



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964-0001
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Mae Ackerman-Brimberg
Rana Anabtawi
Steven Fama
Alison Hardy
Sia Henry
Corene Kendrick
Rita Lomio
Margot Mendelson
Millard Murphy
Lynn Wu

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 January 2018

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

The CDCR term for prison and street gangs is Security Threat Groups (STGs). The CDCR has rules about the validation and placement of STG members and associates (or, more generally, STG "affiliates") in Title 15 of the California Code of Regulations (15 CCR).

In October 2012, the CDCR put into effect new rules for deciding who is an STG affiliate, whether an STG affiliate is placed in a restrictive Security Housing Unit (SHU), and how an STG affiliate can move back into the general population and get their gang validation removed. However, the CDCR's previous and new rules were challenged in a federal court case called *Ashker v. Governor of California* (U.S.D.C. N.D. Cal.) No. C09-05796. In 2015, the CDCR agreed to settle the *Ashker* case and make further changes to its rules. The settlement was approved by the court in 2016. In October 2017, the CDCR issued new emergency rules pursuant to the settlement. This letter discusses the current policies under those rules. As of December 2017, those emergency rules are in effect, but are not yet finalized; there may be changes in the final version of the rules.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President
Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

TABLE OF CONTENTS

| | | |
|-----|--|----|
| 1. | What are the Changes to STG Policies Under the <i>Ashker</i> Settlement and New Rules?..... | 3 |
| 2. | What is the Process for Validating Prisoners as STG Affiliates?..... | 3 |
| 3. | What are the Criteria for Validating Prisoners as STG Affiliates?..... | 5 |
| 4. | Where Are Validated STG Affiliates Housed? | 6 |
| 5. | What is the Step Down Program (SDP)? | 8 |
| 6. | What is the Restricted Custody General Population Unit (RCGP)? | 10 |
| 7. | What is Administrative SHU Placement? | 12 |
| 8. | Can Validated STG Affiliates Debrief (Drop Out)? | 13 |
| 9. | Can an STG Affiliation Ever be Removed from a Prisoner’s Classification Factors?..... | 16 |
| 10. | What Legal Rights Do Prisoners have Regarding STG Validations, Disciplinary Findings, and Segregation?..... | 17 |
| 11. | How Can Prisoners Challenge STG Validations, Disciplinary Findings, or Segregation? | 19 |
| | APPENDIX – Acronyms Used in Gang Validation, Placement, and Debriefing..... | 22 |

1. What are the Changes to STG Policies Under the *Ashker* Settlement and New Rules?

The *Ashker* settlement (and some other new laws) have required the CDCR to make important changes to their STG policies:

- ◆ STG-validated prisoners cannot be sent to a SHU unless they are found guilty of a serious SHU-eligible rule violation (the same type of rule violation that sends non-STG-validated prisoners to SHU).
- ◆ Some STG-validated prisoners who are found guilty of a SHU-eligible rule violation may be required to serve a determinate SHU term and then enter a two-year SHU Step Down Program (SDP) to transition back the general population.
- ◆ There is a new type of facility called a Restricted Custody General Population Unit (RCGP). The RCGP will be used for three categories of prisoners: (1) prisoners whose own personal safety concerns limit their ability to be housed in any other general-population unit, (2) prisoners who repeatedly violate prison rules while in the SDP, and (3) prisoners who refuse to take part in SDP programming. The RCGP allows these prisoners more opportunities for programming and social interactions than SHU housing.
- ◆ There is a new type of facility called a Debrief Processing Unit (DPU) for housing prisoners who are in the first stages of debriefing (dropping out) of an STG.
- ◆ The use of Administrative SHU to house prisoners in SHU indeterminately is strictly limited to cases in which (1) there is overwhelming evidence that the prisoner poses such a serious threat to safety or security that they cannot be house in general population or (2) the prisoner has had three SHU terms within the past five years and poses an on-going threat to safety or security.
- ◆ Prisoners cannot be housed in the Pelican Bay State Prison (PBSP) SHU for more than five continuous years. If the CDCR decides to keep a prisoner in SHU placement, then the prisoner must be transferred to another SHU facility. A prisoner can request to stay in the PBSP SHU rather than be transferred, but the request must be approved by the DRB. Prisoners who have already served five continuous years in the PBSP SHU can be sent back to PBSP SHU only if at least five years have passed since the prisoner was last housed in PBSP SHU and the transfer is approved by the DRB.¹
- ◆ Most prisoners who are in the SHU SDP now can earn Good Conduct Credits toward their sentences.

2. 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 investigators will review that evidence. If the prison's STG Lieutenant decides that further action

¹ 15 CCR § 3341.3(a).

should be taken, an STG investigator will be assigned to prepare a validation package. “Validation” is the CDCR’s term for officially labelling a person as someone who is involved with an STG.

The STG investigator will then interview the prisoner about the information (called source items) in the validation package. The STG investigator must give the prisoner a minimum of 72 hours notice before the interview. The notice will be on a CDCR Form 128-B4 Evidence Disclosure and Interview Notification, and will describe the source items.² A Staff Assistant shall be assigned if the prisoner is mentally ill or disabled and needs help.³ A written summary of the interview will be documented on a CDCR Form 128-B5 Security Threat Group Validation Chrono. Staff must provide the prisoner with a copy of the CDCR Form 128-B5 within 10 calendar days after the interview.⁴

After the interview, the validation package will be submitted to the CDCR’s Office of Correctional Safety (OCS) for review.⁵ The OCS staff will decide which source items can be relied upon and which must be rejected. This includes deciding whether any confidential information meets the CDCR’s requirements for reliability.⁶ They will then make a recommendation to affirm or reject the proposed validation. The OCS’s recommendation will be on a CDCR Form 128-B2 Security Threat Group Validation/Rejection Review.⁷

The case will then go to a hearing by the STG Unit Classification Committee (UCC) within 30 days.⁸ 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.⁹ The STG UCC makes the final determination whether the validation shall be made, and documents it on a CDCR Form 128-G Chrono.¹⁰

After the STG UCC makes its decision, a Classification Services Representative (CSR) will audit the validation for accuracy and compliance with the rules.¹¹

An STG validation will be reflected on a prisoner’s classification documents with the Administrative Determinant code ST1 or ST2, depending on the type of STG that is the basis for the validation (see section 2, below).¹²

² 15 CCR § 3378.2(c)(2), (4)-(5).

³ 15 CCR § 3378.2(c)(3); see also 15 CCR § 3318 (staff assistant guidelines).

⁴ 15 CCR § 3378.2(c)(5).

⁵ 15 CCR § 3378.2(c)(6).

⁶ See 15 CCR § 3321 for the rules on confidential material.

⁷ 15 CCR § 3378.2(c)(7).

⁸ 15 CCR § 3378.2(c)(7), (d); see also 15 CCR § 3376(c)(4)(identifying what staff are on an STG UCC)

⁹ 15 CCR § 3378.2(d).

¹⁰ 15 CCR § 3378.2(d); see also 15 CCR § 3376(d)(5).

¹¹ 15 CCR § 3378.2(d)(2).

¹² 15 CCR § 3375.2(b)(25)-(26).

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

There are two levels of STGs. STG-I is the category for recognized prison gangs and other groups that CDCR contends pose the most severe threat to safety and security based on a history of violence and/or influence over others. STG-II is the category for groups like street gangs or other gangs who are under the more dominant STG-I groups.¹³ There is a process for the CDCR to officially “certify” a group as an STG-I or “recognize” a group as an STG-II.¹⁴

There are also two degrees of STG affiliation. An STG member is someone who has been accepted into membership of the STG. An STG associate is someone who is involved periodically or regularly with members or associates of an STG.¹⁵

To validate a prisoner as an STG affiliate, the CDCR must have a certain amount of information. Different types of information weigh more or less heavily toward validation. A validation requires at least three independent source items with a combined value of 10 points or greater, “coupled with information/behavior indicative of” membership or association.¹⁶ The source items can date from any time, except that photographs must be no more than four years old.¹⁷ 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 member or associate of that STG or to a person who is validated within six months of the behavior described in the source item. There does not need to be evidence that the prisoner knew of the validated affiliate’s STG involvement¹⁸

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.¹⁹

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 report.

¹³ 15 CCR § 3000, § 3023(d), and § 3378.1(c).

¹⁴ 15 CCR § 3378.1(d) and (e).

¹⁵ 15 CCR § 3000, § 3023(d), and § 3378.2(b).

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

¹⁷ 15 CCR § 3378.2(b); see *In re Alvarez* (2013) 222 Cal.App.4th 1064 [166 Cal.Rptr.3d. 271].

¹⁸ 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 CDCR can validate “any person” as an STG affiliates, including people who are not CDCR prisoners. 15 CCR § 3378.2(b).

¹⁹ 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 documents²⁰

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). 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.²¹ Staff must identify any item being relied upon as a "direct link."²²

4. Where Are Validated STG Affiliates Housed?

CDCR staff shall not place prisoners in the SHU, Ad Seg, or any other segregation unit based solely on their STG validation status.²³ Like all prisoners, validated STG affiliates can be placed in segregated housing during the investigation of a rules violation, during an investigation into threats to their own safety, or for other administrative reasons.²⁴

Like all prisoners, STG-validated affiliates who are found guilty of particularly serious rule violations can be punished by a determinate (set-length) term in SHU.²⁵ The Institution Classification Committee (ICC) can select from a range of terms, as set forth in the CDCR's SHU Term Assessment Chart; the term must be reviewed by a CSR.²⁶ Even where a SHU term is assessed, a prisoner may not necessarily end up spending the full length of the term in SHU. The ICC must review the SHU placement every 180 days months, as well as 120 days prior to the end of the term, and may choose

²⁰ 15 CCR § 3378.2(b)(1)-(14).

²¹ 15 CCR § 3378.2(b)(3), (c)(1). The confidential information reliability criteria 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 statement that safety considerations prevent disclosure of informant's name).

²² 15 CCR § 3378.2(c)(1).

²³ 15 CCR §§ 3335, 3341.3, 3378.2(b).

²⁴ 15 CCR § 3335.

²⁵ 15 CCR § 3341.3(a)(2).

²⁶ 15 CCR § 3341.9.

to commute (eliminate) or suspend any portion of the determinate SHU term.²⁷ Also, a prisoner serving a SHU term can earn credits for good behavior to reduce the term by up to half; these credits can be lost if the prisoner commits a serious rule violation during the SHU term.²⁸

In some circumstances, a prisoner whose SHU-eligible rule violation had a nexus (connection) to an STG may be kept in a SHU for an additional two years in a Step Down Program (SDP), after serving any determinate SHU term.²⁹ To be placed in the SDP, a prisoner must meet the following criteria:

- ◆ An STG-I member or associate (or drop-out) may be housed in a SHU and assigned to the SDP if they have been found guilty of a serious rule violation that is both STG-related and SHU-eligible within the prior two years.³⁰
- ◆ An STG-II member or associate (or drop-out) may be housed in a SHU and assigned to the SDP if they have been found guilty of two serious rule violations that are both STG-related and SHU-eligible within the prior four years.³¹

Note that a prisoner does not have to be validated as an STG affiliate for a rule violation to have an STG nexus. Also, a prisoner need not have been validated as an STG affiliate before they committed the SHU-eligible rule violations.

The ICC will decide whether to place a prisoner in the SDP. A referral for SDP placement must be reviewed by a SHU CSR to check whether the prisoner meets all of the criteria.³²

A prisoner assigned to the SDP will have “SDP” code on their classification papers; the SDP code will continue to be on the prisoner’s classification so long as they are STG-validated, even after they complete the SDP and transfer to general population housing.³³

²⁷ 15 CCR §§ 3341.5(a), 3341.6, 3341.8.

²⁸ 15 CCR §§ 3341.7, 3341.9(f).

²⁹ 15 CCR §§ 3341.8(b), (e), 3378.4(b). The SDP is not available to prisoners serving death sentences. 15 CCR § 3378.4(a). For information about behavior with an STG nexus, see 15 CCR 3378.4(a) (STG Disciplinary Matrix). The hearing officer who decides that the prisoner is guilty of a rule violation must clearly state the relationship between the violation and the STG. 15 CCR § 3378.4(a). If the STG relationship is discovered after the disciplinary process has been completed, and the prisoner is still serving the SHU term, then the Chief Disciplinary Officer (CDO) can order the rule violation reissued and reheard based on the new evidence. 15 CCR § 3378.4(c).

³⁰ 15 CCR §§ 3341.3(c)(3)(A)1., 3378.2(b), (d)(3), (e)(1), 3378.4(b).

³¹ 15 CCR §§ 3341.3(c)(3)(A)2., 3378.2(b), (d)(4), (e)(2), 3378.4(b).

³² 15 CCR §§ 3378.2(e), 3378.4(b).

³³ 15 CCR § 3375.2(b)(21).

5. What is the Step Down Program (SDP)?

The SDP is a multi-step program in the SHU for STG affiliates who meet the criteria described in section 4, above. Placement in the SDP is for 24 months, normally with four steps of six months each.³⁴

STG-validated prisoners who are in the SDP are in Work Group D-1 and can earn the same Good Conduct Credits as if they were in general population, up to one day of Good Conduct Credit for every day served.³⁵

Prisoners get more privileges as they work their way through the SDP steps:

- ◆ Step 1: no family visits, non-contact visiting, 25% of the maximum monthly canteen draw, telephone calls on an emergency basis and one call every 90 days (if the prisoner has met program expectations and not been found guilty of a serious rule violation), one package of 30 pounds maximum weight, one photograph.
- ◆ Step 2: no family visits, non-contact visiting, 35% of the maximum monthly canteen draw, telephone calls on an emergency basis and one call every 60 days (if the prisoner has met program expectations and not been found guilty of a serious rule violation), yard access of a minimum of 10 hours per week, one package of 30 pounds maximum weight, two photographs (if the prisoner has met program expectations and not been found guilty of a serious rule violation).
- ◆ Step 3: no family visits, non-contact visiting, 45% of the maximum monthly canteen draw, telephone calls on an emergency basis and one call every 45 days (if the prisoner has met program expectations and not been found guilty of a serious rule violation), yard access of a minimum of 10 hours per week, one package of 30 pounds maximum weight, three photographs (if the prisoner has met program expectations and not been found guilty of a serious rule violation), small group programs at least two hours per week, access to appropriate educational programs.
- ◆ Step 4: no family visits, non-contact visiting, 50% of the maximum monthly canteen draw, telephone calls on an emergency basis and one call every 30 days (if the prisoner has met program expectations and not been found guilty of a serious rule violation), yard access of a minimum of 10 hours per week and participation on small groups yards as determined by ICC, one package of 30 pounds maximum weight plus one food-only package of 15 pounds maximum weight, four photograph(if the prisoner has met program expectations and not been found guilty of a serious rule violation), small group programs at least four hours per week, access to appropriate educational programs.

SDP prisoners at all steps also are allowed electrical appliances in accord with the Authorized Personal

³⁴ 15 CCR §§ 3000, 3378.3(a).

³⁵ Penal Code § 2933.6; 15 CCR §§ 3043.2, 3044(b)(5), 3378(a). Note that the laws have changed several times over the years, so that people who spent time in the SHU in the past based on gang validations may be subject to different credit rules that were in effect when they were in SHU.

Property Schedule for SHU/PSU Inmates.³⁶

The rules address special housing for SDP prisoners who need medical or mental health treatment. Prisoners who are assigned to the SDP and who require mental health treatment at the Enhanced Outpatient Program (EOP) level of care are housed in a Psychiatric Service Unit (PSU).³⁷ Prisoners who are removed from the SDP for in-patient medical or mental health care will be considered for return to the SDP after they complete their health care treatment; they should receive credit toward completion of the SDP for the time they were receiving in-patient care.³⁸

The ICC will review the prisoner's progress in SDP Steps 1 through 3 after 180 days and progress in Step 4 every 90 days.³⁹ In some cases, the ICC can keep the prisoner in a step of the SDP past the regular time period. In particular:

- ◆ If a prisoner refuses to participate in or complete the SDP programming, the ICC at the end of Step 3 can keep the prisoner in Step 3 for an additional 6 months. If the prisoner then completes the SDP through Step 4, the ICC will refer the prisoner to a CSR for transfer to a general population facility based on their case factors and classification score.⁴⁰ A prisoner who still refuses to participate or complete SDP Steps 1 through 4 will be transferred to a Restricted Custody General Population Unit (RCGP).⁴¹ The RCGP is described in section 6, below.
- ◆ A prisoner who commits new SHU-eligible rule violations while in the SDP may be removed from the SDP to serve a new determinate disciplinary SHU term, then placed back into the SDP. What happens after the prisoner completes the determinate SHU term (or when the SHU term is suspended) depends on whether the SHU-eligible rule violation was STG-related and whether the prisoner is validated as an STG-I affiliate or STG-II affiliate. The possibilities are: (1) if the rule violation *was not* STG-related, the prisoner will return to the same SDP step from which they were removed; the prisoner will not serve more than a total of six months that step; (2) if the rule violation *was* STG-related, an STG-I affiliate will be returned to the SDP at Step 1 or another step as determined by the ICC and the six-month per step time limit for completing the SDP will start again; (3) if the rule violation *was* STG-related, an STG-II affiliate who has committed *only one* SHU-eligible rule violation since placement in the SDP will be returned to the same step from which they were removed but will not serve more than a total of six months in that step; (4) if the rule violation *was* STG-related, an STG-II affiliate who has committed *two* SHU-eligible rule violations since placement in the SDP will be returned to the SDP at Step 1 or another step as determined by the ICC and the six-month per step time limit for completing the SDP will start again.⁴²

³⁶ 15 CCR § 3044(i), 3378.3(a).

³⁷ 15 CCR §3341(a).(1).

³⁸ 15 CCR §3341(e).

³⁹ 15 CCR § 3378.3(a)(1).

⁴⁰ 15 CCR §3378.3(b).

⁴¹ 15 CCR §§ 3000, 3378.3(b), 3378.9.

⁴² 15 CCR § 3378.4(b)(3)(B). The ICC can consider suspending a remaining SHU term at each scheduled SHU review.

- ◆ A prisoner who commits three serious rule violations, five administrative rule violations, or a total of five serious and administrative rule violations while in the SDP will be reviewed by the ICC at the end of Steps 3 and 4. The ICC will keep a Step 3 prisoner for an additional six months in Step 3 and then refer the prisoner to the CSR recommending placement in a RCGP. The ICC will refer a Step 4 prisoner to the CSR recommending placement in an RCGP.⁴³ The RCGP is described in section 6, below.

A validated STG affiliate who paroled or discharges from the SDP may be placed back in the SDP upon returning to prison if (1) they paroled from Steps 1-3 of the SDP, (2) have been out of CDCR custody for less than five years, (3) and are returning with the same CDCR number. The prisoner will be assigned to the beginning of the next step from the step they were in when they paroled or discharged, to ensure that they do not spend more than six months in a step. The ICC has discretion to determine whether SDP of general population is appropriate and the ICC's recommendation must be reviewed by a CSR⁴⁴

A prisoner who successfully completes SDP Steps 1-4 will be referred to the CSR for transfer to a general population facility based on their case factors and classification score.⁴⁵ Prisoners who have personal safety issues that prevent their release into the general population may be housed in a RCGP; such a placement must be approved by the DRB; the placement must be reviewed every 180 days to determine whether the safety threat continues to preclude general population housing.⁴⁶

If an STG affiliate in the Step Down Program refuses to program, does not complete the program, or commits multiple rule violations, he may be placed in the Restricted Custody General Population (RCGP) unit. (See section 6, below.)

In extreme cases, a prisoner who has had multiple SHU terms or who poses a very serious threat to safety or security may be placed in Administrative SHU for an indeterminate length of time. This is an indefinite SHU term. (See section 7, below.)

6. What is the Restrictive Custody General Population Unit (RCGP)?

An RCGP is a special type of general population unit that allows prisoners more opportunities for programming and social interactions than SHU housing.⁴⁷ Three types of prisoners can be housed in an RCGP:

15 CCR § 3378.4(d). Also, all prisoners who are serving SHU terms for rule violations are in Work Group D-2 and cannot earn any Good Conduct Credits. 15 CCR § 3044(b)(6).

⁴³ 15 CCR §3378.4(b)(3)(A).

⁴⁴ 15 CCR § 3341.6(d).

⁴⁵ 15 CCR § 3378.3(a).

⁴⁶ 15 CCR § 3378.9.

⁴⁷ 15 CCR § 3378.9(a).

- ◆ A prisoner who would have a substantial threat to their safety if they were released to a regular general population unit; this type of placement must be authorized by the DRB;⁴⁸
OR
- ◆ A prisoner who refuses to participate or complete SDP Steps 1 through 4;⁴⁹ OR
- ◆ A prisoner in the SDP who has been found guilty of three serious STG-related rule violations *or* five administrative STG-related rule violations *or* a total of five serious and administrative STG-related rule violations.⁵⁰

If a prisoner has medical, mental health, mobility, or other case factors that cannot be accommodated in the RCGP, officials from classification and healthcare will confer and decide where to house the prisoner. The prisoner should receive the same privileges if they were in the RCGP, unless doing so will create a significant security concern.⁵¹

Prisoners in the RCGP can continue to work on and complete the SDP components.⁵² Prisoners who are in the RCGP due to rule violations or failure to program in the SDP are in Work Group A-2 (unless they were previously deemed a program failure and placed in Work Group C).⁵³

Prisoners who are in RCGP for failure to program or rule violations in the SDP will be in privilege group S3 or S4, with some particular privilege rules for RCGP status.⁵⁴ Prisoners who are in RCGP for safety needs only will stay in their normal privilege groups, with some particular privilege rules.⁵⁵

Rule violations for STG-related behavior will be reviewed by ICC to determine programming and housing needs and to decide whether to keep the prisoner in the RCGP or transfer to other appropriate housing.⁵⁶ The ICC also will review an RCGP placement every 180 days.⁵⁷ Prisoners who have completed the SDP components while in the RCGP, and who did *not* have either one serious STG-related or two administrative STG-related rule violations during the prior 180-day period will be considered for transfer to the general population. Prisoners who have completed the SDP components while in the RCGP, and who had either one serious STG-related or two administrative STG-related rule violations during the review period will be kept in the RCGP for another 180 day period.⁵⁸

⁴⁸ 15 CCR §§ 3000, 3378.9.

⁴⁹ 15 CCR §§ 3000, 3341.8(a), 3378.3(b), 3378.9.

⁵⁰ 15 CCR §§ 3000, 3341.8(a), 3378.9.

⁵¹ 15 CCR § 3378.9(i).

⁵² 15 CCR § 3378.9(e).

⁵³ 15 CCR § 3378.9(e)-(f).

⁵⁴ 15 CCR § 3378.9(e)-(f).

⁵⁵ 15 CCR § 3378.9(g).

⁵⁶ 15 CCR § 3378.9(h).

⁵⁷ 15 CCR § 3378.9(b).

⁵⁸ 15 CCR § 3378.9(e).

If an RCGP prisoner commits a SHU-eligible rule violation, the ICC may impose a determinate SHU term. When the SHU term is over, the prisoner may be returned to the RCGP or may be sent to the SDP under the same rules that apply when SDP prisoners commit SHU-eligible rule violations (see section 5, above).⁵⁹ In some cases, the prisoner may be eligible for Administrative SHU placement, as discussed in section 7, below.

7. What is Administrative SHU Placement?

The ICC can recommend a prisoner for placement in indeterminate-length Administrative SHU if:

- ◆ there is overwhelming evidence that the prisoner poses such a serious threat to safety or security that they cannot be housed in general population, OR
- ◆ the prisoner has had three SHU terms within the past five years and continues to pose an on-going threat to safety or security.⁶⁰

Administrative SHU can be imposed only with approval of the DRB.⁶¹ The ICC will review an Administrative SHU term at least every 180 days; if the ICC decides that a prisoner no longer poses a threat to safety or security, it should refer the case to the DRB to determine where the prisoner should be housed.⁶² The DRB must review an Administrative SHU placement at least once a year.⁶³ The ICC and DRB can extend the administrative SHU placement if there is overwhelming evidence that the prisoner poses an on-going threat to safety or security.⁶⁴

The ICC may end an Administrative SHU term early when necessary for in-patient medical or mental health treatment.⁶⁵

If a prisoner paroled with an active Administrative SHU term, and then returns to prison under the same CDCR number, the ICC will determine whether the criteria for placement in Administrative SHU are met, and if so, will refer the case to the DRB to decide whether to approve Administrative SHU placement.⁶⁶ A prisoner who returns to prison under a new CDCR number cannot be placed in Administrative SHU unless they meet the Administrative SHU criteria, the ICC makes a new referral, and the DRB approves the placement, as discussed this section, above.

⁵⁹ 15 CCR § 3378.4(b)(3)(B).

⁶⁰ 15 CCR §§ 3341.3(c)(1), 3376(d)(3), 3376.1(d), (f)-(g).

⁶¹ 15 CCR §§ 3341.3(c)(1), 3376(d)(3), 3376.1(d), (f)-(g).

⁶² 15 CCR §§ 3341.5(b)(2), 3341.8(a).

⁶³ 15 CCR § 3341.8(a).

⁶⁴ 15 CCR § 3341.5(b)(3), 3341.8(a)(3).

⁶⁵ 15 CCR §§ 3341.5(b)(1).

⁶⁶ 15 CCR §§ 3341.3(b)(4), 3341.6(c).

8. Can Validated STG Affiliates Debrief (Drop Out)?

An STG-validated prisoner can debrief as a way to officially drop out of an STG. Dropping out does not remove all of the consequences of an STG validation. A prisoner who drops out will still be considered “validated,” with a classification code of ST1 or ST2, along with an indication that the prisoner is on Dropout Status.⁶⁷ A prisoner who drops out can still be placed in the SDP after committing certain types of rule violations, as described in section 4, above. A prisoner who drops out also can be excluded from some facilities and programs based on their validation, and may be subjected to parole restrictions based on their validation.

The purpose of the debriefing process 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.⁶⁸ Information about other prisoners that is obtained during debriefing will be placed in the other prisoners’ files and can be used against them, such as to validate them, find them guilty of rules violations, or to show they are unsuitable for parole.⁶⁹ Participation in debriefing must be voluntary.⁷⁰ A prisoner can end the debriefing process at any time.⁷¹

Debriefing usually is a two-step process-- an interview phase (Phase I) and an observation phase (Phase 2); however, the observation stage may be by-passed based on individual case factors.⁷²

Debriefing Phase 1

When the STG investigator gets notice that a prisoner wants to debrief, the STG investigator should conduct an initial debriefing intake interview with the prisoner within five business days.⁷³ If a prisoner makes a self-incriminating statement during a debriefing interview, the investigator can stop the discussion and move to another topic. The prisoner must waive (give up) the right against self-incrimination before any further questioning about the incriminating matter. A decision to exercise the right shall not be considered in deciding whether the prisoner successfully participated in debriefing.⁷⁴

In Phase 1, the prisoner must also write an autobiography of their STG involvement. After the intake interview document is reviewed by the ICC, the STG investigator will issue autobiography instructions and give the prisoner 30 days to complete the autobiography; if unusual circumstances prevent a prisoner from meeting this deadline, an extension may be granted. The completed

⁶⁷ 15 CCR §§ 3000, 3023(d).

⁶⁸ 15 CCR § 3378.5(b).

⁶⁹ See 15 CCR § 3378.6(a).

⁷⁰ 15 CCR § 3378.5. Prisoners who are serving death sentences can debrief. 15 CCR § 3378.5(i), though their housing options may be limited.

⁷¹ 15 CCR § 3378.5(e).

⁷² 15 CCR § 3378.5(a).

⁷³ 15 CCR § 3378.5(f).

⁷⁴ 15 CCR § 3378.5(e).

autobiography will be collected by the prison's STG Lieutenant and sent to the OCS Gang Intelligence Operations (GIO) Lieutenant.⁷⁵

The OCS staff will present the autobiography to the Debrief Intake Panel (DIP), a committee that evaluates debriefing cases, places each case in one of two categories, and assigns responsibility for completing a debrief report. The two categories of cases are as follows:

- ◆ Category 1 is for complex debriefs; this is typically for prisoners who have held high rank in the STG, committed serious criminal activities or Division A or B rule violations for the STG, and/or have an extensive STG history. Debrief reports for this category be assigned to the OCS GIO and should normally be completed within 90 business days.
- ◆ Category 2 is for less complex debriefs that do not meet the Category 1 criteria. Debrief reports for this category will be assigned to a prison STG investigator and should normally be completed within 60 business days.⁷⁶

The debrief report will be reviewed by STG investigative staff to identify other prisoners and decide whether to conduct further investigation or take disciplinary action against those prisoners.⁷⁷

The ICC will decide where to house the prisoner during the debriefing process.⁷⁸ Most prisoners in Phase 1 of the debriefing process will be housed in a Debrief Processing Unit (DPU), which is supposed to provide safe housing and program.⁷⁹

There are some exceptions. If a debriefing prisoner has medical, mental health, mobility, or other case factors that cannot be accommodated in the DPU, the prisoner should be allowed to complete the debriefing process in their assigned housing.⁸⁰ A debriefing prisoner who is serving a determinate SHU term will be kept in SHU until they complete their SHU term, and then will be considered for transfer to a DPU.⁸¹ A debriefing prisoner who is serving an Administrative SHU term can be considered to transfer to a DPU; this may or may not require DRB review depending on how the DRB has maintained transfer control.⁸² Also, a debriefing prisoner who is awaiting a hearing before the Board of Parole Hearings (BPH) will stay at their local prison until completing the BPH process. A debriefing prisoner with a District Attorney referral for possible criminal prosecution will stay at their local institution until completion of any projected/active determinate SHU term.⁸³

DPU prisoners may be in various Work Groups, and generally will earn the same Good Conduct Credits as if they were in general population, up to one day of Good Conduct Credit for

⁷⁵ 15 CCR § 3378.5(f)-(g).

⁷⁶ 15 CCR § 3378.5(h).

⁷⁷ 15 CCR § 3378.6.

⁷⁸ 15 CCR § 3378.5(f).

⁷⁹ 15 CCR §§ 3000, 3341.8(a)(4), 3378.5(a), 3378.7.

⁸⁰ 15 CCR § 3378.7(c).

⁸¹ 15 CCR §§ 3341.8(a)(4), 3378.4(f).

⁸² 15 CCR § 3341.8(a)(4).

⁸³ 15 CCR § 3378.5(f).

every day served.⁸⁴ Prisoners get expanded program opportunities as they progress through the debriefing process, going from Phase 1 “pre-DIP” to Phase 1 “post-DIP.”⁸⁵

A DPU prisoner who starts the debriefing process and then refuses or fails to complete the process, will be placed in an Administrative Segregation Unit (ASU) for review of potential safety concerns and assessment of where they should be housed. Options include return to their previous unit (such as SDP, SHU, or Administrative SHU), return to the general population, or referral to the DRB.⁸⁶

If a DPU prisoner is found guilty of an STG-related rule violation, the ICC will review the case and decide whether to return the prisoner to the SDP, keep them in the DPU, or place them in some other housing.⁸⁷

Debriefing Phase 2 (“Post-DIP”)

The observation phase will begin when the prisoner’s autobiography is accepted and the ICC changes the prisoner’s status to Post-DIP. The observation phase should last no more than six months as long as the prisoner is actively participating in the program activities.⁸⁸ The purpose of the observation period is to ensure the prisoner will be able to program in a general population setting.⁸⁹

Most prisoners in the observation phase will be housed in a Transitional Housing Unit (THU), which provides continued protection and programming.⁹⁰ DPU housing will be used for Phase 2 prisoners when there are enemy, medical, or other special concerns.⁹¹ If a debriefing prisoner has medical, mental health, mobility or other case factors that cannot be accommodated in the THU, officials from classification and healthcare will confer and decide where to house the prisoner. The prisoner should receive the same privileges as THU prisoners, unless a privilege will create a significant security concern.⁹²

A THU is supposed to be general population unit, not segregated housing.⁹³ Prisoners in a THU are placed in Work Group A-1 and Privilege Group A.⁹⁴

⁸⁴ 15 CCR § 3378.7(e)-(f).

⁸⁵ 15 CCR §§ 3378.5(f), 3378.7(d)-(f).

⁸⁶ 15 CCR § 3378.5(g).

⁸⁷ 15 CCR § 3378.7(g).

⁸⁸ 15 CCR §§ 3378.5(a), 3378.7(b).

⁸⁹ 15 CCR § 3378.8(a).

⁹⁰ 15 CCR §§ 3378.5(c), 3378.7, 3378.8; see also 15 CCR § 3000.

⁹¹ 15 CCR §§ 3378.5(c), 3378.7(h).

⁹² 15 CCR § 3378.8(f).

⁹³ 15 CCR § 3000 (definition of “Transitional Housing Unit”).

⁹⁴ 15 CCR § 3378.7(d).

If a prisoner in a THU commits any STG-related disciplinary offenses, the ICC will review the case and decide whether to return the prisoner to their previous unit (such as SDP, SHU, or Administrative SHU), keep them in the DPU, or place them in some other housing.⁹⁵

Satisfactory completion of the debriefing process must be approved by the OCS and will be documented on a CDC Form 128-B General Chrono.⁹⁶ Upon approval, the prisoner will be referred to a classification committee for transfer to housing consistent with their placement scores and other case factors.⁹⁷ A prisoner who has debriefed is deemed to be on Dropout Status.⁹⁸

A THU prisoner who refuses or fails to complete the debriefing process will be referred to a classification committee, which will determine their future housing and program needs or will refer the case to the DRB.⁹⁹

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

STG affiliates who have been free of STG behavior in general population housing for a certain number of years can have their STG status terminated. This applies to prisoners who have been released from the SDP to general population, prisoners on dropout status, and prisoners who have been validated but who have remained in general population.¹⁰⁰

Being free of STG behavior means no STG-related disciplinary violations and no additional source criteria items totaling 10 points or more.¹⁰¹

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 consecutive 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 consecutive years of general population time with no STG behavior to have the validation removed.¹⁰² These time periods start running on (1) the date an SDP prisoner is approved for release to the general population; (2) the validation date for prisoners who remain in the general population; OR (3) the date of the CDCR Form 128-B2 documenting dropout status of a prisoner who has debriefed.¹⁰³

⁹⁵ 15 CCR §§ 3378.7(g), 3378.8(c).

⁹⁶ 15 CCR § 3378.8(a).

⁹⁷ 15 CCR §§ 3378.5(d), 3378.8(e).

⁹⁸ 15 CCR § 3000.

⁹⁹ 15 CCR § 3378.8(e).

¹⁰⁰ 15 CCR § 3378.10.

¹⁰¹ 15 CCR § 3378.10 (a)-(b).

¹⁰² 15 CCR § 3378.10 (a)- (b).

¹⁰³ 15 CCR § 3378.10(a)-(b).

The ICC should consider whether the criteria for termination have been met at the first annual review after 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.¹⁰⁴

Prisoners whose STG status has been terminated are eligible for housing and programs without any limits related to STG status.¹⁰⁵ They also should not be subjected to parole consequences based on their former STG status, such as High Control supervision and electronic monitoring.¹⁰⁶

After STG status has been terminated, a whole new validation process is required to re-validate the prisoner as an STG affiliate.¹⁰⁷

10. What Legal Rights Do Prisoners have Regarding STG Validations, Disciplinary Findings, and Segregation?

The CDCR has a lot of discretion in validating prisoners as STG affiliates, finding prisoners guilty of rule violations, and deciding where to house them, including placing them in segregation. However, prisoners do have some legal protections. This section discusses legal rights that prisoners have in regards to STG validations, rule violations, and segregation. Section 11, below, summarizes legal tools prisoners can use to challenge validations, rule violations, and segregation.

Prisoners have the right to have the CDCR comply with the *Ashker* settlement by following the CDCR rules that were adopted pursuant to the settlement. As discussed in this letter, those rules set very specific requirements on STG validations, forbid the CDCR from placing prisoners in segregation solely due to their STG validation, and limit how long prisoners may be kept in the SHU except in very extreme cases. Prisoners also have the right to make the CDCR follow all of its other rules.¹⁰⁸ These include rules requiring the CDCR to follow certain procedures in rule violation hearings and setting the punishments for rule violations,¹⁰⁹ rules barring prison staff from using confidential information unless there is some indication that the information is reliable,¹¹⁰ and general rules about placement in segregation and conditions in segregated housing.¹¹¹ If there are disputes about what the rules mean, courts generally defer to the CDCR's interpretation, unless the CDCR's interpretation is unreasonable.¹¹²

¹⁰⁴ 15 CCR § 3378.10 (a)(3)-(4),(b)(3)-(4).

¹⁰⁵ 15 CCR § 3378.10(a)(5), (b)(5).

¹⁰⁶ See 15 CCR §§ 3504(a)(1),(a)(3)(E), 3545(c)(4), 3561(b)(2).

¹⁰⁷ 15 CCR § 3378.10(a)(5), (b)(5).

¹⁰⁸ See e.g., *In re Scott* (2003) 113 Cal.App.4th 38, 44 [5 Cal.Rptr.3d 886]; *In re Carter* (1988) 199 Cal.App.3d 271, 276-277 [244 Cal.Rptr.648]; *In re Lusero* (1992) 4 Cal.App.4th 572, 575 [5 Cal.Rptr.2d 729].

¹⁰⁹ 15 CCR §§ 3310-3326.

¹¹⁰ 15 CCR § 3321.

¹¹¹ 15 CCR §§ 3335-3344.

¹¹² See, e.g., *In re Cabrera* (2012) 55 Cal.4th 683 [148 Cal.Rptr.3d 500] (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

Most of the past case law about constitutional due process rights related to gang validations involved situations in which (like the CDCR's prior policies) prisoners were put in long-term segregation based solely on gang validations. Those cases are no longer directly applicable now that STG-validated prisoners cannot be placed in long-term segregation based only on their gang validations. However, there are general federal constitutional principles that prisoners may be able to use to challenge their STG validations, rule violations, or placement in various types of segregation. The courts' applications of these general principles will depend on the facts of individual cases.

For serious rule violation charges (for which a prisoner can lose time credits), the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution requires that prison authorities provide some procedural protections for a fair hearing. These include the rights to advance notice of the charges, disclosure of the evidence against the prisoner, an opportunity to be heard in person, an opportunity to call witnesses and present documentary evidence (unless doing so would be unduly hazardous to institutional safety or correctional goals), "counsel-substitute" for an illiterate prisoner or if the complexity of the issue makes it unlikely that the prisoner will be able to adequately defend themselves, a decision-maker not actively involved in bringing the disciplinary charge, and a written statement as to the evidence relied on and reasons for the disciplinary action.¹¹³ There must also be "some evidence" to support a rule violation finding of guilt.¹¹⁴

The Due Process Clause does not itself give prisoners a right to avoid placement in segregation. However, states can create federally-protected due process rights if (1) the state rules about segregation contain specific mandatory standards for segregation and (2) the segregation imposes an "atypical and significant hardship" "in relation to the ordinary incidents of prison life."¹¹⁵ It is likely that at least some of the CDCR's segregation regulations create federally-protected due process rights, since those rules contain mandatory rules concerning which prisoners can be placed in segregation and for how long and some STG-validated prisoners still face extended periods of time in harsh SHU conditions if they are found guilty of SHU-eligible rule violations.

Another important right is the U.S. Constitution's Eighth Amendment, which forbids cruel or unusual punishment. Prison conditions, including those in segregated housing, violate the Eighth

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).

¹¹³ *Wolff v. McDonnell* (1974) 418 U.S. 539 [94 S.Ct. 2963; 41 L.Ed.2d 935]; *Baxter v. Palmigiano* (1976) 425 U.S. 308 [96 S.Ct. 1551; 47 L.Ed.2d 810]; *Ponte v. Real* (1985) 471 U.S. 491 [105 S.Ct. 2192; 85 L.Ed.2d 553]; *Edwards v. Balisok* (1997) 520 U.S. 641 [117 S.Ct. 1584; 137 L.Ed.2d 906].

¹¹⁴ *Superintendent v. Hill* (1985) 472 U.S. 445 [105 S.Ct. 2768; 86 L.Ed.2d 356].

¹¹⁵ *Sandin v. Conner* (1995) 515 U.S. 472, 483-484 [115 S.Ct. 2293; 132 L.Ed.2d 418]; see e.g., *Wilkinson v. Austin* (2005) 545 U.S. 209 [125 S.Ct. 2384; 162 L.Ed.2d 174] (Ohio program placing validated prisoners in indeterminate super-max confinement created due process liberty interest; factors relevant to whether a prison's procedures are adequate to ensure due process include 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 procedural safeguards, and the monetary and administrative burdens of requiring additional safeguards).

Amendment if they deprive a prisoner of “the minimal civilized measures of life’s necessities,”¹¹⁶ resulting in either significant injury or a “sufficiently imminent danger,”¹¹⁷ and prison staff acted with “deliberate indifference” to their needs.¹¹⁸ Use of excessive force against a prisoner may amount to cruel and unusual punishment if the prison officials “acted maliciously and sadistically for the purpose of causing harm,” and not in a good-faith effort to maintain or restore order.¹¹⁹ Prisoners also have a right to protection from threats of violence and assault by other prisoners; prison staff violate the Eighth Amendment when they are deliberately indifferent to a substantial risk that a prisoner will be seriously harmed by other prisoners.¹²⁰

The Prison Law Office has manuals with more information on prisoners’ rights in regards to rule violation hearings, use of confidential information, and segregation placement. These manuals are available free of charge by writing to the office or on the Resources page at www.prisonlaw.com.

11. How Can Prisoners Challenge STG Validations, Disciplinary Findings, or Segregation?

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 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.

A prisoner who wants to challenge any CDCR action related to STG validation, rule violations, housing, or programming should file a CDCR Form 602 Inmate/Parolee Administrative Appeal. The 602 should be filed when the initial action is made and every time the action is re-affirmed. A prisoner must file their appeal of within 30 calendar days after receiving notice of the action. The prisoner should pursue the 602 appeal all the way through third (Director’s) level of review.¹²¹ 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.”

There are a few special rules for some types of 602 administrative appeals that may be related to STG matters:

¹¹⁶ *Rhodes v. Chapman* (1981) 452 U.S. 337, 347 [101 S.Ct. 2392; 69 L.Ed.2d 59].

¹¹⁷ *Helling v. McKinney* (1993) 509 U.S. 25, 33 [113 S.Ct. 2475; 125 L.Ed.2d 22]; *Hutto v. Finney* (1978) 437 U.S. 678, 685 [98 S.Ct. 2565; 57 L.Ed.2d 522].

¹¹⁸ *Wilson v. Seiter* (1991) 501 U.S. 294, 302 [111 S.Ct. 2321; 115 L.Ed.2d 271]; *Farmer v. Brennan* (1994) 511 U.S. 825, 842-843 [114 S.Ct. 1970; 128 L.Ed.2d 811].

¹¹⁹ *Whitley v. Albers* (1986) 475 U.S. 312, 320-321 [106 S.Ct. 1078; 89 L.Ed.2d 251]; *Hudson v. McMillan* (1992) 503 U.S. 1, 9-10 [112 S.Ct. 995; 117 L.Ed.2d 156]; *Wilkins v. Gaddy* (2010) 559 U.S. 34 [130 S.Ct. 1175; 175 L.Ed.2d 995].

¹²⁰ *Farmer v. Brennan* (1994) 511 U.S. 825, 833-834, 839-840, 844-845 [114 S.Ct. 1970; 128 L.Ed.2d 811].

¹²¹ See administrative appeal rules at 15 CCR §§ 3084-3084.9.

- ◆ Rule violation findings: A prisoner can file a Form 602 administrative appeal to overturn a finding of guilt made in a prison rule violation proceeding or a finding that the rule violation is STG-related. A disciplinary action cannot be appealed until the disciplinary hearing is completed.¹²² A prisoner does not need to file a Form 22 Request for Interview before appealing a disciplinary rule violation.¹²³ The prisoner should attach the completed CDCR 115 Rules Violation Report to the appeal.¹²⁴ A challenge to a disciplinary credit forfeiture that affects a prisoner's soon-approaching release date may be filed as an emergency appeal for faster processing.¹²⁵ For a serious disciplinary violation, first-level review may be bypassed.¹²⁶ Appeals involving serious disciplinary actions can be filed up through the third level of review.¹²⁷ However, appeals involving administrative disciplinary violations or counseling chronos may not be filed beyond the second level of review.¹²⁸
- ◆ Transfers to an RCGP: There is a special procedure for an administrative appeal of a decision to remove a prisoner from the SDP and place them in an RCGP due to rule violations. However, the prisoner should not submit the 602 appeal for first and second level review. Instead, the prisoner should send the completed 602 form and supporting documents directly to the third level of review using the address for the Appeals Chief on the 602 form. The 602 appeal will be forwarded to the Chief of Classification services, who will discuss the case with the DRB. The DRB will decide whether removal from the SDP and transfer to the RCGP was appropriate.¹²⁹ While the DRB is making that determination, the prisoner might be transferred to the RCGP.
- ◆ Other transfers: Prisoners can oppose transfers to other institutions using the Form 602 administrative appeal process with a few modifications to the process. It is not necessary to file a Form 22 informal grievance before appealing from a CSR's transfer endorsement.¹³⁰ An administrative appeal regarding a transfer cannot be filed until after the transfer recommendation is endorsed by a CSR. When appealing a transfer decision, a prisoner should attach the relevant Form 128-G classification chrono reflecting the Classification Staff Representative's (CSR's) transfer endorsement.¹³¹ An administrative

¹²² 15 CCR § 3084.9(g)(1).

¹²³ See DOM § 54100.8; California Correctional Health Care Services, *IMSP&P*, Vol. 1, Ch. 12, § III.A (Sept. 2008).

¹²⁴ DOM § 54100.8.

¹²⁵ 15 CCR § 3084.9(a)(1).

¹²⁶ 15 CCR § 3084.7(a)(4).

¹²⁷ 15 CCR § 3084.9(g)(2). In theory, after the 602 appeal is denied at the third level of review, a prisoner can ask the Board of Parole Hearings (BPH) to review the loss of good conduct credits. Penal Code § 2932(d); 15 CCR § 2121. In reality, the BPH is unlikely to make any changes to the disciplinary outcome. Moreover, seeking BPH review is unnecessary because third level review through the 602 process exhausts administrative remedies for a disciplinary appeal. 15 CCR § 3084.9(g)(2).

¹²⁸ 15 CCR § 3084.7(b)(1).

¹²⁹ 15 CCR §§ 3084.9(j), 3376.1(i), 3378.4(b)(3).

¹³⁰ See DOM § 54100.8.

¹³¹ DOM § 54100.8.

appeal will not stop or delay a pending transfer, except in extraordinary circumstances.¹³² If a transfer is likely to seriously harm a prisoner's safety or health, the prisoner should ask for emergency appeal processing.¹³³ If the transfer does not involve a reception center, the first level of review will be waived. If the appeal is granted at the second level, the case will be presented to a second CSR for reconsideration. If the second CSR disagrees with the institution's recommendation as to the appropriate action, the case may be presented to the DRB. If the appeal is denied at the second level, or if the case is not presented to the DRB, the prisoner can pursue the appeal to the third level.¹³⁴

If a 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 habeas corpus petitions can be used to raise federal law and state law issues and are relatively easy to prepare. Also, if the prisoner does not have money to hire a lawyer, and the court allows the habeas corpus case to go forward the court must appoint an attorney to represent the prisoner in the rest of the proceedings. A second option is a federal civil rights ("section 1983") lawsuit. A federal civil rights lawsuit can be used to raise federal law issues and state-law issues that are closely related to the federal issues. Federal civil rights lawsuits tend to be more complicated to litigate, and, although the court can try to appoint a lawyer to represent the prisoner, it does not necessarily have to do so.

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 by writing to the office or on the Resources page at www.prisonlaw.com.

¹³² 15 CCR § 3084.9(h)(1).

¹³³ 15 CCR § 3084.9(h)(1)(A).

¹³⁴ 15 CCR § 3084.9(h)(2).

ACRONYMS USED IN GANG VALIDATION, PLACEMENT, AND DEBRIEFING

| | |
|------|---|
| ASU | Administrative Segregation Unit |
| CDCR | California Department of Corrections and Rehabilitation |
| CDO | Chief Disciplinary Officer |
| CSR | Classification Services Representative |
| BPH | Board of Prison Hearings |
| DIP | Debrief Intake Panel |
| DPU | Debrief Processing Unit |
| DRB | Departmental Review Board |
| EOP | Enhanced Outpatient Program |
| GIO | Gang Intelligent Operations |
| ICC | Institution Classification Committee |
| SDP | Step Down Program |
| SHU | Security Housing Unit |
| STG | Security Threat Group |
| OCS | Office of Correctional Safety |
| PBSP | Pelican Bay State Prison |
| PSU | Psychiatric Service Unit |
| RCGP | Restricted Custody General Population Unit |
| RVR | Rule Violation Report |
| THU | Transitional Housing Unit |
| UCC | Unit Classification Committee |