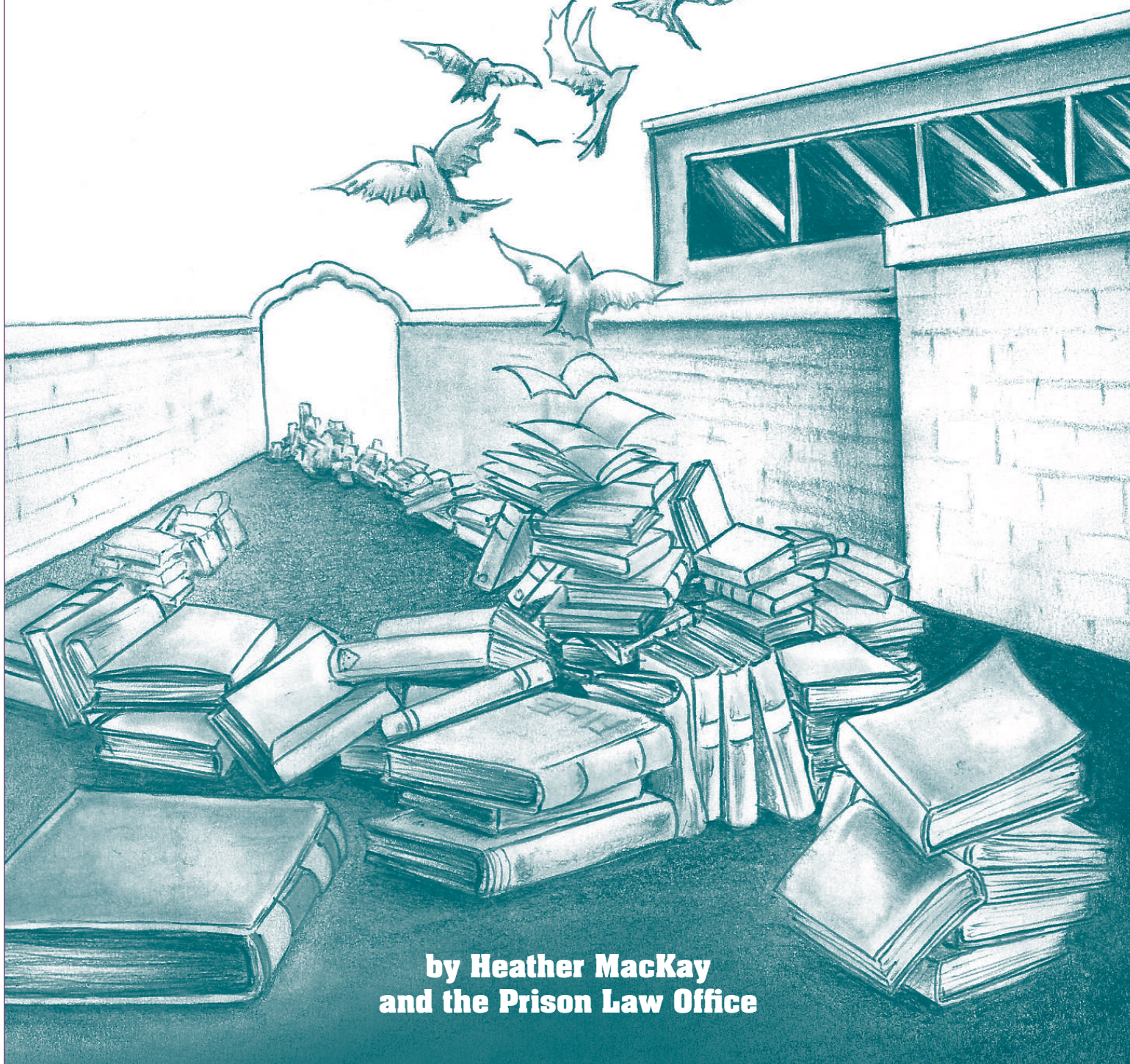


The California Prison and Parole Law Handbook



**by Heather MacKay
and the Prison Law Office**

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

**BY HEATHER MACKAY
&
THE PRISON LAW OFFICE**

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, 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 a prison law library or in a public county law library.

CHAPTER 6

PLACEMENT IN SEGREGATION

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6.1 Introduction

Segregation is a restrictive form of custody in which a person is separated from the general prison population and placed in a “prison within a prison.” Segregation is known informally as “the hole,” “lock-up,” and “solitary.” People in segregation spend almost all of their time in their cells (usually with a cellmate) with few to no work or program opportunities. Segregation units are used to isolate and punish people who have committed serious disciplinary offenses, are under investigation for a rule violation or crime, need protection from other people, or otherwise pose a threat to safety and security. Nearly every CDCR prison has an Administrative Segregation Unit (ASU) to house people who have been temporarily removed from the general population. Some CDCR prisons have facilities for longer-term segregation housing, such as Security Housing Units (SHUs), Psychiatric Services Units (PSUs), and one Protective Housing Unit (PHU).

This chapter discusses the laws governing who can be placed in segregation and for how long. Chapter 3 discusses the laws concerning cruel and unusual punishment, including poor living conditions in segregation units and use of force by staff. Credit-earning for people in segregation is covered in §§ 8.27-8.40.

6.2 Constitutional Rights Regarding Placement in Segregation

The Fourteenth Amendment of the United States Constitution guarantees that people shall not be deprived of liberty without due process of law. However, the U.S. Constitution itself does not require any due process protections before placing or keeping someone in segregation because it is a

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type of confinement that people “should reasonably anticipate receiving at some point in their incarceration.”¹

Even though the U.S. Constitution does not create a federal right to due process before being put in segregation, a state can establish a “liberty interest” that *is* protected by the federal right to due process if the state’s laws create an expectation that a person will remain free from segregation unless certain procedures or standards are followed. In 1995, the U.S. Supreme Court held that state laws create a federal due process liberty interest only if the segregation placement imposes an “atypical and significant hardship” in relation to ordinary prison life. The Court found that a 30-day disciplinary segregation was *not* an atypical and significant hardship that would trigger due process protections. The Court left open the question of what circumstances could constitute atypical and significant deprivations, and stated that relevant facts might include whether segregation is likely to postpone a person’s release date, how long the segregation lasts, and how harsh the living conditions are in the segregation unit.²

Ten years later, the U.S. Supreme Court found that open-ended “supermax” placement for disciplinary violations and gang-related activities constituted an “atypical and significant hardship;” thus, the people incarcerated in Ohio prisons who brought the case had a liberty interest in being free from such placement and a right to due process protections. The Court then considered whether the state’s procedures provided enough due process. The court balanced three factors: (1) the significance of the person’s interest in remaining out of segregation, (2) the risk that a person might erroneously be placed or kept in segregation and the probable value of additional or different procedural safeguards, and (3) the monetary or administrative burdens that would result from additional or different requirements. The Court found that Ohio had adequate policies for giving notice of the reason for supermax placement, holding a classification hearing, allowing the person to present information or objections opposing the placement, and reviewing the placement after the first 30 days

¹ *Hewitt v. Helms* (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675]; see also *Griffin v. Gomez* (9th Cir. 2014) 741 F.3d 10 (court order to release person from SHU vacated on appeal because no Eighth Amendment violation and prison officials reasonably exercised discretion to place person in SHU to protect safety of other people).

² *Sandin v. Conner* (1995) 515 U.S. 472, 483-485 [115 S.Ct. 2293; 132 L.Ed.2d 418]; *Ramirez v. Galaza* (9th Cir. 2003) 334 F.3d 850, 861 (similar); *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083 (remanding for findings on whether segregation in Oregon “Intensive Management Unit” was atypical and significant hardship).

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

and then annually.³ Opportunity for multiple levels of review is also way in which prison officials can provide a due process protection.⁴

Courts have indicated that the CDCR's rules create a liberty interest in avoiding segregation, at least in some circumstances. Where there is such a liberty interest, a person may be able to argue that being placed in segregation without proper procedures or justification violates their federal constitutional right to due process.⁵

Courts give prison officials leeway to act swiftly to avoid potentially dangerous situations, so mere rumors can be enough to justify the initial placement of a person in temporary segregation pending an investigation.⁶ However, the constitutional guarantee of due process requires that there be "some evidence" justifying placement of a person in segregation for more than a very short period. In reviewing whether there is "some evidence," a court is not supposed to re-balance the evidence or make its own assessment of the credibility of witnesses.⁷ The "some evidence" standard gives a lot of power to prison officials because a court can only overturn a decision to segregate a person if there is no reliable evidence to support the decision. Nonetheless, there have been cases where courts have overturned segregation orders due to lack of evidence.⁸

There are special due process concerns where a statement by a confidential informant is used to justify placing a person in segregation. Confidential information can be unreliable because the

³ *Wilkinson v. Austin* (2005) 545 U.S. 209, 224-230 [125 S.Ct. 2384; 162 L.Ed.2d 174] (note that the Court held that prison officials did *not* have to adopt other procedures like providing notice of all the evidence to be relied on, allowing people to present witnesses, providing a detailed statement of reasons for the decision, or notifying people about what they would have to do to get moved back to a lower security level); see *Resnick v. Hayes* (9th Cir. 2000) 213 F.3d 443 (no due process violation where person in federal prison was placed in disciplinary segregation and hearing delayed for 70 days); *Mujahid v. Meyer* (9th Cir. 1995) 59 F.3d 931 (no due process violation for placement in Hawaii disciplinary segregation for 14 days); *May v. Baldwin* (9th Cir. 1997) 109 F.3d 557, 565 (no due process violation in 21-day placement in Oregon administrative segregation pending disciplinary hearing).

⁴ *Wilkinson v. Austin* (2005) 545 U.S. 209, 226-227 [125 S.Ct. 2384; 162 L.Ed.2d 174].

⁵ *Jackson v. Carey* (9th Cir. 2003) 353 F.3d 750 (person who was transferred to SHU could proceed with claim that due process rights had been violated, and determination of whether the SHU placement was a "atypical and significant hardship"); *Bruce v. Ylst* (9th Cir. 2003) 351 F.3d 1283, 1287-1288 (CDCR's former gang validation regulations created due process liberty interest in not being placed in SHU based on an unsupported validation); *Serrano v. Francis* (9th Cir. 2003) 345 F.3d 1071 (placing wheelchair-reliant person in a non-accessible SHU cell without his wheelchair for two months imposed an atypical and significant hardship); *Jones v. Moran* (N.D. Cal. 1995) 900 F.Supp. 1267 (even if retention in SHU implicates a liberty interest, the CDCR's segregation procedures provided sufficient due process).

⁶ *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703, 705.

⁷ *Superintendent v. Hill* (1985) 472 U.S. 445 [105 S.Ct. 276; 86 L.Ed.2d 356]; see also *Burnsworth v. Gunderson* (9th Cir. 1999) 179 F.3d 771, 774-775; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1105-1106; *Toussaint v. McCarthy* (9th Cir. 1991) 926 F.2d 800, 802-803 (prison officials can rely on polygraph exam ("lie detector") to support a decision to place or keep a person in segregation); *Jones v. Moran* (N.D. Cal. 1995) 900 F.Supp. 1267, 1275; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703.

⁸ See *In re Hutchinson* (1972) 23 Cal.App.3d 337, 341 [100 Cal.Rptr. 124]; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703; *Burnsworth v. Gunderson* (9th Cir. 1999) 179 F.3d 771, 774-775; *In re Cabrera* (2013) 216 Cal.App.4th 1522 [158 Cal.Rptr.3d 121]; *In re Fernandez* (2013) 212 Cal.App.4th 1199, 1213 [151 Cal.Rptr.3d 571]. Cases in which courts found there was some evidence to support segregation as gang associates include *In re Furnace* (2010) 185 Cal.App.4th 649 [110 Cal.Rptr.3d 820]; *In re Alvarez* (2013) 222 Cal.App.4th 1064 [166 Cal.Rptr.3d 271]; and *Castro v. Terhune* (9th Cir. 2013) 712 F.3d 1304. Note that these cases date from a period in which CDCR segregated many people based solely on gang validation; this policy has changed (see § 4.29).

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informant may lie and it is not easy for the person who is being placed in segregation to challenge the informant's statements. Due process does not prohibit use of confidential information, but it does require that prison officials provide a statement that safety considerations prevent disclosure of the informant's identity and a summary of facts from which it can reasonably be concluded that the informant is reliable.⁹ Further discussion of due process rights and CDCR rules concerning the use of confidential information is in § 5.7. § 5.12 discusses procedures for requesting that a court review confidential information.

People also have state law protections against unfair segregation. The due process clause of the California Constitution (Article I, § 7) forbids taking away liberty without due process. In addition, people in prison have a right to have the CDCR follow its own rules concerning segregation. However, if there are disputes about what the regulations mean, a court will defer to the CDCR's interpretation unless it is unreasonable.¹⁰ See § 2.4 for more information on actions to enforce the CDCR rules.

In some circumstances, failing to remove a person from the general population may violate the CDCR's duty under the U.S. Constitution's Eighth Amendment to protect people in prison from serious risk of assault.¹¹ See §§ 3.7-3.9 for more information on the CDCR's duty to protect people in custody.

For information on the CDCR rules regarding conditions of confinement in segregation, see § 6.13. For discussion of the federal constitutional Eighth Amendment right not to be subjected to cruel and unusual prison living conditions, including in segregation, see Chapter 3.

6.3 Administrative Segregation Unit (ASU) Placement Criteria

A person may be placed in an administrative segregation unit (ASU) if their presence in the general population presents a threat to their own safety or the safety of others, endangers institution security, or jeopardizes the integrity of an investigation into alleged serious misconduct, criminal activity, or safety concerns.¹² Although administrative segregation is meant to be a temporary placement and should be for as little time as possible,¹³ people can end up spending months or more in administrative segregation before they are either returned to the general population, transferred to another facility, or placed in long-term segregation.

The CDCR uses a special term -- Non-Disciplinary Segregation (NDS) -- when temporary administrative segregation placement is for investigation of personal safety concerns not due to any misconduct by the person, for investigations not related to misconduct or criminal activity, based on a being a relative or associate of a prison staff member, or due to investigation of the person being a

⁹ *Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183; *In re Jackson* (1987) 43 Cal.3d 501 [233 Cal.Rptr. 911].

¹⁰ See e.g., *In re Luero* (1992) 4 Cal.App.4th 572, 575 [5 Cal.Rptr.2d 729] (overturning CDCR segregation placement due to unreasonable application of the rules).

¹¹ See *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1100, fn. 19.

¹² 15 CCR § 3335. Note that some types of removals from the general population are not considered "administrative segregation" and not subject to the administrative segregation rules. These include removing a person to a medical setting or quarantine for medical or mental health reasons, restriction to quarters of people who are newly received or on orientation or lay-over status, or disciplinary detention or confinement to quarters as punishment for a rule violation. 15 CCR § 3335.5.

¹³ See 15 CCR § 3339.

victim of sexual abuse.¹⁴ People on NDS status generally get more privileges than other people in administrative segregation, as discussed in § 4.21.

6.4 Administrative Segregation Procedures

An order placing a person in administrative segregation placement must be made by an official with the rank of lieutenant or correctional counselor II (CCII) or above (unless a lower level staff member is the highest ranking official on duty). The order and reasons for the placement must be documented on a CDCR 114-A Administrative Segregation Unit Placement Notice; the person should be provided with a copy when they are moved to administrative segregation.¹⁵

On the first business day following placement in administrative segregation, a captain, CCIII, or higher-level official will review the segregation order and determine whether to continue the placement. This administrative review should be documented on the CDCR Form 114-D.¹⁶ Also, a captain or CCIII may rescind an administrative segregation placement any time prior to a classification hearing.¹⁷

The administrative reviewer will decide whether to appoint an Investigative Employee (IE) and/or Staff Assistant (SA) to help the person in administrative segregation prepare for further proceedings.¹⁸

An SA should be assigned if the person is illiterate, has difficulty with written or spoken English, has a mental illness or developmental disabilities, or if the issues are so complex that it is unlikely that the person could understand the issues or hearing process.¹⁹ A person does not have a right to choose the SA, but may refuse the first SA at the time of assignment, and a different SA will be assigned. A person can waive an SA unless they have mental illness or developmental disabilities or the administrative reviewer finds that a fair hearing cannot be held without an SA.²⁰ There is a list of specific duties of an SA who is appointed for an administrative segregation hearing; this includes keeping confidential any information the person discloses.²¹

An IE may be assigned if the person is being placed in administrative segregation for non-disciplinary reasons and they make a written request to have witnesses or documentary evidence presented at the hearing.²² The person may object to the first IE who is assigned; the administrative reviewer will have discretion as to whether the objection is reasonable; if the objection is reasonable a

¹⁴ 15 CCR § 3335(a).

¹⁵ 15 CCR § 3335(b).

¹⁶ 15 CCR § 3336.

¹⁷ 15 CCR § 3335(d).

¹⁸ 15 CCR § 3336(c); 15 CCR § 3340.

¹⁹ 15 CCR § 3340(a).

²⁰ 15 CCR § 3340(a)-(c).

²¹ 15 CCR § 3340(d)-(e).

²² 15 CCR § 3340(g).

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different IE will be assigned.²³ The IE must interview the person, find out what questions the person wants to ask the witnesses, and document the investigation in a report.²⁴

An institutional classification committee (ICC) must hold a hearing on the segregation order within 10 calendar days of the placement in segregation; the time cannot be extended.²⁵ The person in segregation should be given at least 72 hours to prepare for the hearing and should be provided all documents showing the reasons for segregation (including disclosure forms summarizing any confidential information and why the information is being deemed confidential and reliable) at least 24 hours before the hearing, though the person can waive these rights.²⁶ The person has a right to attend the hearing, unless a psychiatrist determines that they are unable to participate due to mental illness, or they waive the right or refuse to attend.²⁷ The ICC must allow any requested witnesses and documentary evidence unless doing so would be “unduly hazardous to the safety and/or security of the institution;” reasons for denying witnesses or evidence must be documented.²⁸

At the hearing, the ICC can decide to return the person to the general population, assign them to a segregation unit on a determinate or indeterminate basis, or keep them in administrative segregation due to on-going disciplinary charges or investigation.²⁹ If the ICC decides to retain the person in administrative segregation, the case must be reviewed and approved by a Classification Staff Representative (CSR) within 30 days.³⁰

After the initial hearing, the ICC and CSR must review the administrative segregation placement periodically. Reviews must take place at intervals of not more than 180 days when (1) a SHU-able rule violation charge has been postponed pending a criminal proceeding.³¹ Reviews must occur within every 90 days when a person is being held in administrative segregation because they are awaiting (1) transfer to general population, (2) a hearing on a SHU-able rule violation charge (that has not been postponed), (3) completion of any other type of investigation, (4) waiting for transfer into the Step Down Program (STG) (see § 6.7), or (4) awaiting action on a request to debrief from a Security Threat Group (see § 4.32). Once such issues are resolved, ICC should review the segregation placement within 14 days.³² If a person is on NDS status as a victim of sexual abuse, the prison staff must attempt to find an alternative way to separate the victim from the person who committed the harm within 30 days of the placement, and must review the segregation placement at least every 30 days.³³

²³ 15 CCR § 3340(j).

²⁴ 15 CCR § 3340(k).

²⁵ 15 CCR § 3337(c).

²⁶ 15 CCR § 3336(c); 15 CCR § 3337(a); see also 15 CCR § 3375(f); 15 § 3321(confidential information disclosure).

²⁷ 15 CCR § 3337(a); see also 15 CCR § 3320(g); 15 CCR § 3375(f).

²⁸ 15 CCR § 3340(h).

²⁹ See 15 CCR § 3337(b).

³⁰ 15 CCR § 3337(c).

³¹ 15 CCR § 3337(c)(1).

³² 15 CCR § 3337(c)(2)-(6).

³³ 15 CCR § 3335(a).

When a person is being kept in administrative segregation due to a rule violation charge for which the hearing was postponed pending a referral for “DA referral” for criminal prosecution (see § 5.6, the ICC must review the segregation placement within 14 calendar days after the related DA referral and rule violation charge are resolved. The rules also state that a person awaiting resolution of a DA referral normally cannot be kept in administrative segregation past the projected length of the SHU term that could be assessed for the pending rule violation. Exceptions are allowed if (1) the person poses such a high risk to safety or security that an indeterminate-length Administrative SHU term is being considered (see § 6.9) or (2) the person has safety needs that require further consideration as to where they can be housed.³⁴

A person who has been found not guilty of a rule violation charge usually will be released back to the general population; if continued segregation is necessary for other safety or security reasons, the person is entitled to notice and a hearing on the new reasons for the administrative segregation placement.³⁵

6.5 Administrative Segregation Policies for People Receiving Mental Health Care, Including CCCMS Short Term Restricted Housing (STRH) and EOP Hubs

When people are placed in administrative segregation, they should be screened by mental health staff to determine their mental health needs. Mental health staff also should do daily rounds to monitor the mental health of all people in administrative segregation, and should provide appropriate mental health care.³⁶

The CDCR has additional policies concerning administrative segregation placement of people receiving mental health care at either the Correctional Clinical Case Management System (CCCMS) or the Enhanced Outpatient Program (EOP) level. See Chapter 7 for more information about the CDCR’s mental health care levels and mental health treatment.

Some of the special procedures are for people who are classified as CCCMS or EOP and are placed in administrative segregation for non-disciplinary reasons (NDS status, as described in § 6.3). At the initial ICC hearing (see § 6.4), the ICC should consider options for moving the person to less restrictive housing. If the person is to be kept in administrative segregation on NDS status, then in most cases the person should be transferred to a mental health segregation unit within 72 hours. If the person is not transferred within 72 hours after the ICC review, staff will hold a case conference and consider transferring the person to an NDS hub at CSP-Sacramento. While in administrative segregation, people who are on NDS status will be granted yard and canteen privileges and have access to their personal property.³⁷

The CDCR also has special units and programs for people receiving CCCMS care who would otherwise be in a regular administrative segregation unit. This is called CCCMS Short Term Restricted Housing (STRH). These programs are located in the stand-alone administrative segregation housing

³⁴ 15 CCR § 3337(c)(1).

³⁵ 15 CCR § 3338.

³⁶ CDCR, Mental Health Services Delivery System Program Guide, Ch. 7, § E.

³⁷ CDCR, Memorandum Re: Non-Disciplinary Segregation Processing Procedure for Mental Health Services Delivery System Inmates (Aug. 14, 2014).

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units at certain men's prisons and in the regular segregation units at women's prisons. A CCCMS person should be transferred to an STRH within 30 days of placement in administrative segregation. People in a STRH at a men's prison should receive 20 hours of out of cell time each week including 90 minutes of structured therapeutic activity. People in a STRH at a women's prison should receive 15 hours of out of cell time including 90 minutes of structured therapeutic activity. CDCR policy permits personal radios or televisions in all STRH cells and will provide radios for people who do not have a personal television or radio. People in STRHs should also be offered in-cell activities, and see their mental health clinician once per week.³⁸

When a person in the EOP level of care is placed in administrative segregation, mental health staff can consider sending them back to the EOP if they were not involved in violence and not a risk to others. People in EOP who are kept in administrative segregation ordinarily should be transferred within 30 days to an ASU EOP "hub" facility for housing and mental health care. One additional rule is that a person in an EOP administrative segregation hub who repeatedly refuses more than half of the offered mental health treatment activities should be reviewed by staff to figure out why the person is refusing treatment and to consider alternatives.³⁹ The treatment requirements in EOP Ad Seg Hubs are the same those provided at a regular EOP units, including 10 hours per week of available structured therapeutic activities (see Chapter 7).

Policies, programs, and units for people who are receiving mental health treatment and serving SHU terms are discussed in §§ 6.10-6.11.

6.6 Determinate SHU Terms for Rule Violations

When a person in prison is found guilty of some types of serious rule violations, the ICC can impose a determinate term in segregation ("a SHU term") as part of the punishment if the person poses a threat to safety and security.⁴⁰ The CDCR's SHU Term Assessment Chart lists the types of rule violations for which SHU terms may be imposed and the range of terms (low, expected, and high) for each type of violation.⁴¹ If a SHU term is imposed, the person will receive the expected mid-range SHU term unless mitigating or aggravating factors tip the balance in favor of a lower or higher term.⁴² The term starts as of the date the person was initially placed in administrative segregation or date the information leading to the charge was discovered, whichever occurred first.⁴³

A person can be assessed a concurrent SHU term for another serious rule violation that occurs either prior to or after the initial SHU term; the longest of the terms will control how long the person

³⁸ CDCR, *Memorandum Re: Creation of Corrections Clinical Case Management System Short Term and Long Term Restricted Housing* (Jan. 15, 2015); CDCR, Mental Health Services Policy, Vol. 12, Ch. 6, § 12.06.801.

³⁹ CDCR, Mental Health Services Delivery System Program Guide, Ch. 7, § H; CDCR, *Memorandum Re: Review of Refusal to Attend Treatment by Enhanced Outpatient Inmates Housed in Administrative Segregation Hub Units* (undated).

⁴⁰ 15 CCR § 3341.3(c)(2).

⁴¹ 15 CCR § 3341.9.

⁴² 15 CCR § 3341.3(c)(2); 15 CCR § 3341.9

⁴³ 15 CCR § 3341.3(c)(2).

serves in SHU.⁴⁴ Prison officials also can impose either a concurrent or consecutive SHU term if the person commits a new serious disciplinary violation while already serving a SHU term.⁴⁵

A person who is serving a SHU term can earn credits for good behavior to reduce the term by half. Prison staff will calculate the maximum release date for the SHU term (if no credits are earned or all credits are lost) and the Minimum Eligible Release Date (MERD) (the date the SHU term will end if the person behaves well and earns full credits).⁴⁶ A person who commits a serious disciplinary violation while serving a SHU term can lose up to 45 days SHU term credits for each violation; the credits cannot be restored.⁴⁷

A determinate SHU term must be reviewed by a Classification Staff Representative (CSR), who will determine whether the offense merits a SHU term, whether the term length is within the CDCR guidelines, and whether the MERD has been correctly calculated.⁴⁸

The ICC may commute (eliminate) or suspend a determinate SHU term at any time. If the ICC commutes a SHU term, the term may not be re-imposed. If the ICC suspends a SHU term, the SHU term may be re-imposed if the person commits new misconduct prior to the end of the period of suspension. The suspension period cannot last past the MERD.⁴⁹ If the SHU term was suspended due to a need for inpatient medical or mental health care, the SHU term may be re-imposed if the person continues to pose a threat to safety or security, even if the person does not commit a subsequent rule violation.⁵⁰

A person who is serving a determinate SHU term must be reviewed by the ICC for consideration of release to the general population no less than every 180 days, and also 120 days prior to the MERD.⁵¹

When a determinate SHU term ends, the person may be kept in administrative segregation if release from the SHU would endanger safety and security or jeopardize an investigation, or if the person requests continued SHU housing.⁵² The person should receive a new CDCR Form 114-D and a new hearing should be held, with all the procedural safeguards as for an original placement in administrative segregation.⁵³ Also, some people who have received SHU terms for rule violations that have a nexus (connection) to a Security Threat Group (STG) may be kept in SHU for an additional period of time in a Step Down Program (SDP), as discussed in § 6.7.

⁴⁴ 15 CCR § 3341.4(b)

⁴⁵ 15 CCR § 3341.4(c).

⁴⁶ 15 CCR § 3341.9(f).

⁴⁷ 15 CCR § 3341.7

⁴⁸ 15 CCR § 3341.9(d).

⁴⁹ 15 CCR § 3341.5(a); 15 CCR § 3341.6(a).

⁵⁰ 15 CCR § 3341.6(a).

⁵¹ 15 CCR § 3341.8; CDCR, Memorandum Re: Pre-Minimum Eligible Release Date Reviews Expectations (undated).

⁵² 15 CCR § 3338; 15 CCR § 3341.8.

⁵³ 15 CCR § 3339(b).

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When a person is released on parole before being assessed or finishing a determinate SHU term, the term may be assessed or re-imposed if they return to prison with the same CDCR number. The time they must spend in the SHU after returning to prison cannot exceed the time that remained on the SHU term when they were released.⁵⁴

6.7 Step Down Program (SDP) for Serious Security Threat Group (STG) Rule Violations

In the past, the CDCR placed many people in segregation for long periods of time because they were validated as gang members or associates. However, the CDCR rules now forbid placing people in SHU based solely on a Security Threat Group (STG) validation, regardless of whether they are members or associates or in prison gangs (STG-Is) or street gangs (STG-IIs).⁵⁵ Thus, people who are validated STG as affiliates can be placed in segregation only for the same reasons that apply to other people in prison. However, in some circumstances, a person who commits a SHU-eligible rule violation that has 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.⁵⁶

To be placed in the SDP, a person must meet the following criteria:

- ◆ An STG-I (prison gang) 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.⁵⁷
- ◆ An STG-II (street gang) 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.⁵⁸

Information on the types of rule violations that may have an STG nexus, and the process for determining whether a rule violation is STG-related, is in § 5.9. Note that a person does not have to be validated as an STG affiliate for a rule violation to have an STG nexus. Also, a person need not have been validated as an STG affiliate before they committed the SHU-eligible rule violations.

If a person meets the criteria for SDP placement, the ICC will decide whether to place them in the SDP. A referral for SDP placement must be reviewed by a SHU CSR.⁵⁹

⁵⁴ 15 CCR § 3341.5(a); 15 CCR § 3341.6(b); see also *In re Luero* (1992) 4 Cal.App.4th 572 [5 Cal.Rptr.2d 729] (unfinished SHU term may not be re-imposed if person discharged from original criminal term and is later re-incarcerated).

⁵⁵ 15 CCR § 3335; 15 CCR § 3341.3; 15 CCR § 3378.2(b). See §§ 4.29-4.33 on the criteria and procedure for STG validations.

⁵⁶ 15 CCR § 3341.8(b), (e); 15 CCR § 3378.4(b). The SDP is not available to people serving death sentences. 15 CCR § 3378.4(a). See also 15 CCR § 3378.4(a) (STG Disciplinary Matrix).

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

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

⁵⁹ 15 CCR § 3378.2(e); 15 CCR § 3378.4(b).

A person assigned to the SDP will have an “SDP” code on their classification papers; the SDP code will continue to be on the person’s classification so long as they are STG-validated, even after they complete the SDP and transfer to general population housing.⁶⁰

The SDP is a multi-step program in the SHU. Placement in the SDP is for 24 months, normally with four steps of six months each.⁶¹ People get more privileges as they work their way through the SDP steps. These privileges are summarized in § 4.21.

People who are assigned to the SDP and who require mental health treatment at the EOP level of care are housed in a Psychiatric Service Unit (PSU).⁶² PSU’s are described in § 6.11. People 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.⁶³

The ICC will review a person’s progress in SDP Steps 1 through 3 after 180 days and progress in Step 4 every 90 days.⁶⁴ In some circumstances, the ICC can keep a person in a step of the SDP past the regular time period, put the person back on some other type of SHU status, or transfer to the person to a special type of general population unit called a Restricted Custody General Population Unit (RCGP):

- ◆ If a person refuses to participate in or complete the SDP programming, the ICC at the end of Step 3 can keep the person in Step 3 for an additional 6 months. If the person then completes the SDP through Step 4, the ICC will refer the person to a CSR for transfer to a general population facility based on their case factors and classification score.⁶⁵ A person who still refuses to participate or complete SDP Steps 1 through 4 will be transferred to an RCGP.⁶⁶ The RCGP is described in § 6.8.
- ◆ A person 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 person 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 person is validated as an STG-I affiliate or STG-II affiliate. The possibilities are: (1) if the rule violation *was not* STG-related, the person will return to the same SDP step from which they were removed; the person 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

⁶⁰ 15 CCR § 3375.2(b)(21).

⁶¹ 15 CCR § 3000; 15 CCR § 3378.3(a).

⁶² 15 CCR § 3341(a)(1).

⁶³ 15 CCR § 3341(e).

⁶⁴ 15 CCR § 3378.3(a)(1).

⁶⁵ 15 CCR § 3378.3(b).

⁶⁶ 15 CCR § 3000; 15 CCR § 3378.3(b); 15 CCR § 3378.9.

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.⁶⁷

- ◆ A person 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 person in Step 3 for an additional six months in Step 3 and then refer the person to the CSR recommending placement in a RCGP. The ICC will refer a person in Step 4 to the CSR recommending placement in an RCGP.⁶⁸ The RCGP is described in § 6.8.
- ◆ In extreme cases, a person in the SDP 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. (See § 6.9.)

A person who is validated as an STG affiliate and 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 person 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 determinate whether SDP of general population is appropriate and the ICC's recommendation must be reviewed by a CSR.⁶⁹

A person who successfully completes SDP Steps 1 through 4 will be referred to the CSR for transfer to a general population facility based on their case factors and classification score.⁷⁰ People who successfully complete the SDP but who have personal safety issues that prevent placement in a regular general population facility may be housed in a RCGP (see § 6.8).⁷¹

6.8 Transfer from the SDP to a Restricted Custody General Population Unit (RCGP)

An RCGP is a special type of general population unit that allows people more opportunities for programming and social interactions than SHU housing.⁷² It is the main housing option for people who do not successfully complete the SDP. Three types of people can be housed in an RCGP:

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

⁶⁸ 15 CCR § 3378.4(b)(3)(A).

⁶⁹ 15 CCR § 3341.6(d).

⁷⁰ 15 CCR § 3378.3(a).

⁷¹ 15 CCR § 3378.9.

⁷² 15 CCR § 3378.9(a).

- ◆ A person in the SDP who refuses to participate or complete Steps 1 through 4;⁷³ OR
- ◆ A person 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;⁷⁴ OR
- ◆ A person who has completed the SDP but 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 CDCR's Departmental Review Board (DRB).⁷⁵

If a person 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 else to house the person. The person should receive the same privileges if they were in the RCGP, unless doing so will create a significant security concern.⁷⁶

People in the RCGP can continue to work on and complete the SDP components.⁷⁷ Work groups for people in the RCGP are discussed in § 8.30. Privileges for people in the RCGP are discussed in § 4.21.

When a person in the RCGP commits a rule violation for STG-related behavior, the ICC will conduct a review to determine programming and housing needs and to decide whether to keep the person in the RCGP or transfer to other appropriate housing.⁷⁸ If a person in an RCGP commits a SHU-eligible rule violation, the ICC may impose a determinate SHU term. When the SHU term is over, the person may be returned to the RCGP or may be sent to the SDP under the same rules that apply when people in the SDP commit SHU-eligible rule violations.⁷⁹ In some cases, the person may be eligible for Administrative SHU placement, as discussed in § 6.9.

The ICC will review an RCGP placement every 180 days.⁸⁰ People 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. People who have completed the SDP components while in the RCGP, but 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.⁸¹

⁷³ 15 CCR § 3000; 15 CCR § 3341.8(a); 15 CCR § 3378.3(b); 15 CCR § 3378.9.

⁷⁴ 15 CCR § 3000; 15 CCR § 3341.8(a); 15 CCR § 3378.9.

⁷⁵ 15 CCR § 3000; 15 CCR § 3378.9.

⁷⁶ 15 CCR § 3378.9(i).

⁷⁷ 15 CCR § 3378.9(e).

⁷⁸ 15 CCR § 3378.9(h).

⁷⁹ 15 CCR § 3378.4(b)(3)(B).

⁸⁰ 15 CCR § 3378.9(b).

⁸¹ 15 CCR § 3378.9(e).

6.9 Indeterminate Administrative SHU for Ongoing Safety or Security Threat

There are some very limited circumstances in which a person can be placed in SHU for an indeterminate period of time. The ICC can recommend a person for placement in indeterminate-length Administrative SHU if:

- ◆ there is overwhelming evidence that the person poses such a serious threat to safety or security that they cannot be housed in general population, OR
- ◆ the person has had three SHU terms within the past five years and continues to pose an on-going threat to safety or security.⁸²

Administrative SHU can be imposed only with approval of the DRB.⁸³ The ICC will review an Administrative SHU term at least every 180 days; if the ICC decides that a person no longer poses a threat to safety or security, it should refer the case to the DRB to determine where the person should be housed.⁸⁴ The DRB must review an Administrative SHU placement at least once a year.⁸⁵ The ICC and DRB can extend the administrative SHU placement if there is overwhelming evidence that the person poses an on-going threat to safety or security.⁸⁶

The ICC may end an Administrative SHU term early when necessary for in-patient medical or mental health treatment.⁸⁷

If a person 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.⁸⁸ A person 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.

6.10 CCCMS Long Term Restricted Housing (LTRH)

CDCR has a special program for people receiving mental health care at the CCCMS level who would otherwise be housed in a regular SHU. This is called CCCMS Long Term Restricted Housing (LTRH). People in the LTRH should get 15 hours per week of out of cell activity, including 10 hours of outdoor exercise, 3.5 hours of indoor recreational activity via a “secure treatment module,” and 90

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

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

⁸⁴ 15 CCR § 3341.5(b)(2); 15 CCR § 3341.8(a).

⁸⁵ 15 CCR § 3341.8(a).

⁸⁶ 15 CCR § 3341.5(b)(3); 15 CCR § 3341.8(a)(3).

⁸⁷ 15 CCR § 3341.5(b)(1).

⁸⁸ 15 CCR § 3341.3(b)(4); 15 CCR § 3341.6(c).

minutes of structured therapeutic activity. They should also be offered in-cell activities, and see their mental health clinician once per week.⁸⁹

6.11 Psychiatric Services Units (PSUs)

Psychiatric Services Units (PSUs) provide housing and care for people who are considered to need placement in SHU-level housing, but need mental health treatment at the Enhanced Outpatient (EOP) level of care or accommodations for a developmental disability at the DD3 level.⁹⁰ These units were created partly as a result of a court decision finding that placing people who are mentally ill or developmentally disabled in the restrictive environment of the Pelican Bay State Prison SHU was unconstitutional cruel and unusual punishment.⁹¹ PSUs are segregation units similar to SHUs or administrative segregation housing, but they provide additional activities and mental health treatment. CDCR currently operates PSUs at California State Prison-Sacramento (SAC), and California Institution for Women (CIW).⁹²

6.12 Protective Housing Units

A Protective Housing Unit (PHU) is a special segregation facility for people who cannot be housed safely anywhere else. PHU placement is approved only in the most extreme and high-profile cases. As of October 2017, the CDCR operates a very small PHU at CSP-Corcoran.

A person may be placed in a PHU if they do not require segregated housing for reasons other than protection, are not a member or affiliate of an STG-I, do not pose a threat to the safety or security of other people in the PHU; have specific verified enemy or safety concerns or notoriety likely to result in harm if the person is placed in the general population, and there is no other placement that can ensure the person's safety and provide an appropriate level of supervision and control.⁹³

The DRB must approve all moves into or out of a PHU.⁹⁴

6.13 Living Conditions in Segregation

In California prisons, people in administrative segregation or SHUs generally have few or no program opportunities, are fed all meals in their cells, are not allowed to mix with other people or are allowed to do so only during tightly supervised exercise sessions, and generally spend about 22 hours a day in their cells, usually with a cellmate. These restrictive conditions raise concerns regarding whether people in segregation are subjected to cruel and unusual punishment.

⁸⁹ CDCR, *Memorandum Re: Creation of Corrections Clinical Case Management System Short Term and Long Term Restricted Housing* (Jan. 15, 2015); CDCR, *Mental Health Services Policy*, Vol. 12, Ch. 6, § 12.06.802.

⁹⁰ 15 CCR § 3341.2; See also CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 9. See § 4.25 for information about Developmental Disability Program placement.

⁹¹ *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1267.

⁹² CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 9.

⁹³ 15 CCR § 3341.1(a)-(b).

⁹⁴ 15 CCR § 3341.1(c).

§ 6.14

The Eighth Amendment of the U.S. Constitution prohibits cruel and unusual punishment. Confinement in segregation, even for a lengthy or indeterminate period, does not necessarily constitute cruel and unusual punishment. However, indecent or inhumane conditions in segregation can violate the Eighth Amendment. Also, harsh segregation conditions can be cruel and unusual punishment for people with mental illnesses or developmental disabilities even if the conditions are not unconstitutional for other people. The boundaries of the Eighth Amendment are discussed in Chapter 3.

The CDCR rules establish some minimum conditions for prison segregation units.⁹⁵ For example, the rules require that a person in segregation be provided with a minimum of one hour out of cell time per day, five days a week; when a recreation yard is available, yard time may be substituted for these out of cell periods, provided exercise opportunities are available at least three days a week for a total of 10 hours a week.⁹⁶ Clothing exchange must occur no less often than is provided to people in general population.⁹⁷ People in segregation are to be fed the same meals as people in general population.⁹⁸ People in segregation can have non-contact visits.⁹⁹ They may send and receive mail with no special limitations, except for rules concerning the number and content of packages.¹⁰⁰ The rules also state what amount and type of property a person may possess in segregation.¹⁰¹

Chapter 2 discusses the general law and CDCR rules regarding access to visitation, correspondence, publications, and property, including restrictions for people in segregation. Chapter 2 also discusses rights to be free from discrimination based on gender, race, or disability. Privilege groups for various types of segregation placements, including NDS and SDP status, are discussed in § 4.21. Law library access, including access for people in segregation, is covered in §§ 19.2-19.7.

CDCR rules require prison officials to keep a separate record on each person placed in segregation so that all significant information regarding the person can be documented. The CDCR Form 114-A Detention/Segregation Record is used for this purpose.¹⁰² The CDCR Form 114-A records events such as the dates the person was offered exercise or a shower, or was given supplies and clothing.

6.14 Challenging Segregation Placement

Challenges to any sort of segregation placement can be based on violations of federal constitutional or statutory rights, such as the rights to due process and equal protection, the right to be free from cruel and unusual punishment, and rights to be free from discrimination based on race, gender, or disability. Challenges to segregation can also be based on the CDCR's failure to follow state law or the CDCR's own rules or policies about who can be placed in segregation and for how long,

⁹⁵ 15 CCR § 3343

⁹⁶ 15 CCR § 3343(h).

⁹⁷ 15 CCR § 3343(g).

⁹⁸ 15 CCR § 3343(d).

⁹⁹ 15 CCR § 3343(f).

¹⁰⁰ 15 CCR § 3343(e).

¹⁰¹ See 15 CCR § 3190; the CDCR's Authorized Personal Property Schedule is an Appendix to the DOM.

¹⁰² 15 CCR § 3344.

and what procedures must be followed. People may also be able to challenge other decisions made by the CDCR that may affect whether they are placed in segregation and how long they spend in segregation, such as challenging a rule violation finding of guilt (see Chapter 5) or an STG validation (see §§ 4.29-4.31 and §§ 4.55-4.56).

A person who wants to challenge placement in segregation or living conditions in segregation should file an administrative appeal and pursue it through the highest level of review necessary. Even if the person believes that the administrative appeal will be denied, it is necessary to complete the administrative appeal process before filing any court action challenging the segregation placement or condition. See Chapter 1 for more information on administrative appeals and the requirement of exhausting administrative remedies for court cases.

If an administrative appeal raising a segregation issue is denied at the highest level of review, a person may bring a court action. One way to seek injunctive relief (an order requiring the state to do or stop doing something) is a state court petition for writ of habeas corpus. State habeas corpus actions are discussed in Chapter 15. Alternatively, either injunctive relief or money damages may be sought through a federal civil rights (“section 1983”) lawsuit; these types of lawsuits are discussed in Chapter 17. A third option for seeking injunctive relief or money damages is a state tort lawsuit, as described in Chapter 18. See § 19.30 for a summary of the procedural and substantive requirements for these two types of court actions and considerations in deciding which type of action to file.