PRISON LAW OFFICE
General Delivery, San Quentin CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

THE RIGHTS OF PRISONERS IN ADMINISTRATIVE SEGREGATION

(updated May 2014)

"Segregation" is the term used to describe a highly restrictive form of custody where a prisoner is taken out of the general prison population and placed in a "prison within a prison." Nearly every CDCR prison has an Administrative Segregation Unit (ASU) for housing prisoners who have been removed from the general population and are awaiting decisions as to whether they will be returned to the general population, transferred to another facility, or assigned to a long-term segregation unit. Prisoners who are segregated for disciplinary or for safety and security reasons have no work or program opportunities and get out-of-cell time of only a few hours a day for basic necessities such as exercise, showers, and medical care.

This letter first discusses the general constitutional laws governing placement in segregation. The next two sections describe the CDCR rules about when a prisoner can be placed in segregation and what procedures should be followed, including special rules for prisoners who have disabilities or are mentally ill. The fourth and fifth sections discusses living conditions in segregation and laws setting minimum requirements. The letter ends with a brief summary of what steps a prisoner can take to challenge an unfair segregation placement or inhumane segregation conditions.

Federal and State Constitutional Law Regarding Segregation Placement

The Fourteenth Amendment to the United States Constitution guarantees that people shall not be deprived of liberty without due process of law. Over the years, prisoners have filed lawsuits asserting that the right to due process should protect them from placement in segregation without notice, a hearing, and reasons supported by good evidence. However, under current interpretations of the law, there are few situations in which prisoners will be successful in arguing that their due process rights have been violated by placement in segregation.

The U.S. Constitution itself does not require any due process protections before placing or keeping a person in segregation because it is a type of confinement that prisoners "should reasonably anticipate receiving at some point in their incarceration."[1]

Even though prisoners have no independent federal due process liberty interest in staying out of segregation, state laws that establish an expectation in remaining free from segregation can create a liberty interest protected by the federal due process. In Sandin v. Conner, the U.S. Supreme Court held that state laws create a federal due process liberty interest only if the segregation at issue imposes an "atypical and significant hardship" in relation to ordinary prison life. The Court found that the 30-day disciplinary segregation in the Sandin case was not an atypical and significant hardship that would trigger due process protections. The Court left open the question of what circumstances could constitute atypical and significant deprivations, and stated that relevant facts might include whether segregation is likely to post-pone the release date, how long the segregation lasts, and how harsh the living conditions are in the segregation unit.[2]

Ten years later, in Wilkinson v. Austin, the U.S. Supreme Court found that open-ended "supermax" placement for disciplinary violations and gang activities constituted an "atypical and significant hardship;" thus, the Ohio prisoners who brought the case had a liberty interest in being free from such placement and a right to due process protections. The Court then considered whether the state's procedures provided enough due process. The court balanced three factors: (1) the significance of the prisoner's interest in remaining out of segregation, (2) the risk that a prisoner might erroneously be placed or kept in segregation and the probable value of additional or different procedural safeguards, and (3) the monetary or administrative burdens that would result from additional or different requirements. The Court found that Ohio had adequate policies for giving notice of the reason for supermax placement, holding a classification hearing, allowing the prisoner to present information or objections opposing the placement, and reviewing the placement after the first 30 days and then annually. The Court held that prison officials did not have to adopt other procedures like providing notice of all the evidence to be relied on, did allowing prisoners to present witnesses, providing a detailed statement of reasons for the decision, or notifying prisoners about what they

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[1] Hewitt v. Helms (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675] (rejecting claim that prisoners facing segregation placement must get the same procedural protections as prisoners facing disciplinary credit losses).

[2] Sandin v. Conner (1995) 515 U.S. 472, 483-485 [115 S.Ct. 2293; 132 L.Ed.2d 418]; see Serrano v. Francis (9th Cir. 2003) 345 F.3d 1071 (placing wheelchair-reliant prisoner in non-accessible SHU cell without wheelchair for two months imposed atypical and significant hardship;. Jackson v. Carey (9th Cir. 2003) 353 F.3d 750 (remanding for further hearings as to whether term in Corcoran SHU was an atypical and significant hardship); Ramirez v. Galaza (9th Cir. 2003) 334 F.3d 850, 861 (similar); Keenan v. Hall (9th. Cir. 1996) 83 F.3d 1083 (remanding for findings on whether segregation in Oregon "Intensive Management Unit" was atypical and significant hardship).

Note: Sandin overruled the portion of Hewitt v. Helms (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675] that had previously held that state laws regulating segregation placement created due process liberty interests if they set forth mandatory requirements. Examples of pre-Sandin cases applying the now-obsolete Hewitt analysis include Madrid v. Gomez (N.D. Cal.1995) 889 F.Supp. 1146, 1271-1272, Smith v. Noonan (9th Cir. 1993) 992 F.2d 987, 989 and Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1098. Pre-Hewitt cases on California prisoners' rights regarding placement in administrative segregation include Wright v. Enomoto (N.D. Cal. 1976) 462 F.Supp. 397 and In re Davis (1979) 25 Cal.3d 384 [158 Cal.Rptr. 384].

would have to do to get moved back to a lower security level.[3] Using Wilkinson's analysis, the CDCR regulations governing segregation placement and retention, if followed, most likely provide adequate due process protections.[4]

The constitutional guarantee of due process also requires that there be "some evidence" to justify placing a prisoner in segregation for more than a very short period. In reviewing whether there is "some evidence," a court is not supposed to re-balance the evidence or make its own assessment of the credibility of witnesses.[5] The "some evidence" standard gives a lot of power to prison officials because a court can overturn a decision to segregate a prisoner only if there is no reliable evidence to support the decision. Nonetheless, there have been cases where courts have overturned segregation orders due to lack of evidence.[6]

There are special due process concerns where a statement by a confidential informant is used to justify placing a prisoner in segregation. Confidential information can be unreliable because the informant may lie and it is not easy for the prisoner who is being placed in segregation to challenge the informant's statements. Due process does not prohibit use of confidential information, but it does require that prison officials provide a statement that safety considerations prevent disclosure of the informant's identity and a summary of facts from which it can reasonably be concluded that the

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[3] Wilkinson v. Austin (2005) 545 U.S. 209, 224-230 [125 S.Ct. 2384; 162 L.Ed.2d 174].

[4] See Resnick v. Hayes (9th Cir. 2000) 213 F.3d 443 (no due process violation where federal prisoner placed in disciplinary segregation and hearing delayed for 70 days); Mujahid v. Meyer (9th Cir. 1995) 59 F.3d 931 (no due process violation for placement in Hawaii disciplinary segregation for 14 days); May v. Baldwin (9th Cir. 1997) 109 F.3d 557, 565 (no due process violation in 21-day placement in Oregon administrative segregation pending disciplinary hearing).

Even under the pre-Sandin/Wilkinson standards, courts generally found that the CDCR regulations provided enough due process protection. (See, e.g., Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146, 1278 (procedures for indeterminate SHU placement were lawful, except for failure to prevent future reliance on previously-rejected gang validation evidence); Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800, 803 (review of indeterminate SHU every 120 days was sufficient and no violation in using polygraph exams to support segregation placement); Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1105-1106 (due process required only that officials give prisoner notice of the charges, hold an informal hearing within reasonable time, and provide an opportunity for the prisoner to present his views; review of segregation should be conducted more frequently than annually); Jones v. Moran (N.D. Cal. 1995) 900 F.Supp. 1267, 1275 (procedures for retention in SHU after expiration of SHU term provide sufficient due process).

[5] Superintendent v. Hill (1985) 472 U.S. 445 [105 S.Ct. 276; 86 L.Ed.2d 356]; see also Burnsworth v. Gunderson (9th Cir. 1999) 179 F.3d 771, 774-775); Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1105-1106; Jones v. Moran (N.D. Cal. 1995) 900 F.Supp. 1267, 1275; Cato v. Rushen (9th Cir. 1987) 824 F.2d 703.

[6] See In re Hutchinson (1972) 23 Cal.App.3d 337, 341 [100 Cal.Rptr. 124]; Cato v. Rushen (9th Cir. 1987) 824 F.2d 703; Burnsworth v. Gunderson (9th Cir. 1999) 179 F.3d 771, 774-775; In re Cabrera (2013) 216 Cal.App.4th 1522 [158 Cal.Rptr.3d 121]; In re Fernandez (2013) 212 Cal.App.4th 1199, 1213 [151 Cal.Rptr.3d 571]. Cases in which courts found there was some evidence to support segregation as gang associate include In re Furnace (2010) 185 Cal.App.4th 649 [110 Cal.Rptr.3d 820]; In re Alvarez (2013) 222 Cal.App.4th 1064 [166 Cal.Rptr.3d 271]; and Castro v. Terhune (9th Cir. 2013) 712 F.3d 1304.

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informant is reliable.[7] CDCR rules also require that other documents corroborate the information or that circumstances satisfy the decision-maker that the information is true.[8]

Finally, the due process clause of the California Constitution, article I, sections 7 and 15 protects people from unfair governmental action.[9] Thus, prisoners may in some circumstances argue that the state constitution requires due process protections beyond those enforceable under the federal constitution.

CDCR Rules – Reasons for Segregation Placement

Under CDCR regulations, a prisoner may be placed in administrative segregation when the prisoner's presence in the general population poses an immediate threat to the safety of the prisoner or others, endangers institution security, or jeopardizes an investigation into serious misconduct or criminal activity.[10] An initial short-term period of segregation may be based on rumors or other unsubstantiated reports.[11]

The CDCR defines Non Disciplinary Segregation (NDS) as placement in segregation for reasons that are not the fault of the prisoner, such as placement for safety concerns, investigations not related to the prisoner's own misconduct or criminal activity, or because the prisoner is related to a CDCR staff member.[12]

Prisoners who have been found guilty of serious rule violations may be punished by placement in segregation for determinate (set length) terms. Prisoners who commit repeated serious rule violations or who are active members or associates of prison gangs may be placed in segregation for indeterminate terms. Such prisoners are usually housed in a Security Housing Unit (SHU) or, if

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[7] Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183; In re Jackson (1987) 43 Cal.3d 501 [233 Cal.Rptr. 911]. Courts are deferential when reviewing prison officials' determinations on such matters Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183 (informant reliable because he was an eyewitness to the rule violation, had previously provided accurate information, had passed a polygraph, and his report was corroborated by other information).; see also In re Estrada (1996) 47 Cal.App.4th 1688 [55 Cal.Rptr.2d 506] (upholding use of confidential information) but see Cato v. Rushen (9th Cir. 1987) 824 F.2d 703 (reversing disciplinary finding of guilt when the only information to support the finding was statement of an unidentified source who was told by someone else that the accused prisoner was involved in the misconduct). A prisoner who wants to challenge the reliability of confidential information should ask the court to conduct an in camera (private) review of the information. See Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183, 196-187 and fn. 1.

[8] 15 CCR § 3321.

[9] See People v. Ramos (1984) 37 Cal.3d 136, 152 [207 Cal.Rptr. 800]; People v. Ramirez (1979) 25 Cal.3d 260 [158 Cal.Rptr. 316].

[10] 15 CCR §§ 3335(a).

[11] See Cato v. Rushen (9th Cir. 1987) 824 F.2d 703, 705.

[12] 15 CCR § 3335(b).

mentally ill, in a Psychiatric Services Unit (PSU)[13] Prisoners with on-going serious safety concerns may be housed in a special form of segregation called at Protective Housing Unit (PHU).[14] The laws concerning the criteria for imposing these longer types of segregation are discussed in separate information letters on Rights Regarding Prison Disciplinary Proceedings, Security Threat Group (Gang) Validation, Placement and Debriefing, and Protective Custody; these letters can be obtained for free by writing to the Prison Law Office or on the Resources page at www.prisonlaw.com.

CDCR Rules – Procedures for Administrative Segregation

This section discusses the procedures for deciding whether a prisoner will be removed from the general population and placed in administrative segregation. It also describes special rules for protection of developmentally and physically disabled prisoners and mentally ill prisoners in segregation.

Any order to remove a prisoner from the general population must be made by an official with the rank of lieutenant or above, unless a lower-level staff member is the highest-ranking official on duty.[15] The reasons for placement in segregation must be documented on a CDCR Form 114-D Administrative Segregation Unit Placement Notice, and the prisoner should receive a copy of the CDCR 114-D no later than 48 hours after being placed in segregation.[16] The CDCR 114-D will be reviewed by a staff person of at least the rank of captain on the first work day following the prisoner's placement in segregation.[17] This initial placement is called "administrative" segregation.

A hearing officer (a captain or correctional counselor III or an experienced lieutenant or correctional counselor II) or a committee must hold a hearing on the segregation order after 72 hours

[13] 15 CCR §§ 3341.5 and 3378; As of May 2014, the CDCR is in the process of officially adopting new policies regarding segregation of gang members and associates. CDCR Memorandum, Pilot Program for Security Threat Group Identification, Prevention and Management Plan (Oct. 2012) and Notice of Change to Regulations No. 14-02 Security Threat Groups [proposed 15 CCR § 3378.2]. Placement in a PHU for protection is discussed in 15 CCR § 3341.5(a).

[14] 15 CCR § 3341.5(a).

[15] 15 CCR § 3336.

[16] 15 CCR § 3336(a) and (d).

[17] 15 CCR § 3337.

but no later than 10 days following placement in segregation.[18] The prisoner is entitled to appear at the hearing, except in very limited circumstances.[19]

The official issuing the segregation order may appoint an Investigative Employee (IE) to interview the prisoner, gather documents and/or question potential witnesses prior to the hearing; the IE can present a report to the hearing officer describing the results of the investigation. Anything the prisoner says to an investigative employee is not confidential and may be relayed to the hearing officer.[20]

The official issuing the segregation order should appoint a Staff Assistant (SA) if the prisoner is illiterate or if the issues are so complex that it is unlikely the prisoner can collect and present any necessary evidence.[21] An SA must be assigned in any disciplinary proceeding involving an inmate in the Developmentally Disabled Program (DDP)[22] or in the Enhanced Outpatient Program (EOP) level of mental health care. A prisoner has the right to refuse the first staff member assigned to assist, and a different staff member will be assigned.[23] An SA should inform the prisoner about the hearing rights and procedures, assist the prisoner in preparing for the hearing, and represent the prisoner's position at the hearing. An SA must keep confidential any information the prisoner discloses.[24]

Prisoners with mobility, visual or hearing disabilities should be provided with any accommodations they need to review the CDCR 114-D and to prepare for and participate in the hearing. Depending on the nature of the disability, this may be accomplished through assignment of an

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[18] 15 CCR §§ 3335(d), 3337(c), and 3338. A hearing may be held in less time if the prisoner waives to right to 72 hours notice. 15 CCR § 3337(c). A hearing need not be held if the segregation order is withdrawn and the prisoner is returned to the general population before 10 days elapse. 15 CCR § 3338(a)(1). The hearing need not be held within 10 days if, before the 10 days elapse, the prisoner is provided with a disciplinary hearing and referred for classification review. 15 CCR § 3338(a)(2)-(3), The hearing may be delayed longer than 10 days if there is a state of emergency, but then must be held as soon as it is safe and practical to do so. 15 CCR § 3338(a)(4).

[19] 15 CCR § 3338(c). The limited circumstances in which a hearing may be held without the prisoner present are when the prisoner has a serious mental disorder preventing the prisoner from understanding or participating in the hearing, the prisoner has been convicted of escape and has not yet been returned to the facility where the escape happened, or the prisoner has signed a written waiver of the right to be present. 15 CCR § 3330(g).

[20] 15 CCR § 3318(a and 3337(b)).

[21] See 15 CCR §§ 3336(b)-(c), 3318(b), 3337(a), 3341, 3315(d)(2)(F). A Staff Assistant must be assigned if the prisoner is in levels DD1-DD3 of the Developmentally Disabled Program (DDP) or in the Enhanced Outpatient Program (EOP) level of mental health care. See 15 CCR § 3315(d)(2)(E)(1).

[22] Clark v. California (N.D. Cal. Mar. 1, 2002) No. C96-1486FMS, Remedial Plan, § VI.L.2.

[23] 15 CCR § 3337(a). The prisoner may also object to the assigned IE by writing to the classifying official before the beginning of the investigation and explaining the reasons for the objection. If the request is determined to be reasonable, a new IE will be assigned. 15 CCR § 3315(d)(1)(D).

[24] 15 CCR § 3318(b).

SA, a qualified interpreter, a reader, or accommodations such as large print materials, or sound amplification devices.[25]

A prisoner has the right to request attendance of witnesses at the hearing (the request must be made in writing) and to present documentary evidence.[26] The prisoner's witnesses and documentary evidence must be allowed unless it would be "unduly hazardous to the institution safety or correctional goals," and the reason for denying witnesses or evidence must be documented on the Form 114-D.[27]

At the end of the hearing, the hearing officer or committee has several options. The officer or committee may decide to return the prisoner to the general population, assign the prisoner to a long-term segregation unit, or keep the prisoner in administrative segregation while a criminal prosecution or disciplinary proceeding is pending or while a continuing investigation is being conducted.[28] If the decision is to keep the prisoner in administrative segregation, a Classification Staff Representative (CSR) must review and approve the decision within 30 days.[29]

For prisoners who are not mentally ill, there is no specific limit on how long a person may be held in administrative segregation. However, the Institution Classification Committee (ICC) and a CSR must review an administrative segregation placement periodically and release the prisoner if the issues are resolve or segregation is no longer justified.[30] The interval between reviews depends on the reason for the temporary segregation. Reviews must occur every 90 days if the prisoner is in segregation (1) due to on-going investigation of serious misconduct or criminal activity, (2) waiting for resolution of safety, security, or non-disciplinary issues, or (3) waiting for a disciplinary hearing for a Division C, D, E, or F rule violation charge. Reviews must occur every 180 days of the prisoner is waiting for (1) a disciplinary hearing on a Division A-1, A-2, or B rule violation charge, (2) resolution of a court proceeding, or (3) completion of the gang validation process.[31]

There are some special rules regarding mentally ill prisoners in administrative segregation:

- The CDCR currently has a policy (which may change in June 2014, see the paragraph below) for expedited transfers out of administrative segregation for prisoners who are in non-disciplinary segregation (NDS) and are mental health patients at either the Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management

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[25] Armstrong v. Davis (N.D. Cal. Jan. 3, 2001) No. C94-2037CW, Remedial Plan, § II.E.

[26] 15 CCR § 3337(b).

[27] 15 CCR § 3338(h).

[28] See 15 CCR § 3338(d).

[29] 15 CCR § 3335(e)-(f).

[30] 15 CCR § 3335(d), (e) and (f).

[31] 15 CCR § 3335(e).

Services (CCCMS) levels of care. NDS prisoners at the EOP level of care are supposed to be released or transferred out of segregation within 30 days of the initial segregation placement. NDS prisoners at the CCCMS level of care are supposed to be transferred out within 60 days. If these timelines are not met, headquarters-level staffshould to assist the institution staff in addressing any reasons for the delay.[32]

- In April 2014, the federal court overseeing the Coleman v. Brown case issued an order requiring the CDCR to take additional steps to protect mentally ill prisoners from suffering serious psychological harm in segregation. If the order takes effect, then starting on June 10, 2014, EOP and CCCMS prisoners should not be placed in administrative segregation for non-disciplinary (NDS) reasons for more than 72 hours. The CDCR would have to develop a process for barring placement of any EOP or CCCMS prisoner in administrative segregation if there is a substantial risk of psychological harm (there is no set date for this to start). Also, starting on June 10, 2014, EOP-ASUs would be required to meet certain standards in order for mentally ill prisoners to be placed in them. NOTE: This order is not yet in effect; we do not know if the CDCR will appeal some of all of this order or ask for some of all of it to be delayed.[33]

For other segregation prisoners, once any on-going investigation, proceeding or issue is resolved, the ICC must review the case within 14 days.[34] At this review, the ICC will decide whether to return the prisoner to the general population or send the prisoner to a long-term segregation unit like a SHU, PSU or PHU. Sometimes the action ordered by the ICC requires that the prisoner be transferred to a different prison or facility. If a transfer to the general population cannot be carried out immediately, and continued segregation is required pending the transfer, then the ICC must review the case at least every 90 days.[35]

If the ICC decides to place the prisoner in long-term segregation (either for a determinate term or for an indeterminate period of time), a CSR's must review and approve the decision.[36] The length of the segregation placement and the procedures for reviewing the placement will depend on why the prisoner is put in segregation.[37]

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[32] CDCR Memorandum, Non Disciplinary Segregation Enhanced Outpatient Program and Correctional Clinial Case Management Services Release or Transfer Timelines (Dec. 3, 2013.)

[33] For more details and updates, write to the Prison Law Office for information on the Coleman case. The Coleman Fact Sheet also discusses portions of the court order that would limit SHU placement for mentally ill prisoners.

[34] 15 CCR § 3335(e)(1)-(3).

[35] 15 CCR § 3335(e).

[36] 15 CCR § 3341.5.

[37] Determinate SHU terms for prisoners found guilty of serious prison rule violations are discussed in 15 CCR § 3341.5 (c)(2)(B)-(3). Indeterminate SHU for prisoners deemed to be a threat to the safety and security of others, including prisoners who are validated gang members or associates, are discussed in 15 CCR §§ 3341.5(c)(3)(C) and 3378-3378.3.

CDCR Rules – Conditions of Confinement in Administrative Segregation

Most California prisoners who are in administrative segregation have few or no program opportunities, eat all meals in their cells and are barred from mixing with other prisoners or may do so only during tightly supervised exercise sessions. Prisoners in segregation generally spend about 22 hours a day in their cells, and most segregation prisoners are double-celled with another prisoner.

Under the current laws, prisoners who are in administrative segregation (including NDS prisoners) are in Work Group D-1, which means they are eligible to earn up to day-for-day conduct credits unless their criminal offense is of a type that limits credit eligibility.[38] Except for NDS prisoners, administrative segregation prisoners are in Privilege Group D, meaning no overnight family visits, one-fourth the maximum monthly canteen draw, telephone calls on an emergency basis only, limited yard access and no other recreational activities, and receipt of one package of 30 pounds maximum weight per year.[39] NDS Prisoners stay in the privilege group they were assigned to prior to being segregated.[40]

A prisoner in segregation must be permitted a minimum of one hour of out-of-cell time per day, five days a week. When a recreation yard is available, yard time may be substituted for these out-of-cell periods, provided that exercise opportunities are available at least three days a week for a total of 10 hours a week.[41] Segregation prisoners should be fed the same meals as general population prisoners,[42] and clothing exchange must occur no less often than for general population prisoners.[43] Prisoners in administrative segregation should have the same visiting opportunities as general population prisoners, except that segregation prisoners are generally prohibited from having contact

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As of May 2014, the CDCR is in the process of officially adopting new policies regarding segregation of gang members and associates. The new policies allow prison gang members and associates to demonstrate that they are in-active and work their way back to the general population. The program allows prisoners additional privileges and program opportunities as they complete the various steps of the program. CDCR Memorandum, Pilot Program for Security Threat Group Identification, Prevention and Management Plan (Oct. 2012); Notice of Change to Regulations No. 14-02 Security Threat Groups.

[38] 15 CCR § 3044(b)(6). Prisoners who are ultimately placed in long-term segregation for serious disciplinary offenses or as validated gang members and associates, or prisoners who are deemed program failures, are placed on D-2 (zero credit-earning) status. Penal Code § 2933.6; 15 CCR §§ 3043.4 and 3044(b)(7).

[39] 15 CCR § 3044(g).

[40] 15 CCR § 3044(c)(6)(A).

[41] 15 CCR § 3343(h).

[42] 15 CCR § 3343(d).

[43] 15 CCR § 3343(g).

visits.[44] Segregation prisoners may send and receive mail with no special limitations.[45] Segregation prisoners should have a minimum of 2 hours a week of law library access (4 hours per week if on Priority Legal User [PLU] status); a paging system may be used only in "extraordinary circumstances" such as when a prison is on lockdown, when a prisoner's movement is restricted due to a medical condition, or when a prisoner's physical access to the law library is suspended pending investigation of a serious rule violation.[46]

The rules also state what amount and type of personal and legal property a prisoner may possess in segregation;[47] because the amount and type of property a prisoner may possess in segregation is severely limited, a prisoner may have to send home or donate many personal items if placed in segregation. Segregation prisoners may have a TV and/or radio, though prisoners who commit rule violations may be punished by temporary loss of these appliances in addition to any other punishment that is imposed.[48] There is even a radio "loaner program" (adopted as a suicide prevention effort) by which the state will provide free radios to prisoners who are placed in an ASU they either receive their own entertainment appliance or are returned to the general population.[49]

Since NDS prisoners do not change privilege groups when they are placed in segregation, they may have some telephone access, and may be allowed more canteen purchases, personal property and packages than most other segregation prisoners. They may also participate in any programs, services and activities that can be provided without endangering security.[50] However, NDS prisoners are limited to no-contact visits like other segregation prisoners.[51]

CDCR rules require prison officials to keep a record on each prisoner placed in segregation documenting all out-of-cell time and other activities, such as when the prisoner was offered exercise or a shower, or was given supplies or clean clothing. The CDCR Form 114-A Detention/Segregation Record is used for this purpose.[52]

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[44] 15 CCR § 3170.1(f) (though warden may allow contact visits for ASU prisoners on a case-by-case basis); see also 15 CCR § 3343(f).

[45] 15 CCR § 3343(e).

[46] 15 CCR § 3123.

[47] 15 CCR § 3190; see the CDCR's Authorized Personal Property Schedule at DOM § 54030.20.

[48] CDCR Memorandum, Televisions in Administrative Segregation Units (Mar. 12, 2007).

[49] CDCR Memorandum, Multi-powered Radio Loaner Program in Administrative Segregation Units (Jan. 22, 2014.)

[50] 15 CCR § 3044(c)(6)(A) and (d)-(e); 15 CCR § 3190(c); See the Non Disciplinary Segregation Personal Property Matrix, at www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2013NCR/13-03/NDS%20Matrix%2012-30%20splitter%2015%20day.pdf.

[51] 15 CCR § 3044(d)(2)(B) and (e)(2)(B).

[52] 15 CCR § 3344.

Federal Constitutional Law Regarding Segregation Placement

Restrictive conditions can raise concerns about whether segregation prisoners are being subjected to cruel and unusual punishment. The U.S. Constitution's Eighth Amendment ban on cruel and unusual punishment requires only that a prison meet basic human needs. So long as such needs are met, confinement in segregation – even for a lengthy or indeterminate period – does not constitute cruel and unusual punishment.[53]

Court decisions over the last 50 years have established the minimum conditions that must be maintained in California's segregation units. In 1966, a federal district court concluded that conditions segregation cells at Soledad were cruel and unusual because the prisoners were not provided with the "essentials for survival." According to the court, the "essentials" included food, water, toothbrush, toothpaste, toilet tissue, and a regular shower. The court also expressed disapproval of the lack of any interior light in the cells and of the fact that the in-cell toilets could not be flushed by the prisoners.[54]

In 1973 a state legislative report attacked California's segregation units, citing a lack of medical services and exercise opportunities and singling out San Quentin's segregation unit as "filthy, noisy, rodent infested, and drafty."[55] In 1979, the Ninth Circuit Court of Appeals affirmed a district court holding that the Eighth Amendment required a minimal amount of outdoor exercise for prisoners housed in San Quentin's Adjustment Center.[56]

In the 1980s, CDCR segregation units continued to be the subject of legal challenges. A federal court issued a preliminary injunction requiring the CDCR to provide constitutional conditions in the segregation units at San Quentin, Folsom, Deuel Vocational Institution, and the California Training Facility (Soledad). A permanent injunction required improvements in the SHUs at San Quentin and Folsom after decay and neglect had caused conditions such as sanitation, lighting, clothing, plumbing, heating, noise, and fire safety to become indecent and inhumane. The court also required prison officials to provide segregation prisoners with a minimum amount of outdoor

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[53] See Hewitt v. Helms (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675]; Toussaint v. McCarthy (N.D. Cal. 1984) 597 F.Supp. 1388, aff'd in part, rev'd in part, and remanded, 801 F.2d 1080 (9th Cir. 1986); Bono v. Saxbe (7th Cir. 1980) 620 F.2d 609; see also LeMaire v. Maass (9th Cir. 1993) 12 F.3d 1444 (upholding severe restrictions to control a disruptive inmate in Oregon's disciplinary segregation unit); Anderson v. County of Kern (9th Cir. 1995) 45 F.3d 1310 (short-term use of strip cells and lack of group exercise did not violate the Eighth Amendment).

[54] Jordan v. Fitzharris (N.D. Cal. 1966) 257 F.Supp. 674, 682-683.

[55] Report of The Assembly Select Committee on Prison Reform and Rehabilitation, Administrative Segregation in California's Prisons (1973), p. 25.

[56] Spain v. Procunier (9th Cir. 1979) 600 F.2d 189; the district court opinion, which includes a detailed description of the Adjustment Center, can be found at 408 F.Supp. 534 (N.D. Cal. 1976).

exercise.[57] Segregation conditions at San Quentin, Folsom, Soledad, and Deuel Vocational Institute were then analyzed repeatedly and subject to court orders and monitoring.[58] In 1989, a consent decree was filed in federal court requiring that the segregation cells at the California Medical Facility be modified so that prisoners could flush their own toilets and control their own lights.[59]

With respect to other rights, the Ninth Circuit Court of Appeal ruled in 1986 that segregation prisoners had no federal constitutional rights to contact visits or work programs; however, the court did find that segregation prisoners must have reasonable access to an adequate law library or to assistance from persons trained in the law.[60] The latter ruling resulted in the establishment of a segregation law library at San Quentin and the limitation of the "paging system" by which prisoners could do legal research only by asking that specific books be brought to their cells.

In the 1990s, dehumanizing conditions and guard brutality in the Pelican Bay State Prison SHU were challenged in a class action lawsuit, leading to court injunctions. The Pelican Bay SHU, a highly automated unit, was designed to reduce visual, environmental, and social stimulation; an inmate housed there might spend years without seeing any aspect of the outside world and without any opportunity for normal social contact with other people. In addition to challenging the lack of medical and mental health care and the use of excessive force by staff, the prisoners argued that the extreme isolation and environmental deprivation of the SHU were a form of psychological torture amounting to cruel and unusual punishment. The court found that the risk of mental health injury to most prisoners in the SHU was not serious enough to violate the Eighth Amendment. However, the court found that it was cruel and unusual punishment to house prisoners who were mentally ill, mentally retarded, or otherwise particularly vulnerable to psychiatric problems in the Pelican Bay SHU.[61] During the 1990s, the state's other large SHU at Corcoran State Prison also gained notoriety for

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[57] Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; Toussaint v. McCarthy (N.D. Cal. 1984) 597 F.Supp. 1388, 1401-1402, 1412, and 1424, aff'd in part and rev'd in part, 801 F.2d 1080 (9th Cir. 1986), cert. denied, 107 S.Ct. 2462 (1987). See also Allen v. Sakai (9th Cir. 1994) 48 F.3d 1082, 1087 (finding that allowing only 45 minutes a week of outdoor exercise violated the Eighth Amendment); Pierce v. County of Orange (9th Cir. 2008) 526 F.3d 1190. (14th Amendment right to due process violated when jail provided only 90 minutes of exercise per week for inmates in segregation).

[58] Wright v. Rushen (9th Cir. 1987) 642 F.2d 1129; Toussaint v. Rushen (N.D. Cal. 1983) 553 F.Supp. 1365, aff'd in part, Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; Toussaint v. McCarthy (N.D. Cal. 1984) 597 F.Supp. 1388, aff'd in part and rev'd in part, 801 F.2d 1080 (9th Cir. 1986); Toussaint v. Rowland (N.D. Cal. 1989) 711 F.Supp. 536; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800.

[59] Gates v. Deukmejian (E.D. Cal.) No. Civ. S-87-1636 LKK-JFM.

[60] Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1106-1110, and 1113-1114.

[61] Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146, 1128-1130, and 1265-1267. After the Madrid case, the CDCR created a new type of unit — the Psychiatric Services Unit (PSU) – to house mentally ill prisoners who need segregation-level security. 15 CCR § 3341.5(b). PSU prisoners have access to additional counseling and programming opportunities in order to protect and improve their mental health.

Another important case discussing horrendous conditions in Texas administrative segregation units and the finding that housing mentally ill prisoners in those units was cruel and unusual punishment is Ruiz v. Johnson (S.D. Tex. 1999) 154 F.Supp.2d 975; see also Jones'El v. Berge (W.D.Wis. 2001) 164 F.Supp.2d 1096 (granting preliminary injunction removing mentally ill prisoners from "supermax" segregation unit).

violence, including staged "gladiator fights" in which prison guards put hostile prisoners on group yards, bet on the resulting fights, and sometimes shot the prisoners involved.[62]

In 2001, the state adopted a remedial plan that requires the CDCR to provide reasonable accommodations for administrative segregation prisoners with physical disabilities, and to ensure that disabled prisoners are not deprived of necessary health care appliances.[63]

Challenging Segregation Placement or Conditions

If you are a California prisoner and you want to challenge your segregation placement or get improvements in your conditions of confinement, you should file an administrative appeal, such as a CDCR Form 602 (for most types of issues), CDCR Form 1824 (for disability accommodation issues) or CDCR Form 602-HC (for health care issues.) If you file your appeal to the highest level of review but do not get a satisfactory response, you can then file a petition for writ of habeas corpus in state court or a civil rights suit in either federal or state court. More information on how to file administrative appeals, state habeas petitions, and federal civil rights suits is included in The California State Prisoners Handbook (4th Ed. 2008 plus 2014 Supplement). Also, the Prison Law Office has free manuals that explain how to file administrative appeals, state habeas petitions and federal civil rights suits; you can get one of those manuals by writing to the Prison Law Office or from the Resources page at www.prisonlaw.com.

[62] The events at Corcoran are chronicled in Quinn, ed., Maximum Security University: A Documentary History of Death and Cover-Up at America's Most Violent Prison (California Prison Focus 1999) and in articles by Mark Arax and Mark Gladstone in the Los Angeles Times, including Attorney General's Office to Investigate 24 Shootings by Corcoran Prison Guards (Jan. 14, 1999) and Trial of Guards Opens in Prison Rape Case (Oct. 5, 1999).

[63] Armstrong v. Davis (N.D. Cal. Jan. 3, 2001) No. C94-2037CW, Remedial Plan, § IV.I.21- 22.