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### Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. However, the laws change frequently and are subject to differing interpretations. 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 is applicable to your situation. Most of the materials you need should be available in your institution law library.

### **SECURITY THREAT GROUP (GANG) VALIDATION, PLACEMENT AND DEBRIEFING Revised November 2014**

We are sending this information in response to your questions or concerns about the gang validation and/or the debriefing process. We do not have the resources to provide individual response to everyone who seeks our assistance. This information explains how the California Department of Corrections and Rehabilitation (CDCR) may validate or officially label a prisoner as a prison gang member or associate, what happens to such prisoners, and how a prisoner may try to have that label removed. We hope that it will help answer your questions.

In 2012, the CDCR adopted new rules for deciding who is a gang member or associate, and whether or not those prisoners are placed in a Security Housing Unit (SHU). Gangs are now called Security Threat Groups (STGs). The rules establish a new way for gang members or associates in a SHU to be released to the general population, called the Step Down Program (SDP). The rules also provide for a special one-time review of each validated gang member or associate who was in a SHU before the new rules to determine whether the prisoner will stay in the SHU.

The new rules were announced in October 2012, when the CDCR issued a memorandum establishing a Security Threat Group (STG) pilot program. In October 2014, the CDCR made some changes to the STG rules and officially adopted the rules in Title 15 of the California Code of Regulations (15 CCR). The information below cites to these new rules.

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## 1. What are the Main Changes Under the New STG Rules?

The new rules establish what the CDCR believes is a management strategy for gangs similar to what is done in other states. The rules apply to prisoners whom the CDCR calls gang "affiliates."<sup>1</sup> Here is a list of the main changes under the new program (these changes are discussed in more detail in the following sections of this information):

- The validation and housing rules now cover a broader category of "security threat group" (STG), which includes prison gangs, disruptive groups and street gangs;
- When validating prisoners as STG affiliates, the CDCR will use information similar to the information it considered in the past under the old validation rules. However, there is a new point system by which different types of information (called "source items") carry different weights. There must be three source items adding up to at least 10 points to validate a prisoner as an STG affiliate, replacing the old rule that just required three source items. To show current activity, the STG behavior must have occurred within the previous four years.
- There are multiple categories of STG affiliation. Prisoners in higher categories must be placed in a highly-restrictive Security Housing Unit (SHU) but prisoners in lower categories will be placed in a SHU only if they continue to engage in STG behavior or commit certain types of rule violations.
- STG-related behavior or possession of STG contraband is an administrative rule violation. STG-related behavior that is directing, controlling, disruptive or violent is a serious rule violation. STG behavior promotes, furthers or assists a STG. There is a matrix with the consequences of STG-related rule violations.
- There is a four-year Step Down Program (SDP) in which validated STG affiliates can progress through a series of increased privileges and programming opportunities to return to the general population. The SDP replaces the former six-year inactive review process.
- Prisoners who were validated as gang members prior to the pilot program starting in October 2012 will be reviewed by the Departmental Review Board (DRB) to determine whether they will be placed in the SDP or released to general population housing.
- There is also a two-phase debriefing process that prisoners can go through to drop out of an STG and return to the general population.
- There is a process for removing a prisoner's gang validation completely if the prisoner programs for a certain number of years in the general population without any STG-related behavior.

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<sup>1</sup> The term "affiliates" means people who are validated as members, associates or on monitored status who are connected or interact with a certified or recognized gang/security threat group. 15 CCR § 3000.

## **2. What Happens to Prisoners who Were Validated as Gang Affiliates Before the New STG Program began in October 2012?**

Validated prisoners who were already serving indeterminate SHU terms prior to the new STG program will not be re-validated under the new criteria. Instead, each of those prisoners gets a one-time Departmental Review Board (DRB) review to determine if the prisoner will remain in or be released from the SHU. The review is based on the prisoner's behavior over the most recent four-year period. The prisoner can attend the review. If the DRB keeps the prisoner in the SHU, the prisoner goes into the Step Down Program (SDP), which is described in Section 6, below.<sup>2</sup>

There were approximately 3,100 validated gang members/associates when DRB reviews began after October 2012. As of mid-September 2014, approximately 940 of those prisoners had been reviewed by the DRB. Approximately 600 of those prisoners were released from SHU to general population housing, and most of the rest were placed in the SDP.<sup>3</sup> It is not known how long it will take the DRB to complete review of all of the approximately 2,000 other prisoners who were validated as gang affiliates before October 2012. We understand that the DRB reviewed prisoners with the oldest validations first and will generally continue in that manner.

Prisoners who are released from SHU as a result of the DRB reviews are designated as Inactive-Monitored (IMO).<sup>4</sup> Those prisoners (as well as prisoners who were released from SHU as inactive gang members under the old rules) can be returned to SHU if they engage in STG-related behavior after being placed in the general population.<sup>5</sup>

## **3. What are the Criteria for Validating Prisoners as STG Affiliates?**

The new rules define two levels of STGs. STG-I groups are recognized prison gangs and other groups that pose the most severe threat to safety and security based on a history of violence and/or influence over others. STG-II groups are other groups like street gangs, who are subservient to the more dominant STG-I groups.<sup>6</sup> There is a process for the CDCR to officially "certify" a group as an STG-I or "recognize" a group as an STG-II.<sup>7</sup>

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<sup>2</sup> CDCR, *STP Pilot Program Memorandum* (Oct. 2012), p. 3.

<sup>3</sup> Phone call, CDCR to Prison Law Office, September 2014.

<sup>4</sup> 15 CCR § 3000 and § 3375.2(b)(12).

<sup>5</sup> 15 CCR § 3341.5(c)(6) and § 3378.4(b)(7).

<sup>6</sup> 15 CCR § 3000, § 3023(d), and § 3378.1(c).

<sup>7</sup> 15 CCR § 3378.1(d) and (e).

A prisoner can be validated as a member or an associate of either an STG-I or STG-II. A member has been accepted into membership of the STG. An associate is involved periodically or regularly with the members or associates of an STG.<sup>8</sup>

To validate a prisoner as an STG member or an associate, the CDCR must have a certain amount of information. Different types of information weigh more or less heavily toward validation. The basic rule is that a validation requires at least three independent source items with a combined value of 10 points or greater, plus some "information/ activity indicative of" membership or association.<sup>9</sup> The source items can date from any time, except that photographs, must be no more than four years old.<sup>10</sup> For validation as a member or associate of an STG-1, there is an additional requirement that at least one of the source items must be a "direct link" to a current or former validated STG member or associate or to a person who was validated within six months of the activity described in the source item.<sup>11</sup>

A validated STG associate may be upgraded to an STG member based on at least three source items with a combined value of 10 points; the source items must not have been used in the previous validation and at least three of the items must indicate STG membership.<sup>12</sup>

The types of source items that can be considered are the same as those used by the CDCR in the past. However, different types of source items now have point values assigned so that some items count more heavily than others. The points assigned to the categories are as follows:

- Two points: symbols (e.g., hand signs, graffiti, distinctive clothing), written materials identifying the prisoner that are not in the personal possession of the prisoner (e.g., membership or enemy lists)
- Three points: association with validated STG affiliates, informant information (however, validation cannot be based solely on hearsay informant information), debriefing reports

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<sup>8</sup> 15 CCR § 3000, § 3023(d), and § 3378.2(b).

<sup>9</sup> 15 CCR § 3378.2(b). Multiple sources providing information about a single STG-related act or conduct count as only one source item.

<sup>10</sup> 15 CCR § 3378.2(b) and § 3378.2(b)(6); see *In re Alvarez* (2013) 222 Cal.App.4th 1064.

<sup>11</sup> 15 CCR § 3378.2(b). A "direct link" is "any connection between the prisoner and any person validated as a STG affiliate. 15 CCR § 3000. Note that the group of people whom the CDCR can validate as gang members and associates includes "any person – even people who are not under CDCR's jurisdiction. 15 CCR § 3378(c)(3)-(4). See also *In re Cabrera* (2012) 55 Cal.4th 683, 686, 690 (rule requiring "direct link" to a current or former validated member did not require showing of reciprocal interaction); *In re Cabrera* (2013) 216 Cal.App.4th 1522 (possession of photocopies of artwork signed by prison gang affiliates did not provide some evidence of a "direct link" with a prison gang affiliate).

<sup>12</sup> 15 CCR § 3378.2(b).

- Four points: written materials that are in the personal possession of the prisoner, photos (no more than four years old), CDCR staff observations, information from other agencies, visits from people known to promote or assist STG activities, communications (e.g., phone conversations, mail, notes)
- Five points: self admissions
- Six points: crimes committed for benefit, at direction or in association with an STG, tattoos or body markings
- Seven points: legal documents<sup>13</sup>

The CDCR must disclose all source items used in a validation on a CDCR Form 128-B4 (Evidence Disclosure and Interview Notification), and provide a copy of all non-confidential documents being relied upon (unless the prisoner requests otherwise in writing). Staff must identify any item being relied upon as a "direct link."<sup>14</sup> Confidential information used in the validation must be identified on a CDCR Form 1030 (Confidential Information Disclosure Form) and must meet the CDCR's criteria for reliability.<sup>15</sup>

#### **4. What is the Process for Validating Prisoners as STG Affiliates?**

When prison staff have evidence that a prisoner may be involved in STG activities, STG investigative staff will review that evidence. If the STG Lieutenant decides that further action should be taken, an investigator will be assigned to prepare a validation package.

The STG investigator will then interview the prisoner to give the prisoner a meaningful opportunity to be heard in regard to the source items in the validation package. The STG investigator must give the prisoner a minimum of 72 hours notice before the interview.<sup>16</sup> A Staff Assistant (SA) shall be assigned if the prisoner is mentally ill or disabled and needs help.<sup>17</sup> A written summary of the interview will be documented on a CDCR Form 128-B5 (Security Threat

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<sup>13</sup> 15 CCR § 3378.2(b)(1)-(14).

<sup>14</sup> 15 CCR § 3378.2(c)(1).

<sup>15</sup> 15 CCR § 3378.2(b)(3) and (c)(1). The reliability criteria for confidential information is in 15 CCR § 3321(c): information previously supplied by the informant has proven to be true; other confidential sources have independently provided the same information; the information incriminates the source; the information is corroborated through investigation or information from non-confidential sources; the confidential source is the victim of a related rule violation; or the source has successfully completed a polygraph examination. See also *Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183, 186 (requiring that notice of confidential information include a statement that safety considerations prevent the disclosure of the informant's name).

<sup>16</sup> 15 CCR § 3378.2(c)(2), (4) and (5).

<sup>17</sup> 15 CCR § 3378.2(c)(3); the staff assistant guidelines are in 15 CCR § 3318.

Group Validation Chrono). Staff must provide the prisoner with a copy of the CDCR Form 128-B5 within 10 calendar days after the interview.<sup>18</sup>

After the interview, the validation package will be submitted to the CDCR Office of Correctional Safety (OCS) for review.<sup>19</sup> The OCS staff will decide which source items can be relied upon and which must be rejected, and make a recommendation to affirm or reject the proposed validation. The OCS's recommendation will be documented on a CDCR Form 128-B2 (Security Threat Group Validation/Rejection Review).<sup>20</sup>

The case will then go to an STG Unit Classification Committee within 30 days.<sup>21</sup> The prisoner has a right to attend the committee hearing and to request witnesses. An Investigative Employee (IE) will be assigned to assist the prisoner in preparing for the hearing.<sup>22</sup> The STG Unit Classification Committee makes the final determination whether the validation shall be made. The hearing is documented on a CDCR Form 128-G1 (STG Unit Classification Committee-Results of Hearing).<sup>23</sup>

An STG validation will be reflected on a prisoner's classification documents with the Administrative Determinant code STG.<sup>24</sup>

## **5. Where Are Validated STG Affiliates Housed?**

Most prisoners who are validated as STG affiliates will be referred to the Institution Classification Committee (ICC) to determine the appropriate housing for the prisoner. The prisoner may not need ICC review if he or her is in general population and the level of validation and behavior do not require a housing change.<sup>25</sup> If the ICC disagrees with a validation at the STG-I level or with placement into the SDP, the case is to be referred to the DRB for resolution.<sup>26</sup>

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<sup>18</sup> 15 CCR § 3378.2(c)(5).

<sup>19</sup> 15 CCR § 3378.2(c)(6).

<sup>20</sup> 15 CCR § 3378.2(c)(7).

<sup>21</sup> 15 CCR § 3378.2(c)(7) and (d); see also 15 CCR § 3376(c)(4)(identifying what staff is on an STG Unit Classification Committee)

<sup>22</sup> 15 CCR § 3378.2(d).

<sup>23</sup> 15 CCR § 3378.2(d); see also 15 CCR § 3376(d)(5).

<sup>24</sup> 15 CCR § 3375.2(b)(27). Previously, the code for validated gang members was GAN.

<sup>25</sup> 15 CCR § 3378.2(d)(1)-(6).

<sup>26</sup> 15 CCR § 3378.2(e).

Where the validated prisoner is housed will depend on the prisoner's level of STG involvement and behavior:

An STG-I member may be placed into the SDP Step 1, and housed in a SHU.<sup>27</sup>

An STG-I associate may be placed into the SDP Step 1 and housed in a SHU if any of the validation source items involve a serious rule violation for STG behavior that is a SHU-able offense. Otherwise, an STG-I associate will stay in the general population or other appropriate housing.<sup>28</sup>

An STG-II member or associate may be placed into the SDP Step 1 and housed in a SHU if the validation source items involve two or more serious rule violations for STG behavior that are SHU-able offenses within the past four years or if the prisoner has committed such a disciplinary violation since being validated. Otherwise, an STG-II member or associate will stay in the general population or other appropriate housing.<sup>29</sup>

The regulations include a chart identifying the acts that count as serious STG behavior when there is a connection between the behavior and an STG.<sup>30</sup> The regulations also state which types of disciplinary violations are SHU-able offenses.<sup>31</sup>

If a validated prisoner commits any rule offense that qualifies for a SHU term, the ICC can impose the SHU term. The prisoner will serve the SHU term in regular SHU housing, not in the Step Down Program (SDP). The ICC can opt to suspend the SHU term and place or retain the validated prisoner in the SDP.<sup>32</sup>

A validated prisoner who is not initially placed in the SDP can later be placed in the SDP Step 1 and housed in a SHU for new STG-related misbehavior. The level of validation determines what misbehavior is required. An STG-I associate can be sent to the SDP Step 1 if found guilty of one serious STG-related rule violation or two administrative STG-related rule violations within a 12 month period. An STG-II member or associate can be sent to the SDP if found guilty of two STG-related rule violations which are SHU-able offenses.<sup>33</sup>

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<sup>27</sup> 15 CCR § 3378.2(e)(1).

<sup>28</sup> 15 CCR § 3378.2(e)(2).

<sup>29</sup> 15 CCR § 3378.2(e)(3).

<sup>30</sup> 15 CCR § 3378.4(a). See also 15CCR §§ 3314(a)(3)(L)-(M), 3315(a)(3)(Z)-(AA) and 3323 adding STG-related rules violations.

<sup>31</sup> 15 CCR § 3341.5(c)(9).

<sup>32</sup> 15 CCR § 3378.4(d).

<sup>33</sup> 15 CCR § 3378.4(c)(1)(2) and (6).

Prisoners can also be placed in the SDP and housed in SHU based on information from other law enforcement agencies or from outside CDCR's jurisdiction; the STG behavior must have occurred within the last four years and the source information must total at least 10 additional validation points.<sup>34</sup>

There are rules for deciding whether a previously-validated STG affiliate who was paroled or discharged from the CDCR will be housed in the SHU upon returning to prison.<sup>35</sup>

## **6. What is the Step Down Program (SDP)?**

The SDP is a program for validated STG affiliates in the SHU to possibly get out of SHU after serving a period of time without further STG behavior. The SDP includes incentives to stop STG participation.<sup>36</sup> A prisoner in the SDP must complete Steps 1 through 4 to gain placement in non-segregated housing. Staff will notify the prisoner of the behavior and programming expectations at each step.<sup>37</sup> Participation is voluntary, but a prisoner who refuses to participate in the SDP will remain in SHU even if he or she has no new STG-related behavior.<sup>38</sup> A prisoner who has previously refused to participate can notify his or her counselor to ask to appear before the ICC for renewed SDP placement.<sup>39</sup>

The SDP starts with Step 1, followed by Step 2. Prisoners in Steps 1 and 2 have only in-cell programming and all movement is in restraints. Steps 1 and 2 are designed to be completed in 12 months each. However, the ICC will review the prisoner's progress every 180 days. At the review, the ICC can "accelerate" completion of Step 1 or 2 and let the prisoner move on to the next step if he or she has completed all of the program requirements and been free of STG behavior.<sup>40</sup>

SDP prisoners who complete Steps 1 and 2 can go to Step 3, followed by Step 4. Steps 3 and 4 include educational programs and programs like anger management, parenting, substance abuse, and violence prevention. Prisoners must complete journals to help develop a system of values and strategies that lead to responsible thinking and behavior. They may have voluntary

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<sup>34</sup> 15 CCR § 3378.4(c)(7).

<sup>35</sup> 15 CCR § 3341.5(11).

<sup>36</sup> 15 CCR § 3000 and § 3378.3(a)(1)-(3). Because there are special processes and restrictions for placing mentally-ill prisoners in SHU housing, prisoners who are validated STG affiliates and who have serious mental illnesses may participate in the SDP while housed in a Psychiatric Services Unit (PSU).

<sup>37</sup> 15 CCR § 3378.3(a)(1).

<sup>38</sup> 15 CCR § 3378.3(b).

<sup>39</sup> 15 CCR § 3378.3(a)(4).

<sup>40</sup> 15 CCR § 3378.3(b)(1).

work assignments. In Step 3, programs are either in-cell or in individual treatment modules and movement is in restraints. In Step 4, programming may be in small groups, there may be some unrestrained movement, and yard time will be with a cell-mate for six months and then on an integrated yard. Prisoners in Step 3 are reviewed by the ICC every 180 days and prisoners in Step 4 are reviewed every 90 days. Prisoners must stay in Step 3 for a minimum of 12 months and in Step 4 for a minimum of 12 months.<sup>41</sup>

The CDCR rules describe the privileges available to prisoners at various levels of the SDP. Prisoners get more privileges as they work their way through the steps.<sup>42</sup>

Prisoners who are in Steps 1 through 4 will have to stay in the SDP longer if they commit STG-related misbehavior. The CDCR calls this "regressing." The rules have a matrix (chart) setting the range of consequences for various types of STG-related misbehavior. Prisoners can be sent back a few months or to the start of their current step, sent back to the previous step, or sent all the way back to the start of Step 1.<sup>43</sup>

If a prisoner is not progressing through Steps 1 or 2 and/or case factors such as medical or mental health needs have changed, the ICC can refer the case to the DRB for consideration of alternate housing.<sup>44</sup>

Upon completion of Step 4, a validated prisoner will go to Step 5. In Step 5, the prisoner will be observed by staff for a minimum of 12 months while programming in general population facility with regular privileges.<sup>45</sup> Male Step 5 inmates must be housed in a Level IV facility during this period regardless of placement score, unless the DRB approves a different placement.<sup>46</sup> A Step 5 inmate will be assigned to Close B Custody unless special case factors require Close A Custody. When a prisoner goes to Step 5, the Administrative Determinant on the prisoner's Classification Score Sheet will change to Monitored Status (MON)<sup>47</sup>

If a prisoner programs successfully in Step 5 for 12 months, with no STG involvement, he or she will then be considered for transfer to a general population facility consistent with his or her placement score and other program needs. Prior STG affiliates will still be on Monitored Status (MON) and may be subject to greater scrutiny of cell contents, mail and phone calls, and

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<sup>41</sup> 15 CCR § 3378.3(b)(2) and (3).

<sup>42</sup> 15 CCR § 3044(i) and 3378.3(b)(9).

<sup>43</sup> 15 CCR § 3378.4(a) and (b)(4)-(6).

<sup>44</sup> 15 CCR § 3378.1(d)(10).

<sup>45</sup> 15 CCR § 3378.3(b)(5)-(6) and (9).

<sup>46</sup> 15 CCR § 3378.3(b)(5); see also 15 CCR § 3378.1(d)(8) (providing for DRB overrides).

<sup>47</sup> 15 CCR § 3378.3(b)(7).

periodic STG investigator interviews.<sup>48</sup>

A prisoner who is in Step 5 or who has graduated from Step 5 can be sent back to SHU for one serious STG-related rule violation or two administrative STG-related rule violations within a 12-month period. The prisoner normally will be sent back to Step 1 and have to serve at least two years in Step 1 before progressing to the next step.<sup>49</sup>

## **7. Can Prisoners in the SDP Earn Sentence-Reducing Conduct Credits?**

Prisoners in Steps 1 through 4 of the SDP as STG-I members or associates are in Work Group D-2 and do not earn any sentencing-reducing conduct credits.<sup>50</sup> However, the Work Group D-2 regulation does not include STG-II members or associates, so it appears that STG-II members or associates in SDP Steps 1 through 4 are in Work Group D-1 and can earn day-for-day (half-time) credits unless their criminal conviction limits credit eligibility or a recent serious disciplinary offense requires them to serve time on D-2 no-credit status.<sup>51</sup>

All prisoners in Step 5 of the SDP earn the same conduct credits they would earn if they were regular general population prisoners.

## **8. Can Validated STG Affiliates Debrief?**

Prisoners can debrief as a way to drop out of an STG and get released to the general population.<sup>52</sup> A prisoner must request to participate in the debriefing process and may end participation in the process at any time.<sup>53</sup>

Debriefing can raise many concerns. For prisoners who have been wrongly accused of gang membership, the debriefing process may prove difficult; a prisoner will be unable to provide sufficient information if he or she never knew much about the gang in the first place. Also, prisoners may be reluctant to provide information regarding gang members given the

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<sup>48</sup> 15 CCR § 3378.3(b)(7)(B) and (8).

<sup>49</sup> 15 CCR § 3378.4(b)(7).

<sup>50</sup> Penal Code § 2933.6(a); 15 CCR § 3043.4(b) and § 3044(b)(7). Prior to January 25, 2010, prisoners who were housed in SHUs as validated prison gang members could earn some conduct credits. The state and federal courts have rejected arguments that it violates the U.S. Constitution's prohibition on ex post facto laws to change the rules to make such prisoners ineligible to earn future credits. *In re Sampson* (2011) 197 Cal.App.4th 1234; *In re Efstathiou* (2011) 200 Cal.App.4th 725; *Soto v. Lewis* (N.D. Cal. 2012) No. C11-4704 CRB; *Nevarez v. Lewis* (N.D. Cal. 2012) No. C12-1912 SI; *Gregory v. Lewis* (N.D. Cal. 2012) No. C12-0967 EMC.

<sup>51</sup> 15 CCR § 3044(b)(6).

<sup>52</sup> See 15 CCR § 3378.5(a).

<sup>53</sup> 15 CCR § 3378.5(a) and (e).

prisoner code of conduct that discourages cooperation with prison officials and the risk of retaliation by other prisoners. Thus, prisoners who are thinking about debriefing should carefully consider the possible advantages and disadvantages.

Debriefing usually consists of an interview phase and an observation phase; the observation stage may be by-passed based on individual case factors.<sup>54</sup>

In the interview phase, the prisoner must write an autobiography of his or her STG involvement and be interviewed by investigative staff. The purpose is to provide staff with information about the STG's structure, activities and affiliates, and not for the purpose of acquiring incriminating evidence against the debriefing prisoner.<sup>55</sup> If a prisoner makes a self-incriminating statement during debriefing, the investigator can stop the discussion and move to another topic. The subject must waive the right against self-incrimination before any further questioning about the incriminating matter. If the prisoner decides not to waive the right, that shall not be considered in deciding whether the prisoner successfully participated in the debriefing.<sup>56</sup> The debriefing will be documented by the prison's STG Coordinator/Investigator and approved by the CDCR Office of Correctional Safety (OCS) on a CDCR Form 128-B (General Chrono).<sup>57</sup>

A debriefing prisoner may also be required to complete an observation phase of up to six months while housed with other prisoners who are going through the debriefing process. Most debriefing male prisoners will serve their observation period in the Transitional Housing Unit (THU). A THU offers additional protection to debriefing prisoners and includes education and therapeutic programs.<sup>58</sup> Prisoners in a THU are placed in Work/Privilege Group A-1A.<sup>59</sup> If a prisoner in a THU commits any STG-related disciplinary offenses, he may be removed from the THU and sent back to Step 1 of the SDP.<sup>60</sup>

At the discretion of a classification committee, male prisoners who are debriefing from general population may be placed in a THU or allowed to stay in general population during their observation period. Female prisoners will serve their observation period in general population.<sup>61</sup>

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<sup>54</sup> 15 CCR § 3378.5(a) and (e).

<sup>55</sup> 15 CCR § 3378.5(b).

<sup>56</sup> 15 CCR § 3378.5(e).

<sup>57</sup> See 15 CCR § 3378.6 and § 3378.7(a)(1).

<sup>58</sup> 15 CCR § 3378.7(b).

<sup>59</sup> 15 CCR § 3378.7(d).

<sup>60</sup> 15 CCR § 3378.7(c)(2).

<sup>61</sup> 15 CCR § 3378.5(a) and (c) and § 3378.7(a).

Upon completion of the debriefing process, the prisoner will be housed consistent with his or her placement scores and other case factors.<sup>62</sup> A prisoner who has debriefed and been released from the THU is on Dropout Status.<sup>63</sup> A prisoner on Dropout Status may be removed from the general population and sent to the SDP if found guilty of new misbehavior consisting of either one serious STG-related rule violation or two STG-related administrative rule violations within a 12-month period.<sup>64</sup>

## **9. Can an STG Affiliation Ever be Removed from a Prisoner's Classification Factors?**

STG affiliates who have been in general population housing without STG behavior for a certain number of years can have their STG status terminated. This applies to prisoners who have been validated but not placed in the SHU based on STG affiliation and prisoners who are on Monitored, Inactive or Dropout Status.<sup>65</sup> Being free of STG behavior means no STG-related disciplinary violations and no additional source criteria items totaling 10 points or more. The length of time a prisoner must spend in general population without STG behavior varies depending on the level of validation. An STG-I associate or STG-II associate must do six years of general population time with no STG behavior to have the validation removed. An STG-I member or STG-II member must do 11 years of general population time with no STF behavior to have the validation removed.<sup>66</sup>

Termination is to be considered by the ICC at the first annual review upon which the prisoner becomes eligible. If STG status is terminated, an updated CDCR Form 128-B2 (Security Threat Group Validation/Rejection Review) will be created to reflect the termination.<sup>67</sup>

Prisoners whose STG status has been terminated are eligible to participate in housing and programs without any limits related to STG status.<sup>68</sup> They also should not be subjected to parole consequences such as High Control supervision and electronic monitoring based on STG status.<sup>69</sup>

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<sup>62</sup> 15 CCR § 3378.5(d).

<sup>63</sup> 15 CCR § 3000.

<sup>64</sup> 15 CCR § 3378.4(c)(3).

<sup>65</sup> 15 CCR § 3378.8.

<sup>66</sup> 15 CCR § 3378.8 (a) and (b).

<sup>67</sup> 15 CCR § 3378.8 (a)(3)-(4) and (b)(3)-(4).

<sup>68</sup> 15 CCR § 3378.8 (a)(5) and (b)(5).

<sup>69</sup> See 15 CCR § 3504(a)(1) and (3)(E), § 3545(c)(4) and § 3561(b)(2).

After STG status has been terminated, a whole new validation process is required to put the prisoner back on STG status.<sup>70</sup>

## 10. What Legal Rights Do Prisoners have Regarding STG Validation and SDP Placement?

The CDCR has a lot of discretion in validating prisoners as STG affiliates and placing them in segregated housing. However, prisoners do have some legal protections. This section discusses the legal rights that prisoners have in regards to gang validation and segregation. The next section summarizes legal tools prisoners can use to challenge validations and segregation.

Prisoners have state law protections against unfair validation or segregation. The due process clause of the California Constitution (Art. I, § 7) forbids taking away liberty without due process. Prisoners also have a right to have the CDCR follow its own rules and procedures.<sup>71</sup> However, if there are disputes about what the regulations mean, a court will defer to the CDCR's interpretation, unless the CDCR's interpretation is unreasonable.<sup>72</sup>

As for federal law rights, the U.S. Constitution does not itself give prisoners a Fifth or Fourteenth Amendment due process right to avoid gang validation or placement in segregation as a gang affiliate. However, states can create federally-protected due process rights if (1) the state rules about gang validation/ segregation contain specific mandatory standards for validation/segregation and (2) the gang validation or segregation imposes an "atypical and significant hardship" "in relation to the ordinary incidents of prison life."<sup>73</sup> In a case from Ohio, the U.S. Supreme Court found that a program for placing validated prisoners in indeterminate super-max confinement did create a due process liberty interest.<sup>74</sup> Courts also have held that CDCR's prior gang validation regulations created a due process liberty interest in not being placed in indeterminate SHU based on an unsupported validation.<sup>75</sup> The CDCR's new STG regulations have not yet been examined by the courts, but it is likely that at least some portions

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<sup>70</sup> 15 CCR § 3378.8 (a)(5) and (b)(5).

<sup>71</sup> See e.g., *In re Scott* (2003) 113 Cal.App.4th 38, 44; *In re Carter* (1988) 199 Cal.App.3d 271, 276-277; *In re Lusero* (1992) 4 Cal.App.4th 572, 575.

<sup>72</sup> *In re Cabrera* (2012) 55 Cal.4th 683 (upholding a CDCR policy that an "association does not have to be "reciprocal to satisfy the "direct link requirement); *In re Furnace* (2012) 185 Cal.App.4th 649 (allowing use of book and newspaper article to validate prisoner where items included the address of a validated gang member); *In re Villa* (2013) 214 Cal. App. 4th 954 (since CDCR rules allow prisoners to possess other prisoners' documents to assist them with legal work, possession of a gang member's chronos did not constitute a source item for validation absent a showing that the prisoner did not possess the chronos for the purpose of providing legal assistance).

<sup>73</sup> *Sandin v. Conner* (1995) 515 U.S. 472, 483-484.

<sup>74</sup> *Wilkinson v. Austin* (2005) 545 U.S. 209.

<sup>75</sup> *Bruce v. Ylst* (9th Cir. 2003) 351 F.3d 1283, 1287-1288; see also cases pre-dating *Sandin* -- *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1261, 1271; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1097-1098; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490, 1494 fn. 6.)

of the regulations create federally-protected due process rights, since some gang-validated prisoners still must spend at least several years in harsh SHU conditions.

To assure substantive due process, prison officials must have "some evidence" to support a validation. The standard requires that there be some evidence in the record that could support the validation.<sup>76</sup> The evidence must have some 'indicia of reliability,' which means that "an inmate may not be confined to the SHU for gang affiliation unless the record contains some factual information from which [the prison officials] can reasonably conclude that the information was reliable."<sup>77</sup> Recent cases have also addressed whether various types of evidence were sufficient to support gang validations.<sup>78</sup>

Due process also involves procedural protections. The federal courts have held that gang validation and segregation serves legitimate administrative purposes and is not punishment, so prisoners who are being validated are not entitled to the same procedural protections as prisoners who are facing serious rule violation charges.<sup>79</sup> In deciding whether a prison's procedures are adequate, courts must weigh various factors: prisoners' interests in being free from long-term segregation on the basis of gang validation, the risk that prison officials will erroneously validate a prisoner and place him in segregation, the probable value of additional or different procedural safeguards, and the monetary and administrative burdens that additional or different procedural requirements would cause.<sup>80</sup> Under these principles, prisoners who are facing gang validation

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<sup>76</sup> *In re Cabrera* (2013) 216 Cal.App.4th 1522, 1531-1533; see also *Superintendent v. Hill* (1985) 472 U.S. 445 (establishing the some evidence test); *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1273; *Bruce v. Ylst* (9th Cir. 2003) 351 F.3d 1283, 1287-1288; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703, 705.

<sup>77</sup> *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1274; see also *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703, 705.

<sup>78</sup> *In re Villa* (2013) 214 Cal.App.4th 954 (jailhouse lawyer's possession of validated gang associate's chronos for use in preparing legal documents could not serve as validation source item, since CDCR rules say that prisoners can possess other prisoners' documents to assist them with legal work); *In re Fernandez* (2013) 212 Cal.App.4th 1199, 1213 (confidential debriefing report was insufficient to validate a prisoner because it failed to describe the nature of involvement with the gang; the report simply said the prisoner was an associate and did not mention specific acts, incidents, or role prisoner had served); but see *In re Furnace* (2010) 185 Cal.App.4th 649, 661 (policy allowing use of book and newspaper article to validate prisoner was permissible even though it impacted prisoner's First Amendment rights, where items included the address of a validated gang member); *Castro v. Terhune* (9th Cir. 2013) 712 F.3d 1304 (some evidence supported gang validation where prisoner had pictures with gang-related symbols, had signed and sent a birthday card for a validated gang member, and was identified in two debriefing reports); *In re Cabrera* (2013) 216 Cal.App.4th 1522 (prisoner's possession of photocopies of artwork signed by gang affiliates did not provide some evidence of a direct link); *Stewart v. Alameida* (N.D. Cal. 2006) 418 F.Supp.2d 1154, 1167-1168 (some evidence supported gang validation).

<sup>79</sup> *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1274-1275; *Bruce v. Ylst* (9th Cir. 2003) 351 F.3d 1283, 1287.

<sup>80</sup> *Wilkinson v. Austin* (2005) 545 U.S. 209.

and segregation are entitled to advance notice of the allegations and an opportunity to present their views to prison officials involved in the validation decision, as well as a limited right to staff assistance.<sup>81</sup> Opportunity for multiple levels of review is also a due process protection.<sup>82</sup>

## **11. How Can Prisoners Challenge an STG Validation or SDP Placement Decision?**

Challenges to STG validations should focus on any failure by the CDCR to follow its own procedural rules or criteria for validation, failure to provide notice and a hearing prior to validation or segregation, and/or lack of some reliable evidence to support the validation or SDP placement.

A prisoner's first opportunity to attack STG allegations is during the initial validation process. The prisoner should always make an effort to explain any reasons why the allegations are not supported and to present any evidence undermining the allegations. If the validation is confirmed, the prisoner should raise these issues at every subsequent review.

A prisoner who wants to challenge a validation and/or gang segregation decision should file a CDCR Form 602 (Inmate/Parolee Appeal) when the initial validation is made and every time the validation and SDP placement are re-affirmed. A prisoner must file his or her appeal of an STG validation within 30 calendar days after receiving the CDCR Form 128-B2 documenting the STG Unit Classification Committee's validation decision. The prisoner should pursue the 602 appeal all the way through third (Director's) level of review. Even if the prisoner believes that the 602 appeal will be denied, it is necessary to complete the administrative appeal process before filing any court action challenging the STG validation. This is because prisoners are usually barred from bringing court actions until they have "exhausted administrative remedies."

If the 602 appeal is denied at the third level, a prisoner may bring a court action. One option is a state court petition for writ of habeas corpus; state court petitions are relatively easy to prepare and if the court allows the case to go forward, it must appoint an attorney to represent the prisoner in the rest of the proceedings. Another option is a federal civil rights ("section 1983") lawsuit. When deciding what type of action to file, the prisoner should take into consideration whether the issues being raised are matters of state or federal law or both. Further discussion of the pros and cons of the two types of court actions, as well as their procedural and substantive requirements, are beyond the scope of this letter.

The Prison Law Office has manuals with more information on administrative appeals, state petitions for writ of habeas corpus and federal civil rights suits. These manuals are available free of charge on request or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

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<sup>81</sup> *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1272, 1274-1275; *Castro v. Terhune* (9th Cir. 2002) 29 Fed.Appx. 465; *Toussaint*, 801 F.2d 1080; see also *Wilkinson v. Austin* (2005) 545 U.S. 209, 225-226.

<sup>82</sup> *Wilkinson v. Austin* (2005) 545 U.S. 209, 226-227.