged.

Subsections 3269.1(b)(5) is amended to read:

(5) RR, Restricted by Refusal. Inmate is otherwise eligible for integrated housing but refuses to participate. Refusal to accept an integrated housing assignment, when all available documentation and information does not preclude such, shall result in disciplinary action ~~with the potential to be housed in alternative and more restrictive housing, such as an Administrative Segregation Unit (ASU) or a Security Housing Unit (SHU).~~

Subsections 3269.1(c) through 3269.1(d)(7) remain unchanged.

Subsection 3269.1(e) is amended to read:

(e) If an inmate refuses to be housed in appropriately determined housing, he shall be subject to the disciplinary process, ~~with the potential to be housed in alternative and more restrictive housing.~~ Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, section 3005(c), Refusing to Accept Assigned Housing Obeying Orders, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty (CCR subsection 3323(f)(67)). ~~and shall be considered after the first RVR for placement in more restrictive housing such as an ASU or a SHU.~~ At any time during this process the inmate may elect to participate in the IHP.

Subsections 3269.1(f) through 3269.1(g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Johnson v. California* (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of *Johnson v. California*, (9th Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].

Subchapter 4. General Institution Regulations

Article 7 title is amended to read:

Article 7. Segregated Housing

Section 3335. Administration Segregation.

Sections 3335 is amended to read:

~~(a) When an inmate's presence in an institution's general inmate population presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity, the inmate shall be immediately removed from general population and be placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated segregation unit or, in an emergency, to any single cell unit capable of providing secure segregation.~~

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

~~(1) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.~~

~~(2) Investigations not related to misconduct or criminal activity~~

~~(3) Being a relative or an associate of a prison staff member.~~

~~(c) Temporary Segregation. Pending a classification committee determination of the inmate's housing assignment, which may include assignment to one of the segregation program units specified in section 3341.5 of these regulations or to the general inmate population, an inmate may be placed in a designated temporary housing unit under provisions of sections 3336-3341 of these regulations.~~

~~(d) An inmate's placement in segregation shall be reviewed by the Institutional Classification Committee (ICC) within 10 days of receipt in the unit and under provisions of section 3338(a) of these regulations. Action shall be taken to retain the inmate in segregation or release to general population.~~

~~(e) When, pursuant to this section, an ICC retains an inmate on segregation status, the case shall be referred to a Classification Staff Representative (CSR) for review and approval. Unless otherwise directed by the CSR, subsequent ICC reviews shall proceed in accordance with the following timelines until the inmate is removed from segregation status:~~

~~(1) At intervals of not more than 90 days until pending Division C, D, E, or F rules violation report is adjudicated. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. At that time, if no further matters are pending, but continued segregation retention is required pending transfer to a general population, ICC reviews shall be within at least every 90 days until the transfer can be accomplished.~~

~~(2) At intervals of not more than 180 days until a pending Division A-1, A-2, or B rules violation report is adjudicated, a court proceeding resulting from a referral to the district attorney for possible prosecution is resolved, or the STG validation investigation process is complete. Upon resolution of such matters, an ICG shall review the inmate's case within 14 calendar days.~~

~~(3) At intervals of not more than 90 days until completion of the pending investigation of serious misconduct or criminal activity, excluding STG validation, or pending resolution of safety and security issues, or investigation of non-disciplinary reasons for segregation placement. Should the completed investigation result in the issuance of a Rules Violation Report and/or a referral to the district attorney for criminal prosecution, an ICG shall review the case in accordance with the schedule set forth in subsections (1), (2), or (3) above. Upon resolution of such matters, an ICG shall review the inmate's case within 14 calendar days. At that time, if no further matters are pending, but continued segregation placement is required pending transfer to a general population, ICG reviews shall be at least every 90 days until transfer can be accomplished.~~

~~(f) Inmate retention in administrative segregation beyond the initial segregation ICG hearing shall be referred for CSR review and approval within 30 days and then thereafter in accordance with subsection (d) above. In initiating such reviews an ICG shall recommend one of the following possible outcomes:~~

~~(1) Transfer to another institution in accordance with section 3379.~~

~~(2) Transfer to a Segregated Program Housing Unit in accordance with section 3341.5.~~

~~(3) Retention in segregation pending completion of an active investigation into an alleged violation of the rules/disciplinary process, an investigation of other matters, or resolution of criminal prosecution. In such instances an ICG shall offer a reasonable projection of the time remaining for the resolution of such matters.~~

~~(g) Subsequent to CSR approval of an extension of segregation retention, an ICG will schedule the case for future CSR review in a time frame consistent with the projection(s) made in accordance with subsection (d) above.~~

~~(h) Inmates in segregation who have approved Security Housing Unit (SHU) term status, but are still awaiting other processes (i.e., court proceedings, adjudication of other rule violation reports, STG validation, etc.), shall be reviewed by an ICG in accordance with the SHU classification process noted in subsection 3341.5(c)(9).~~

~~(i) The need for a change in housing or yard status of any inmate segregated under the provisions of this article shall be reviewed at the next convened ICG hearing.~~

When an inmate's presence in an institution's General Population (GP) presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person, the inmate shall be immediately removed from the GP and placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated Administrative Segregation Unit (ASU) or, in an emergency, to any single cell unit capable of providing secure segregation.

(a) Non Disciplinary Segregation.

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

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

(B) Investigation not related to misconduct or criminal activity.

(C) Being a relative or an associate of a prison staff member.

(2) Designation as NDS shall be made by ICC.

(A) Any case designated as NDS, and included in the MHSDS, shall be transferred to an appropriate institution within 72 hours of initial designation.

(b) The reasons for ordering an inmate's placement in administrative segregation shall be clearly articulated on an CDC Form 114-D (Order and Hearing on Segregated Housing), which is hereby incorporated by reference, by the initial segregating authority.

(1) The CDC Form 114-D shall include sufficient information and detail to allow the inmate to present a written or verbal defense to the stated reason(s) and circumstances for segregation during the classification hearing.

(2) The authority to order an inmate's initial placement in segregated housing shall not be delegated below the staff level of Correctional Lieutenant or Correctional Counselor II (CCII), except when a lower level staff member is the highest ranking official on duty.

(3) A copy of the CDC Form 114-D shall be issued to the inmate at the time of placement in administrative segregation by the official ordering placement or by staff at the level of Correctional Lieutenant, CCII or higher.

(A) When necessary, the official ordering administrative segregation placement shall document whether there is a need for an accommodation to ensure effective communication as defined in section 3000, and if necessary, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) Administratively segregated inmate's returning to their endorsed institution from out-to-court or out-to-medical shall not require an updated CDC Form 114-D unless the inmate's next scheduled ICC hearing was missed or the circumstances for segregation have changed.

(c) In addition to the CDC Form 114-D, the initial segregation authority or designee shall prepare a CDCR Form 114-A1, Inmate Segregation Profile, which is hereby incorporated by reference, for each inmate being placed on administrative segregation status.

(d) A staff member at the rank of Captain, Correctional Counselor III (CCIII) or higher may rescind the placement and order the release of an inmate in administrative segregation at any time prior to the initial Institution Classification Committee (ICC).

Subsection 3335(j) is renumbered to 3335(e)

(je) All classification committee actions shall be documented, including a specific record of the inmate's participation, an explanation of the reason(s), and the information and evidence relied upon for the action taken. The inmate shall be provided copies of the completed forms relied upon in making the decisions affecting the inmate.

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

Section 3340 has been relocated to adopted subsection 3335.5, renumbered, and amended to read:

334035.5. Exclusions.

~~Removal of an inmate Separation from the Ggeneral Ppopulation(GP) 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 the GP general inmate status for medical or psychiatric reasons by order of medical healthcare staff and the inmate's placement is in a medical 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. Administratively segregated inmates with~~
When medical and psychiatric reasons healthcare concerns are involved, but are not the primary reasons for an inmate's placement in administrative segregation, shall remain on administrative segregation status, regardless of housing, 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. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.~~

~~(c) Orientation. Newly received inmates 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. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.~~

~~(ed) 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).~~

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

~~(f) 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.

Section 3336. Segregation Order is amended to read:

3336. Segregation Order. Administrative Review of Administrative Segregation Unit Placement

~~Authority to order an inmate to be placed in administrative segregation, before such action is considered and ordered by a classification hearing, may not be delegated below the staff level of correctional lieutenant except when a lower level staff member is the highest ranking official on duty.~~

~~(a) The reason for ordering an inmate's placement in administrative segregation will be clearly documented on a CDC Form 114-D (Order and Hearing on Segregated Housing) by the official ordering the action at the time the action is taken.~~

~~(b) In addition to explaining the reason and need for an inmate's placement in administrative segregation, the official ordering the action will determine if a staff member needs to be assigned to assist the inmate in presenting the inmate's position at a classification hearing on the need for retention in segregated housing. Staff assistance will be assigned and the assignment will be noted on the CDC Form 114-D if the inmate is illiterate or if the complexities of the issues make it unlikely that the inmate can collect and present evidence necessary for an adequate comprehension of the inmate's position at a classification hearing. If an inmate is not illiterate and the issues are not complex, staff assistance will not be assigned. The reason for not assigning staff assistance will be entered on the CDC Form 114-D.~~

~~(c) In assigning staff assistance, the official initiating the CDC Form 114-D will designate the inmate's caseworker by name, as the staff member to assist the inmate. If the assigned caseworker's name is not known or cannot be readily determined by the official initiating the CDC Form 114-D, the words "assigned caseworker" will be entered on the form.~~

~~(d) A copy of the CDC Form 114-D, with the "order" portion of the form completed, will if practical, be given to the inmate prior to placement in administrative segregation but not later than 48 hours after such placement. Copies of the CDC Form 114-D with the "order" portion completed will also be submitted to the warden or superintendent or designated staff for review and possible further action as described in section 3337. A copy of the CDC Form 114-D will also be routed to the records office as a notice of the inmate's current status and pending actions.~~

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

(a) The purpose of the administrative review is to determine if the reason(s) for administrative segregation placement is appropriate and whether continued administrative segregation status retention is necessary, in accordance with the provisions of this article.

(b) An inmate's administrative segregation placement shall be reviewed for retention or release by staff at the level of Captain, CCIII or higher, on the first business day following such placement. The review shall include: the inmate's case factors, reason(s) for segregation, and an interview with the inmate unless the inmate refuses to participate.

(1) Administrative reviews shall not be conducted by the staff member who authorized initial administrative segregation placement.

(2) An acting Captain may conduct an administrative review; however, in this case, an Associate Warden (AW) shall conduct a subsequent review that same day. If the reviewing AW is also in an acting capacity, their permanent rank shall be no lower than Captain or CCIII.

(3) When required, the Administrative Reviewer shall document the need for effective communication accommodation, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) The inmate shall be released to the GP if the Administrative Reviewer deems continued administrative segregation placement unnecessary.

(5) If administrative segregation placement is deemed appropriate, the Administrative Reviewer shall retain the inmate in administrative segregation and address the appropriate cell status pending the ICC hearing.

(6) The decision rendered shall be documented on the CDC Form 114-D.

(c) The Administrative Reviewer shall ensure the following procedural safeguards are afforded to the inmate in anticipation of the ICC hearing and that any necessary efforts to ensure effective communication are provided and documented.

(1) Staff Assistance. The Administrative Reviewer shall determine the need for a Staff Assistant (SA) in accordance with section 3340 and document on the CDC Form 114-D.

(2) Investigative Employee (IE). If an inmate requests witnesses and/or the assistance of an IE, the Administrative Reviewer may assign an IE in accordance with section 3340 and document on the CDC Form 114-D.

(3) Inmate Waiver. An inmate may waive their right to the 72-hour preparation time in writing by signing and acknowledging the waiver on the CDC Form 114-D, pursuant to subsection 3337(a)(2).

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

3337. Review of Segregation Order is amended to read:

3337. Review of Segregation Order Classification Hearing of Administrative Segregation Placements.

~~On the first work day following an inmate's placement in administrative segregation, designated staff at not less than the level of correctional captain will review the order portion of the CDC Form 114-D. If retention in administrative segregation is approved at this review, the following determinations will be made at this level:~~

~~(a) Determine the appropriate assignment of staff assistance, if such assistance was deemed necessary by the official initiating the CDC Form 114-D. If the inmate's caseworker is not an appropriate assignment because of the caseworker's schedule, an alternate staff assistance assignment will be made. The inmate will be notified in writing of any change in the assignment of staff assistance. An inmate may decline to accept the assignment of his or her caseworker or the first person assigned. In such cases a different staff member will be assigned to assist the inmate.~~

~~(b) Determine the inmate's desire to call witnesses or submit other documentary evidence. If the inmate requests the presence of witnesses or submission of documentary evidence at a classification hearing on the reason or need for retention in segregated housing, an investigative employee will be assigned to the case. A request to call witnesses and the names of witnesses must be submitted in writing by the inmate.~~

~~(c) Determine if the inmate has waived the 72-hour time limit in which a classification hearing cannot be held, as indicated on the CDC Form 114-D, or if the inmate desires~~

~~additional time to prepare for a classification hearing. A request and the reason for needing additional time to prepare for a hearing must be submitted in writing by the inmate. In the absence of an inmate's waiver of the 72-hour preparation period or an approved request for additional preparation time, a classification hearing cannot be held earlier than 72 hours after the inmate's placement in segregated housing, but will be held as soon thereafter as it is practical to do so.~~

~~(d) Determine the most appropriate date and time for a classification hearing based upon the determination arrived at under (a)(b) and (c) and the time limitations prescribed in section 3338.~~

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

(a) The need to retain an inmate in administrative segregation shall be determined by the ICC.

(1) The initial ICC hearing shall be held within 10 calendar days after the date the inmate was initially placed in administrative segregation. Voluntary extension of this time frame by the inmate is not permitted.

(2) The inmate shall be allowed at least 72 hours to prepare for the ICC classification hearing. However, the inmate may waive this procedural safeguard, after the Administrative Reviewer considers the need for SA and the inmate does not require a SA.

(3) In addition to a copy of the CDC Form 114-D, provided to the inmate at the time of placement in administrative segregation in accordance with subsection 3335(b)(3), the inmate shall be provided copies of all additional documentation concerning the reasons for administrative segregation placement at least 24 hours prior to the ICC hearing. Confidential information pertaining to the case shall be afforded to the inmate in accordance with subsection 3321(b)(3).

(4) Inmates not requiring a staff assistant, in accordance with section 3340, may waive the 24-hour period for documentation review. Waivers shall be formally noted in the CDC Form 128-G.

(5) Exceptions to the inmate's physical presence at the hearing shall be permitted in accordance with subsections 3320(g) or 3375(f)(3). The reasons for any hearing conducted without the presence of the inmate shall be recorded within the CDC Form 128-G.

(6) If the inmate refuses or is unable to attend the hearing, a staff member shall query the inmate on behalf of the classification committee and convey all relevant information to the committee to consider in making their decision and shall be recorded within the CDC Form 128-G.

(7) The SA, if one is assigned, shall be at the hearing even if the inmate is not present.

(b) The primary purpose of the initial ICC hearing is to determine the need for continued segregation. Consistent with the criteria set forth in section 3335, the ICC review shall be based on the documented case-specific circumstances of the CDC Form 144-D and any other disciplinary, IE report or other available information that may impact placement. The classification committee shall ensure that all applicable procedural safeguards are uniformly applied to each inmate placed in administrative segregation and record their findings on a CDC Form 128-G in accordance with subsection 3375(g), including any evidence or documentation relied upon, with a copy issued to the inmate.

(1) The classification committee shall consider all available information, including inmate comments, when determining the appropriate exercise yard group and any housing restrictions.

(2) The inmate's yard assignment and housing status shall be reviewed at each ICC appearance and modified as necessary.

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

(1) At intervals of not more than 180-days: when a pending Security Housing Unit (SHU) assessable Rules Violation Report (RVR) is postponed pending a court proceeding, a referral to the District Attorney (DA) for possible prosecution, or pending completion of Security Threat Group (STG) validation investigation process pursuant to subsection 3341.3(a)(1)(D) & (E). Administrative segregation extension requests specific to pending disciplinary matters shall identify the inmate's intent to postpone the disciplinary hearing, as well as, the status of the pending DA referral. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. Inmates who have postponed their RVR pending a court proceeding or a referral to the DA shall not be retained in ASU past the anticipated projected MERD unless ICC has reason to believe based on the inmate's disciplinary history, that administrative SHU status would be necessary for the safety and security of the institution or persons, following the adjudication of the RVR. In these cases a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

(2) At intervals of not more than 90 days: when an administrative segregation inmate is pending a GP transfer.

(3) At intervals of not more than 90 days: until a SHU assessable RVR is adjudicated and the matter is not pending referral for prosecution. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

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

(d) Subsequent ICC reviews shall be in accordance with subsection (c) of this section. All cases shall be presented to the CSR prior to the expiration of a previously approved CSR extension.

(e) Inmates in administrative segregation who have an approved SHU term, but are pending other unresolved case considerations, shall be reviewed by the ICC in accordance with subsection 3341.8, Security Housing Unit/Psychiatric Services Unit Classification Hearings.

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

Section 3338 is amended to read.

3338. Hearing on Segregated Housing Order Amendment to Reasons for Segregation

(a) A classification hearing for consideration and determination of the need to retain an inmate in segregated housing, for the reasons set forth in an segregation order, CDC Form 114-D, will be held as soon as it is practical and possible to do so, but in no case longer than 10 days from the date the inmate was initially placed in segregated housing, except for the following reasons:

(1) The segregation order, CDC Form 114-D, has been withdrawn and the inmate has been returned to general population status pursuant to Section 3339.

(2) The inmate has been afforded the procedural safeguards of a disciplinary hearing for a serious rule violation and the case has been referred to a classification committee for review, as provided in Section 3315(g). In such cases the classification committee may rely upon the findings of the disciplinary hearing in determining the inmate's need for segregated housing and in ordering such placement. A separate order and hearing on segregated housing is not required in such cases.

(3) The inmate is retained in segregated housing for any Administrative reasons or purposes after acquittal or dismissal of disciplinary charges for which the inmate was segregated pending a disciplinary hearing. In such cases, a segregated housing order shall be initiated and a hearing shall be held on the order within the time limits and under the procedural safeguards set forth in Section 3339(b).

(4) A continuing state of emergency exists within the institution, as described in Section 3383. Under such circumstances the hearing will be held as soon as it is safe and practical to do so.

(b) The hearing on an administrative segregation order, CDC Form 114-D, may be conducted by a single classification hearing officer (facility captain, correctional captain, correctional counselor III, or experienced correctional lieutenant, or correctional counselor II.) This does not preclude the use of classification committees or subcommittees of classification for such hearings if such committee hearings can be scheduled and conducted within the time constraints required for such hearings. This option is left to the discretion of each warden and superintendent.

(c) The inmate will be present at the initial hearing on an administrative segregation order except under the applicable conditions as described in section 3320 (g) of the Secretary's rules relating to disciplinary hearings. If the hearing is held without the inmate present, the reason will be documented on the segregation order form. Any staff member assigned to assist the inmate will also be present at the hearing.

(d) The primary purpose of the initial hearing on an administrative segregation order, CDC Form 114-D, is to determine the need for continued retention in administrative segregation pending criminal prosecution, disciplinary proceedings, the resolution of nondisciplinary issues or considerations, and reclassification by the institution's main classification committee for assignment to a specialized security housing unit, or an action on the main classification committee's recommendation for transfer to an institution with appropriate specialized security housing units.

(e) When the reason for an inmate's initial placement in administrative segregation is a disciplinary matter and likely to result in a formal report of violation of institution rules on a CDC Form 115, or a referral to the district attorney for possible criminal prosecution,

~~the hearing will assume the alleged misconduct or criminal activities to be factual as reported in the segregation order. The hearing will not consider evidence or information relating to the guilt or innocence of the inmate. The only determination to be made is whether the inmate needs to be retained in administrative segregation for the reasons given in subsection 3335 (a) and in the segregation order, CDC Form 114-D, pending resolution or disposition of disciplinary issues. If the hearing decision is to retain the inmate in administrative segregation, the case will be referred to the next scheduled meeting of the institution's main classification committee for review. The main classification committee may review the case in absentia and continue the inmate in administrative segregation pending resolution of the disciplinary issues, or schedule the inmate for a personal appearance to consider placement in a specialized security unit based upon other nondisciplinary reasons necessitating such placement.~~

~~(h) Based upon the finding of the investigative employee, the initial hearing or the main classification committee will permit the inmate to present witnesses and documentary evidence at the hearing unless the initial hearing officer or the chairperson of the committee determines in good faith that permitting such evidence will be unduly hazardous to the institution safety or correctional goals. The reason for disallowing witnesses or evidence will be documented in the "hearing" portion of the segregation order, CDC Form 114-D, and in the classification committee's report (CDC Form 128-G) depending upon the hearing at which the presentation of such evidence or witnesses would have otherwise been presented.~~

~~(i) The determinations arrived at in the classification hearing will be documented in the hearing portion of the segregation order, CDC Form 114-D, and in the classification committee report, CDC Form 128-G, depending upon the hearing at which the need for segregated housing is resolved. Such documentation will include an explanation of the reason and the information and evidence relied upon for the action taken. A copy of the completed CDC Form 114-D and any CDC Form 128-G resulting from hearings will be routed to the inmate's central file. The inmate will also be given copies of all completed forms and of all other documents relied upon in the hearing except those containing confidential information.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Wright v. Enomoto*, 462 F Supp 397 (1976).~~

(a) When the initial reason(s) for segregation has been resolved, but additional circumstances exist warranting continued administrative segregation placement, a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

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

(2) The official ordering retention shall ensure all procedural safeguards have been provided, in accordance with subsection 3336(c).

(3) The ICC shall be the sole authority permitted to effect a placement decision under the provisions of this section.

(b) For retention purposes, the CDC Form 114-D shall include:

- (1) The current reason(s) for segregation, and any resolution of such placement.
- (2) The new reason(s) for retention in segregated housing in accordance with section 3335.
- (3) When necessary, the official issuing the CDC Form 114-D for administrative segregation retention shall document the need for effective communication accommodation if any, as defined in section 3000, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.
- (c) ICC hearings on CDC Form 114-D's, retaining inmates in ASU/SHU/PSU shall be in accordance with section 3337.

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

Section 3339 Release from Administrative Segregation and Retention in Administrative Segregation is amended to read:

Section 3339 Release from Administrative Segregation and Retention in Administrative Segregation. Release from 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.~~

(a) Release from administrative segregation shall occur at the earliest possible time in keeping with the inmate's case factors and reasons for the inmate's placement in administrative segregation.

(b) When releasing or rescinding an initial administrative segregation placement prior to the initial ICC, prior to release, the releasing authority shall:

(1) Consult with the Captain or designee from the facility where the inmate is to be housed.

(2) Explain the basis and reasoning for the decision on the CDC Form 114-D.

(3) Provide the inmate a copy of the CDC Form 114-D.

(c) Inmates released from administrative segregation are considered GP inmates and are no longer subject to the requirements of this article. If immediate release to the GP is impractical for reasons identified in section 3335, a new CDC Form 114-D shall be issued and addressed in accordance with sections 3335, 3336 and 3337.

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

Existing section 3340 has been relocated and renumbered to new subsection 3335.5.

~~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.

New Section 3340 is adopted to read:

3340. Assistance to Inmates for Administrative Segregation Classification Hearings.

The Administrative Reviewer of the CDC Form 114-D, or official ordering an inmate retained in administrative segregation, shall determine the need for providing assistance to inmates placed or retained in administrative segregation. Such assistance may be in the form of a Staff Assistant (SA) or an Investigative Employee (IE). Only staff trained in the role and responsibilities of a SA or IE may be assigned. The duties and functions of a staff member assigned to assist an inmate in a classification hearing based upon a CDC Form 114-D will be separate from those described in section 3318 for a disciplinary hearing.

(a) A SA shall be assigned if:

(1) The inmate is illiterate.

(2) The inmate has difficulty reading, writing or speaking English. If a SA is necessary for the purpose of language interpretation, but is not fluent in the inmate's language, a certified interpreter shall also be provided.

(3) The issues are sufficiently complex to make it unlikely that the inmate can understand the issues or the ICC hearing process.

(4) The inmate is included in the Mental Health Services Delivery System (MHSDS), is Developmentally Disabled, or the circumstances surrounding administrative segregation placement involve behavior of a bizarre or unusual nature.

(A) The ICC shall assess the ongoing appropriateness for a SA assigned to inmates in the MHSDS Correctional Clinical Case Management System (CCCMS) level of care while housed in administrative segregation. In such cases the ICC shall determine whether the inmate is capable of comprehending the issues being presented based upon a clinical assessment in accordance with subsection 3375(g)(3), and presented at the time of the hearing.

(b) An inmate may refuse to accept the first SA at the time of assignment. If the inmate refuses the SA at the time of initial assignment, a second staff assistant shall be assigned. Any decision to substitute the assigned SA subsequent to the administrative review shall require notification to the inmate in writing.

(c) Inmates may refuse to accept the assignment of a second SA or waive a previous SA assignment unless:

(1) It is determined by the Administrative Reviewer that a fair hearing cannot otherwise be held.

(2) The inmate meets criteria in accordance with subsection (a)(4) of this section.

(d) The assigned SA shall:

(1) Meet with the inmate at least 24 hours prior to the classification hearing, inform the inmate of the role of the SA, explain their rights and the purpose and procedure of the classification hearing.

(2) Address the need for effective communication, how it was provided, how it was achieved and how the SA was satisfied effective communication was accomplished, which shall be documented within the CDC Form 128-G in accordance to subsection 3375(g)(1)(E).

(3) Provide assistance to the inmate by being present during the IE's interview of the inmate.

(4) Inform the inmate of the following due process rights afforded during the classification hearing process:

A. The right to 72 hours time to prepare response for the ICC hearing;

B. The right to a fair and impartial hearing;

C. The right to request witnesses and documentary evidence;

D. The right to a written decision documenting the evidence or information relied upon for the decision.

(5) Advise and assist in the inmate's preparation for a classification hearing. However, the SA shall refrain from giving legal counsel or specifying the position the inmate should take in the classification hearing.

(6) Keep confidential any information the inmate may disclose concerning the charges for which the SA was assigned.

(7) Inform the inmate that all evidence and information obtained and considered or developed in the classification process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.

(8) If the SA becomes aware that the inmate is contemplating future criminal conduct, the SA shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.

(9) Assist the inmate in presenting the inmate's position, in person, at the hearing.

(10) Make reasonable effort to ensure that the inmate's position is understood.

(11) Make reasonable effort to ensure the inmate understands and comprehends the decision reached.

(12) Perform the above duties for inmates in conjunction with all classification reviews.

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

(f) Assignment of a SA shall not preclude assignment of an IE.

(g) An IE may be assigned if:

(1) The reasoning for an inmate's placement in administrative segregation is for non-disciplinary reasons and the inmate requests in writing the presence of witnesses or submission of documentary evidence at a classification hearing on the reason or need for retention in segregated housing.

(A) When an inmate's administrative segregation placement is for non-disciplinary reasons, the Administrative Reviewer will consider all available evidence or information relating to the validity of the reasons documented for administrative segregation placement. Denial of an IE, witnesses or evidence requested by the inmate shall be on the basis of legitimate penological interest and documented on the CDC Form 114-D.

(B) The reason for an inmate's placement in administrative segregation is a serious disciplinary matter resulting in the issuance of a CDCR Form 115 Rules Violation Report (Rev. 07/88) and/or a referral to the district attorney for criminal prosecution, the

classification committee will assume the alleged misconduct or criminal activity to be factual as documented. In such cases, the services of an IE, witnesses or additional evidence shall be reserved for the disciplinary hearing, but denied for purposes of the initial ICC.

(h) Based upon the findings of the investigative employee, the initial hearing shall permit the inmate to present witnesses and documentary evidence unless the chairperson of the committee determines in good faith that permitting such evidence will be unduly hazardous to the safety and/or security of the institution.

(i) Assignment of an IE shall not preclude assignment of a SA.

(j) The inmate may not select the investigative employee, but may object to the one assigned and provide, in writing to the Administrative Reviewer, the reasons for the objection. The Administrative Reviewer shall evaluate the inmate's objection(s) and, if determined to be reasonable, assign an alternate investigative employee to complete the investigation. If the Administrative Reviewer determines that the inmate's objections are not reasonable, the original investigative employee shall complete the investigation. The inmate's objection must be provided prior to the beginning of the investigation. The Administrative Reviewer shall note on the CDC Form 114-D the decision to deny or approve a request, and if denied, explain the reason(s) for denial.

(k) The assigned IE shall:

(1) If applicable, coordinate with the inmate's assigned SA to ensure the SA is present during any questioning by the IE.

(2) Document all effective communication efforts, as necessary; including the need for effective communication, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.

(3) Interview the inmate, to include the inmate's statement and any relevant questions for witnesses with first-hand knowledge of the circumstances warranting the inmate's segregation. An IE is not subject to the confidentiality provisions of the SA in accordance with subsection 3340(d)(6) and shall not withhold any information received from the inmate. The inmate's submission of questions for witnesses does not preclude the IE from asking other relevant questions of the witnesses that may be of assistance to the classification committee in making decisions regarding the reason(s) for segregation.

(4) It is the inmate's responsibility to provide information to the IE in order to assist in identifying any relevant witness(es) the inmate requests to be interviewed.

(5) Immediately document the investigative findings in a report, including the name of the SA and, if applicable, an interpreter present during interviews; and forward the completed report to the ICC.

(6) Provide the inmate a copy of the IE report, any non-confidential reports and information relevant to the segregation decision and/or administrative segregation placement, within 24 hours prior to the ICC.

(7) Witnesses and Evidence. The authority to grant or deny the appearance of witnesses shall be reserved for the ICC.

(8) When an IE provides assistance to an inmate, in lieu of or in addition to that provided by a SA the IE shall do so as a representative of the official who will conduct the classification hearing rather than as a representative of the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995) and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

Existing Section 3341 is deleted in its entirety.

~~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~~

New Section 3341 is adopted to read:

3341. Segregated Program Housing Units.

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

(b) With the exception of Protective Housing Unit (PHU) and as otherwise specified in subsections section 3378.3(b)(1) through 3378.3(b)(3), SPHU placement for administrative SHU purposes shall be reviewed by ICC at least every 180 days, or sooner as directed by a CSR. For determinate SHU inmates, ICC reviews shall be no less frequently than every 180 days following their initial SHU annual review, or sooner as directed by a CSR. The purpose of such reviews is to evaluate the inmate's case factors to determine if specialized housing continues to be the most appropriate and least restrictive placement option commensurate with any existing threat to institutional security or the safety of any person.

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

(d) The ICC may release an inmate from PSU/SHU to an available and appropriate bed pending CSR review for alternate placement consideration at another institution. Unless otherwise specified in this section, if the current institution has other available and appropriate non SPHU housing, the ICC may release the inmate to that program pending C&PR review who has local endorsement authority in this circumstance.

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

New Section 3341.1 is adopted to read:

3341.1 Protective Housing Unit.

Protective Housing Unit (PHU). A PHU houses inmates whose safety would be endangered by general population inmates and provides secure housing and care for inmates with safety concerns of such magnitude, that no other viable housing options are available.

(a) An inmate may be placed in PHU in accordance with the following criteria:

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

(2) The inmate is not documented as an affiliate of an STG-I.

(3) A classification committee has determined that the inmate does not pose a threat to the safety or security of other inmates similarly housed in the PHU.

(4) The inmate has specific, documented and verified safety and/or enemy concerns, likely to and capable of causing the inmate great bodily injury if placed in the general population.

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

(6) There is no alternative placement available that can both ensure the inmate's safety and provide the level of custody required for the appropriate control of the inmate's movement.

(b) The inmate's uncorroborated personal report, the nature of their commitment offense or a record of prior protective custody shall not be the sole basis for protective housing unit placement.

(c) The DRB shall retain sole authority for the placement and removal of inmates from PHU.

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

New Section 3341.2 is adopted to read:

3341.2. Psychiatric Services Unit.

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 section 3341.3.

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

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

(2) The inmate is included in the Developmental Disability Program at DD3 and the inmate's conduct has resulted in either a determinate or administrative SHU term.

- (b) Staff shall not postpone a CSR referral for any inmate requiring placement in a PSU.
(c) The CSR shall document any pending issues, such as disciplinary matters, DA referrals or investigations, on the CDC Form 128-G identifying the sending institutions responsibility for resolving any outstanding concerns.
(d) Inmates assigned to PSU shall be classified pursuant to section 3341.8.

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

New Section 3341.3 is adopted to read:

3341.3. Security Housing Unit

An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a Security Housing Unit (SHU) for administrative reasons or for a determinate period of time if found guilty for serious misconduct pursuant to section 3341.9(e).

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

(1) Administrative SHU. An inmate may be assessed an administrative SHU term when:

(A) At a pre-MERD review, ICC identifies an inmate with a substantial disciplinary history, consisting of no less than three SHU terms within the past five years, which demonstrates an unwillingness to comply with departmental rules and behavior. ICC shall articulate substantive justification for the need of continued SHU placement due to the inmate's ongoing threat to the safety and security of the institution and/or others.

(B) The inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, where ICC shall articulate substantive justification for the need for SHU placement.

(C) The inmate has voluntarily requested continued retention in segregation, where ICC has carefully articulated and substantively justified support for retention and the inmate does not qualify for housing within the Protective Housing Unit.

(D) The inmate is a validated STG affiliate and placed in the Step Down Program by ICC or DRB in accordance with section:

1. STG-I Member: upon initial validation and Institutional Classification Committee Confirmation.

2. STG-I Associate: as part of initial validation, source items include serious documented STG behavior or activity as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.9(e) SHU Term Assessment Chart.

3. STG-II Member or Associate: as part of initial validation, source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in section 3378.4(a) STG Disciplinary Matrix which are also identified in CCR Section 3341.9(e) SHU Term Assessment Chart.

(E) As provided in Section 3378.4(c), a validated STG affiliate shall be considered by ICC for initial placement in a SHU. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining the need for placement in a

SHU/Step Down Program (SDP) for an administrative term when the following criteria are met:

1. STG-I Associate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

2. Inactive Status or Inactive-Monitored Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

3. STG-II Member or Associate: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.9(e) SHU Term Assessment Chart within the preceding four (4) years.

4. Monitored Status or Dropout Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

(F) The DRB approves placement.

(2) Determinate SHU. An inmate shall be assessed a determinate SHU term when the inmate is found guilty of a CDC Form 115, Rules Violation Report for an offense specifically listed in subsection 3341.9(e) and ICC has determined the inmate presents a threat to the security of the institution and/or the safety of others.

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

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

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

(D) Only rule violations occurring within the past 5 years on an inmate's current CDCR number which warrant a SHU assessment shall be addressed by ICC and reviewed by the CSR. ICC shall assess the appropriate SHU term per 3341.9(e) and one of the following actions:

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

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

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

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

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

New Section 3341.4 is adopted to read:

3341.4. Security Housing Unit Terms - Initial, Concurrent and Consecutive.

(a) An initial Security Housing Unit (SHU) term is the first established term that changes the inmate's status from administrative segregation to SHU and shall be calculated using the SHU Term Assessment Worksheet. The initial SHU term shall be the controlling term unless another SHU term is later assessed with a more distant MERD.

(b) Concurrent SHU terms are independent SHU terms running simultaneously to another SHU term(s) and shall be calculated using the SHU Term Assessment Worksheet. Concurrent SHU terms shall be assessed for any offenses eligible for SHU assessment that occur either prior to the initial SHU term and may also be assessed for those offenses eligible for SHU assessment that occur or after the initial SHU term.

(c) Consecutive SHU terms are successive SHU terms that begin following the maximum MERD of an initial or previously assessed SHU term and shall be calculated using the SHU Term Assessment Worksheet. Consecutive SHU terms may be assessed for any offense committed after the assessment of a previous SHU term with an unexpired MERD.

(d) For SHU assessable violations that occur after a previously assessed SHU term, with an unexpired MERD, ICC shall have the discretion to assess either a Concurrent or Consecutive SHU term, in accordance with subsections 3341.4(b) and (c). Any ICC action to assess either a Concurrent or Consecutive SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G.

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

Existing Section 3341.5 is deleted in its entirety

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).~~

~~(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 an affiliate of a STG-I.~~

~~(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.~~

~~(A) Administrative SHU Segregation.~~

~~1. An inmate assigned to a security housing unit on an administrative SHU term, who is not a validated STG affiliate, 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.~~

~~A validated STG affiliate assigned to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.~~

~~2. Except as provided at section 3335(a), a validated STG affiliate 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 administrative term when the following criteria are met:~~

~~a. STG-I Member: upon initial validation and Institutional Classification Committee Confirmation.~~

~~b. STG-I Associate: as part of initial validation, source items include serious documented STG behavior or activity as listed in Section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.5(c)(9) SHU Term Assessment Chart.~~

~~c. STG-II Member or Associate: as part of initial validation, source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in Section 3378.4(a) STG Disciplinary Matrix which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart.~~

~~3. As provided in Section 3378.4(c), a validated STG affiliate shall be considered by ICC for initial placement in a SHU. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining the need for placement in a SHU/Step Down Program (SDP) for an administrative term when the following criteria are met:~~

~~a. STG-I Associate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~b. Inactive Status or Inactive Monitored Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~c. STG-II Member or Associate: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in Section 3378.4(a) STG Disciplinary Matrix and which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart within the preceding four (4) years.~~

~~d. Monitored Status or Dropout Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~4. Administrative 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 ICG 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 ICG 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, ICG 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 STG affiliate shall be considered for release from a SHU, as provided above, after the inmate is verified as a STG dropout through a debriefing process.~~

~~(5) A validated STG affiliate shall be considered for release from SHU upon successful completion of steps 1 through 4 of the STG Step Down Program (SDP), pursuant to section 3378.3. Successful inmates shall be transferred to the general population of a Level IV facility for a 12-month period of observation that shall be considered step 5 of the SDP. Upon completion of step 5, 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.~~

~~(6) An affiliate on monitored status, inactive-monitored status, inactive status, or validated as a dropout of a STG and placed in general population may be returned to segregation based upon STG activity/behavior pursuant to section 3378.4(c) identifying the inmate as a currently active affiliate of the STG with which the inmate was previously validated. Current activity is defined as any documented STG activity or behavior within the past four (4) years. The procedures described in Sections 3335 through 3345, and in Article 10, Classification, shall be utilized for the removal of the offender from the general population, the review of the initial segregation order, and all periodic reviews of the STG SHU term.~~

~~(7) 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. 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).~~

Notice to Printer

PICTURE OF SHU TERM ASSESSMENT CHART IS DELETED

~~(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 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.~~

~~(11) A validated STG affiliate who was paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:~~

~~(A) An inmate who was previously paroled or discharged with Maximum (MAX) custody while pending validation and is returned to CDCR's custody shall be placed in ASU. The STG Investigator shall obtain the validation package to determine the status of~~

validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination. (B) A validated STG affiliate who was previously paroled or discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

1. While outside of CDCR jurisdiction, the inmate had no documented STG-related behavior, ICC shall place the inmate at the beginning of the step that they were in at the time of parole/discharge.

2. While outside of CDCR jurisdiction, the inmate had a documented STG-related conviction or good cause finding by a court, ICC shall place the inmate in Step 1 of the SDP.

(C) A validated STG affiliate who was previously paroled or discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate. ICC shall complete a case-by-case criteria review to determine if placement into the SDP Step 1 is appropriate. This review shall consist of commitment offense or good cause finding circumstances which were specifically related to the same STG with which the inmate was previously validated and occurred within the past four years from the date of arrest for this conviction or good cause finding.

NOTICE TO PRINTER

Picture of CDC Form CDCR 629-D is deleted.

~~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).~~

New Section 3341.5 is adopted to read:

3341.5 Suspending Security Housing Unit Terms.

(a) ICC may commute or suspend any portion of a Determinate SHU term. Once commuted, the term shall not be re-imposed. ICC may suspend a Determinate and/or end an Administrative SHU term any time it is determined an inmate no longer poses a threat to the safety of any person or the security of the institution. Additionally, ICC may suspend a Determinate or end an Administrative SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary. Any ICC action

to suspend or commute a SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G.

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

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

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

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

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

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

Section 3341.6 is adopted to read:

3341.6. Re-imposed Security Housing Unit Terms.

New subsections 3341.6(a) through 3341.6(a)(2) are adopted to read:

(a) A suspended SHU term may be re-imposed if an inmate is placed in administrative segregation immediately following an RVR for serious misconduct that occurred prior to the expiration of a previously established MERD. In this circumstance, the inmate must be found guilty of the serious misconduct and the ICC determines that the inmate poses a threat to the safety of any person or to the security of the institution. SHU terms re-imposed based on subsequent serious misconduct shall be effective the date of the misconduct. SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be re-imposed without subsequent misconduct if the inmate continues to pose a threat to the safety of others or the security of the institution.

(1) If the SHU term is re-imposed, the ICC shall record the decision and the reasons for the decision on the CDC Form 128-G. If multiple SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed.

(2) Upon a guilty finding of subsequent serious misconduct, the ICC may elect to re-impose the current unexpired MERD, impose a forfeiture of clean conduct credits or impose a subsequent SHU term. ICC may impose a forfeiture of clean conduct credit or a concurrent/consecutive SHU term, where appropriate, upon those cases where the

subsequent and serious misconduct occurred prior to the expiration of the established MERD; however, adjudication did not occur until after.

(b) If an inmate paroled with an active Determinate or Administrative SHU term and subsequently returns to CDCR custody as a parole violator or with a new prison commitment under the same CDCR number, ICC shall evaluate the case for re-imposition. Re-imposed Administrative SHU terms shall be in accordance with subsection (a)(1), except as otherwise provided in subsection 3341.6(c)(1)-(3)(A). Re-imposed Determinate SHU terms shall be calculated utilizing the SHU Term Assessment Worksheet. Any unexpired SHU term shall be recalculated and addressed by ICC. If multiple CSR approved SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed. ICC retains the authority to impose or suspend any remaining time based upon the safety of persons or security of the institution.

(1) If re-imposed, the SHU term shall not exceed the period of time remaining on the original SHU term at the time of parole.

(2) Re-imposition of the SHU term following return to custody shall be documented on the appropriate CDC Form 128-G.

(3) SHU terms reassessed under the provisions of this subsection shall be audited and approved by a CSR.

(c) A validated STG affiliate who paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:

(1) An inmate who previously paroled or was discharged with Maximum (MAX) custody while pending validation and is returned to CDCR's custody shall be placed in ASU. The STG Investigator shall obtain the validation package to determine the status of validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination.

(2) A validated STG affiliate who previously paroled or was discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) While outside of CDCR jurisdiction, the inmate had no documented STG related behavior, ICC shall place the inmate at the beginning of the step that they were in at the time of parole/discharge.

(B) While outside of CDCR jurisdiction, the inmate had a documented STG related conviction or good cause finding by a court, ICC shall place the inmate in Step 1 of the SDP.

(3) A validated STG affiliate who previously paroled or was discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) ICC shall complete a case by case criteria review to determine if placement into the SDP Step 1 is appropriate. This review shall consist of commitment offense or good cause finding circumstances which were specifically related to the same STG with

which the inmate was previously validated and occurred within the past four years from the date of arrest for this conviction or good cause finding.

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

New Section 3341.7 is adopted to read:

3341.7. Forfeiture of Clean Conduct Credit.

(a) Serious misconduct not warranting a SHU term, occurring at any time following the commission of any offense listed in subsection 3341.9(e), but prior to a projected/established MERD, may result in a forfeiture of clean conduct credits.

(1) Up to 45 days of clean conduct credit may be forfeited as a result of a guilty finding for a serious misconduct not listed in subsection 3341.9(e). Such forfeiture shall be calculated utilizing the SHU Term Assessment Worksheet.

(2) If the SHU term has not yet been assessed or has been suspended in accordance with section 3341.5 at the time of the subsequent serious misconduct, the forfeiture of clean conduct credit is permitted should the SHU term be imposed or re-imposed.

(b) For inmates on segregation status, the ICC shall review any serious misconduct which may result in forfeiture of clean conduct credit and clearly articulate in the CDC Form 128-G the basis for their decision.

(c) Forfeitures of clean conduct credit may be assessed against credits already earned or future clean conduct credits, but shall not be assessed in periods exceeding the maximum MERD for the controlling offense.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490.

New Section 3341.8 is adopted to read:

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

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

(a) SHU/PSU Status Reviews. Except as otherwise provided, inmates on Administrative SHU status, shall be reviewed by the ICC no less frequently than every 180 days for release consideration to a GP. Inmates on Determinate SHU status shall be reviewed by the ICC no less frequently than every 180 days following their initial SHU annual review for release consideration to a GP. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules in accordance with California Code of Regulations, Division 3, Title 15. A validated STG affiliate assigned

to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.

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

(2) An inmate shall not be retained on SHU status beyond the expiration of a determinate term or beyond 360 days, unless the ICC 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/PSU.

(B) Release of the inmate would severely endanger the lives of inmates, staff, or the security of the institution.

(C) The inmate has voluntarily requested continued retention in segregation and the ICC has substantively justified retention.

(3) A validated STG shall be considered for release from a SHU, as provided above, after the inmate is verified as a STG dropout through a debriefing process.

(4) A validated STG affiliate shall be considered for release from SHU upon successful completion of Steps 1 through 4 of the STG Step Down Program (SDP), pursuant to section 3378.3. Successful inmates shall be transferred to the general population of a Level IV facility for a 12 month period of observation that shall be considered Step 5 of the SDP. Upon completion of Step 5, 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.

(5) An affiliate on monitored status, inactive-monitored status, inactive status, or validated as a dropout of a STG and placed in general population may be returned to segregation based upon STG activity/behavior pursuant to section 3378.4(c) identifying the inmate as a currently active affiliate of the STG with which the inmate was previously validated. Current activity is defined as any documented STG activity or behavior within the past four (4) years. The procedures described in Sections 3335 through 3345, and in Article 10, Classification, shall be utilized for the removal of the offender from the general population, the review of the initial segregation order, and all periodic reviews of the STG SHU term

(b) Pre-MERD Hearing. A Pre-MERD hearing shall be held by ICC 120 days prior to the expiration of a MERD. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules, as well as determination of the housing and program assignment following completion of the SHU term, or sooner, if appropriate.

(1) If before the Pre-MERD hearing, there is any indication the inmate may be retained in segregation beyond the MERD for reasons specified in section 3335, the inmate shall be issued an CDC Form 114-D- in accordance with section 3338.

(2) If ICC retains the inmate in segregation beyond the expiration of the MERD, the inmate's status then becomes administrative segregation, where future classification hearings shall be conducted in accordance with section 3337.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal.

1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847).Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995) and Clark v. California 123 F. 3d 1267 (9th Cir. 1997).

New Section 3341.9 is adopted to read:

3341.9. Security Housing Unit Term Calculation and Assessment.

(a) The SHU term shall be set at the expected range unless the ICC finds factors exist which warrant the imposition of a lesser or greater period of confinement.

(1) Both aggravating and mitigating factors shall be considered for behavior occurring prior to the current serious rules violation. Aggravating and mitigating factors shall be considered for behavior occurring during an inmate's current term, prior term, discharged term or other verifiable incarcerated period, which have occurred during the past 5 calendar years.

(2) The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in subsection 3341.9(e), the SHU Term Assessment Chart. In setting the term, the ICC shall determine the expected term for the offense, review the circumstances of the disciplinary offense, and consider the inmate's institutional behavior history using the factors below. The ICC shall then determine that either no unusual factors exist, or find that specific aggravating and/or mitigating factors exist which specify a greater or lesser term. The reasons for the specific amount of time assessed or deviation from the expected term shall be clearly documented on a CDC Form 128-G, and SHU Term Assessment Worksheet, with a copy provided to the inmate.

(3) When calculating a SHU term, ICC shall address all aggravating and mitigating factors. Any single aggravating and/or mitigating factor shall be considered. If aggravating or mitigating factors exist, ICC shall adjust the SHU term in consideration of such factors. Should both aggravating and mitigating factors exist, ICC shall adjust the SHU term by uniformly applying each factor.

(b) Factors in Mitigation.

(1) The inmate has no serious RVR's within 12 months of the behavior or no disciplinary history during the first year of CDCR incarceration,

(2) The inmate has not been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(3) The serious misconduct was situational and spontaneous, as documented and referenced.

(4) The inmate was influenced by others to commit the offense, as documented and referenced.

(5) The serious misconduct resulted, in part, from the inmate's fear for safety, as documented and referenced.

(6) The serious misconduct resulted, in part, from the inmate's mental health, as documented and referenced on the CDCR Form 115-MH.

(c) Factors in Aggravation.

(1) The inmate has been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(2) The serious misconduct was planned and executed, as documented and referenced.

(3) The serious misconduct was committed on behalf of an STG, as documented and referenced.

(4) The inmate influenced others to commit serious misconduct at the time of the offense, as documented and referenced.

(5) The serious misconduct directly resulted in injury to more than one victim, as documented and referenced.

(d) ICC decisions to assess a SHU term and/or referral for segregated housing placement, shall be referred to a CSR for review and approval. In auditing and endorsing cases, the CSR shall ensure that any SHU term assessment is consistent with the specific disciplinary violation that was charged and the subsequent findings as confirmed by the Chief Disciplinary Officer (CDO) and ICC.

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

<u>OFFENSE</u>	<u>TYPICAL TERM (Mos)</u>		
	<u>Low</u>	<u>Expected</u>	<u>High</u>
<u>(1) Homicide:</u>			
<u>(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.</u>	<u>36</u>	<u>48</u>	<u>60</u>
<u>B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.</u>	<u>24</u>	<u>36</u>	<u>48</u>
<u>(2) Violence Against Persons:</u>			
<u>A) Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.</u>	<u>09</u>	<u>15</u>	<u>21</u>
<u>(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.</u>	<u>12</u>	<u>18</u>	<u>24</u>
<u>(E) Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.</u>	<u>6</u>	<u>9</u>	<u>12</u>
<u>(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.</u>	<u>12</u>	<u>18</u>	<u>24</u>
<u>(G) Battery on a non-inmate without serious injury.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(H) Assault on a non-inmate</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).</u>	<u>2</u>	<u>4</u>	<u>6</u>

<u>(3) Threat to Kill or Assault Persons:</u>			
<u>(A) To take or use a non-inmate as a hostage.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Threat of violence to non-inmate.</u>	<u>2</u>	<u>5</u>	<u>8</u>
<u>(4) Possession of a Weapon:</u>			
<u>(A) Possession of a firearm or possession or manufacturing of an explosive device.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon—other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.</u>	<u>4</u>	<u>8</u>	<u>12</u>
<u>(5) Distribution of Controlled Substances as defined in section 3000.</u>			
	<u>6</u>	<u>12</u>	<u>18</u>
<u>(6) Escape:</u>			
<u>(A) With force or Attempted Escape with force against a person.</u>	<u>12</u>	<u>24</u>	<u>36</u>
<u>(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(7) Disturbance, Riot, or Strike:</u>			
<u>(A) Leading a disturbance, riot or strike.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or 1 with direct STG nexus).</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(C) Inciting conditions likely to threaten institution security</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(8) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.</u>			
	<u>6</u>	<u>12</u>	<u>18</u>
<u>(9) Theft or destruction of State property by any means where the loss or potential loss exceeds \$10,000 or threatens the safety of others.</u>			
	<u>2</u>	<u>8</u>	<u>12</u>
<u>(10) Extortion or Bribery:</u>			
<u>(A) Extortion or bribery of a non-inmate.</u>	<u>4</u>	<u>8</u>	<u>12</u>
<u>(B) Extortion or bribery of an inmate.</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>(11) Sexual Misconduct:</u>			
<u>(A) Indecent Exposure.</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(B) Sexual Disorderly Conduct (two or more offenses within a twelve month period).</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(12) Except as otherwise specified in this section or identified as an assault, proven attempts to</u>			

commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.

(13) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.

(f) Staff shall apply the appropriate amount of time to calculate the maximum and minimum eligible release date of the SHU term, pursuant to subsection 3341.9(e). Both the maximum and minimum eligible release dates from SHU shall be established by assessing the appropriate number of months, followed by any remaining calendar days.

(1) SHU MOS refers to the maximum number of months assessed for a specific determinate term pursuant to subsection 3341.9(e).

(2) MERD TERM means a combination of months, followed by days which represent the minimum amount of time that must pass before a SHU term expires and is also referred to as the MERD. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit. The MERD may be adjusted based upon subsequent serious misconduct.

(A) Unless previously suspended, the established MERD is the date the SHU term ends and the date on which the inmate is no longer on SHU status. When multiple MERD's exist, the most distant MERD shall be the controlling MERD.

(3) 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 maximum SHU term.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 530, 532, 646.9, 653m, 932, 2081, 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847). Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995) and Clark v. California 123 F. 3d 1267 (9th Cir. 1997).

3342. Case Review

Existing Subsection 3342(a) is amended to read:

(a) The case of every inmate assigned to a segregated housing unit will be continuously reviewed and evaluated by custodial and casework staff assigned to the unit. Staff will confer on each case no less frequently than once a week during the first two months of the inmate's segregated status. Such case reviews will not be necessary during any week in which the inmate's case is reviewed by a regular or special classification committee or by staff who are authorized to take classification actions. Any significant observations, determinations or recommendations, will be documented on the inmate's ~~Detention/Segregation Record, CDC Form 114-A,~~ Inmate Isolation Segregation Record (rev: 10/98), which is hereby incorporated by reference.

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

Existing Section 3343 is amended to read:

3343. Conditions of Segregated Housing.

New section 3343 Presentence is adopted to read:

For the purposes of this section, special purpose segregated housing includes, but is not limited to, Administrative Segregation Units (ASU) and Segregated Program Housing Units (SPHU).

Existing Subsection 3343(a) through 3343(m) are amended to read:

a) Living Conditions. In keeping with the special purpose of an Administrative Segregation Unit (ASU) or Segregated Program Housing Unit (SPHU), ~~and with the degree of security, control and supervision required to serve that purpose,~~ the physical ~~facilities~~ conditions of special purpose segregated housing ASU and SPHU will approximate those of the general population, with the exception of the physical layout of the building itself and necessary security measures that must be enforced to provide the level of security, control, and supervision required to serve that special purpose.

(b) Restrictions. Whenever an inmate in administrative segregation ASU or SPHU is deprived of any usually authorized item or activity and the action and reason for that action is not otherwise documented and available for review by administrative and other concerned staff, a report of the action will be made and forwarded to the unit administrator as soon as possible.

(c) Clothing. No inmate in administrative segregation ASU or SPHU ~~will~~ shall be required to wear clothing that significantly differs from that worn by other inmates in the unit, except that temporary adjustments may be made in an inmate's clothing as is necessary for security reasons or to protect the inmate from self-inflicted harm. No inmate ~~will~~ shall be clothed in any manner intended to degrade the inmate.

(d) Meals. Inmates assigned to administrative segregation, including those housed in special purpose segregated housing ASU or SPHU, ~~shall~~ will be fed the same meal and ration as is provided for inmates of the general population, except that a sandwich meal may be served for lunch. Deprivation of food will not be used as punishment.

(e) Mail. Inmates assigned to administrative segregation, including special purpose segregated housing ASU or SPHU, ~~shall~~ will not be restricted in their sending and receiving of personal mail, except that incoming packages may be limited in number, and in content to that property permitted in the segregated unit to which an inmate is assigned.

(f) Visits. Inmates assigned to ASU, SHU and PSU segregated housing, ~~except for inmates assigned to security housing units in accordance with Sections 3341.5 shall be permitted~~ non contact visits, unless otherwise specified in section 3170.1(f), General Visiting, to visit under the same conditions as are permitted inmates of the general population. ~~Inmates assigned to security housing units shall be prohibited from physical contact with visitors.~~

(g) Personal Cleanliness. Inmate's assigned to administrative segregation ASU or SPHU, ~~shall including special purpose segregated housing,~~ will be provided the means to keep themselves clean and well-groomed. Haircuts will be provided as needed. Showering and shaving ~~shall~~ will be permitted at least three times a week. Clothing, bedding, linen and other laundry items ~~shall~~ will be issued and exchanged no less often than is provided for general population inmates.

(h) Exercise. Inmates assigned to ~~special purpose segregation housing~~ ASU or SPHU ~~will~~ shall be permitted a minimum of one hour per day, five days a week, of exercise outside their rooms or cells unless security and safety considerations preclude such activity. When ~~special purpose segregated housing units~~ ASU or SPHU are equipped with their own recreation yard, the yard periods may substitute for other out of cell exercise periods, providing the opportunity for use of the yard is available at least three days per week for a total of not less than 10 hours a week.

(i) Reading Material. Inmates assigned to ~~administrative segregation, including special purpose segregated housing, ASU or SPHU,~~ shall ~~will~~ be permitted to obtain and possess the same publications, books, magazines and newspapers as are inmates of the general population, except that the quantity may be limited for safety and security reasons. Library services ~~will~~ shall be provided and will represent a cross-section of material available to the general population.

(j) Telephones. Institutions ~~will~~ shall establish procedures for the making of outside telephone calls by inmates in ~~administrative segregation, ASU or SPHU.~~ Such procedures will approximate those for the work/training incentive group to which the inmate is assigned, except that individual calls must be specifically approved by the supervisor in charge or the administrator of the unit before a call is made.

(k) Institution Programs and Services. Inmates assigned to ASU or SPHU segregated housing units ~~will~~ shall be permitted to participate and have access to such programs and services as can be reasonably provided within the unit without endangering security or the safety of persons. Such programs and services ~~will~~ may include, but are not limited to: education, commissary, library services, social services, counseling, religious guidance and recreation.

(l) Visitation and Inspection. Inmates assigned to ~~administrative segregation, including those placed in special purpose segregated units,~~ ASU or SPHU shall be seen daily by the custodial supervisor in charge of the unit and by a physician, registered nurse or medical technical assistant, and, by request, members of the program staff. A timely response should be given to such requests whenever reasonably possible. Any indication of medical or mental health distress, shall be immediately referred for further evaluation.

(m) Management Disruptive Cases. Inmates assigned to ASU or SPHU segregated housing who persist in disruptive, destructive, ~~or~~ dangerous behavior and who will not heed or respond to orders and warnings to desist, are subject to placement in a management cell, as provided in Section 3332(f).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601(d) and 5054, Penal Code.

3344. Administrative Segregation Records.

Subsection 3344 is amended to read:

(a) An ~~Administrative Segregation Log, CDC Form 114, Isolation Log (rev: 3/03),~~ shall be maintained in each ASU administrative segregation unit, and SPHU including special purpose segregated units. One ~~Disciplinary Detention/Segregation Isolation~~ Log may serve two or more special purpose units which are administered and supervised by the same staff members.

(b) A separate record ~~will~~ shall be maintained for each inmate assigned to administrative segregation, including SHU and PSU special purpose segregated units.

This record ~~shall~~ will be compiled on CDC Form 114-A, ~~Detention/Segregation Record~~. ~~In addition to the~~ including all identifying information required on the form.; Additionally, all significant information relating to the inmate during the course of segregation, from reception to release, including, but not limited to, documentation of all programs, activities, and services afforded the inmate while segregated and note any significant staff observations, determinations or recommendations regarding unusual behavior displayed by the inmate during this period ~~will~~ shall be entered ~~on the form~~ in chronological order.

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