

Article 7. Segregation Housing

3335. Administrative Segregation.

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

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

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

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

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

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

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

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

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

(2) Transfer to a Segregated Program Housing Unit in accordance

with section 3341.5.

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

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

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

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

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

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

HISTORY:

1. Repealer of Article 7 (Sections 3340–3357) and new Article 7 (Sections 3335–3345) filed 4-18-80; effective thirtieth day thereafter (Register 80 No. 16). For prior history see Registers 76, No. 31; 77, No. 9; 78, No. 25; and 79, No. 34.

2. Amendment of subsection (b) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).

3. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.

4. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).

5. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.

6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).

7. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted

156

§ 3336 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

to OAL within 120 days or emergency language will be repealed on 9-30-88.

8. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).

9. Amendment of article heading and subsection (c), repealer of subsections (c)(1)–(c)(1)(B), new subsections (d)–(i) and amendment of Note filed 6-15-2005 as an emergency pursuant to Penal Code section 5058.3; operative 6-15-2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-22-2005 or emergency language will be repealed by operation of law on the following day.

10. Editorial correction of subsection (d)(3) and History 9 (Register 2005, No. 50).

11. Certificate of Compliance as to 6-15-2005 order transmitted to OAL 10-31-2005 and filed 12-15-2005 (Register 2005, No. 50).
12. Change without regulatory effect amending subsection (d)(3) filed 5-4-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 19).
13. Change without regulatory effect amending subsection (g) filed 5-11-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 19).

3336. Segregation Order.

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

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

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

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

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

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

HISTORY:

1. Change without regulatory effect amending first paragraph filed 3-22-2001 pursuant to section 100, Title 1, California Code of Regulations (Register 2001, No. 12).

3337. Review of Segregation Order.

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

(a) Determine the appropriate assignment of staff assistance, if such assistance was deemed necessary by the official initiating the CDC Form 114-D. If the inmate's caseworker is not an appropriate assignment because of the caseworker's schedule, an alternate staff assistance assignment will be made. The inmate will be notified in

writing of any change in the assignment of staff assistance. An inmate may decline to accept the assignment of his or her caseworker or the first person assigned. In such cases a different staff member will be assigned to assist the inmate.

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

(c) Determine if the inmate has waived the 72-hour time limit in which a classification hearing cannot be held, as indicated on the CDC Form 114-D, or if the inmate desires additional time to prepare for a classification hearing. A request and the reason for needing additional time to prepare for a hearing must be submitted in writing by the inmate. In the absence of an inmate's waiver of the 72-hour preparation period or an approved request for additional preparation time, a classification hearing cannot be held earlier than 72 hours after the inmate's placement in segregated housing, but will be held as soon thereafter as it is practical to do so.

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

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

3338. Hearing on Segregated Housing Order.

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

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

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

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

157

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION § 3339

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

(b) The hearing on an administrative segregation order, CDC Form 114-D, may be conducted by a single classification hearing officer (facility captain, correctional captain, correctional counselor III, or experienced correctional lieutenant, or correctional counselor II.) This does not preclude the use of classification committees or subcommittees of classification for such hearings if such

committee hearings can be scheduled and conducted within the time constraints required for such hearings. This option is left to the discretion of each warden and superintendent.

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

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

(e) When the reason for an inmate's initial placement in administrative segregation is a disciplinary matter and likely to result in a formal report of violation of institution rules on a CDC Form 115, or a referral to the district attorney for possible criminal prosecution, the hearing will assume the alleged misconduct or criminal activities to be factual as reported in the segregation order. The hearing will not consider evidence or information relating to the guilt or innocence of the inmate. The only determination to be made is whether the inmate needs to be retained in administrative segregation for the reasons given in subsection 3335(a) and in the segregation order, CDC Form 114-D, pending resolution or disposition of disciplinary issues. If the hearing decision is to retain the inmate in administrative segregation, the case will be referred to the next scheduled meeting of the institution's main classification committee for review. The main classification committee may review the case in absentia and continue the inmate in administrative segregation pending resolution of the disciplinary issues, or schedule the inmate for a personal appearance to consider placement in a specialized security unit based upon other nondisciplinary reasons necessitating such placement.

(f) When the reason for an inmate's placement in administrative segregation is for nondisciplinary reasons, the hearing will consider all available evidence or information relating to the validity of the reasons given for such placement as well as the need to retain the inmate in administrative segregation pending resolution of the situation or circumstances set forth in the administrative segregation order.

(g) All cases of nondisciplinary administratively segregated inmates referred to the institution's main classification committee in place of an initial hearing on a segregation order or for a review of an initial hearing decision, will require the inmate's personal appearance except under the applicable conditions for absentia hearings as described in section 3320(g) of the director's rules.

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

of such evidence or witnesses would have otherwise been presented.

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

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

HISTORY:

1. Amendment of subsections (a)(2) and (a)(3) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Change without regulatory effect amending subsections (c) and (g) filed 5-7-96; operative 6-6-96 (Register 96, No. 19).
3. Change without regulatory effect amending subsection (b) filed 7-30-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 31).
4. Change without regulatory effect amending subsection (b) filed 8-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 32).

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

(a) Release: Release from segregation status shall occur at the earliest possible time in keeping with the circumstances and reasons for the inmate's initial placement in administrative segregation. Nothing in this article shall prevent the official ordering an inmate's placement in administrative segregation, or a staff member of higher rank in the same chain of command, from withdrawing an administrative segregation order before it is acted upon or prior to a hearing on the order after consulting with and obtaining the concurrence of the administrator of the general population unit to which the inmate will be returned or assigned. Release from segregated housing after such placement shall be effected only upon the written order of an equal or higher authority.

(b) Retention: Subsections (b)(1)–(b)(5) set forth procedural safeguards. These procedural safeguards apply to inmates retained for administrative reasons after the expiration of a definite term or terms of confinement for disciplinary reasons. Definite terms of confinement shall be set or reduced by classification or administrative action.

(1) A segregated housing order, CDC Form 114-D, shall be initiated, giving written notice of the reasons for such retention in sufficient detail to enable the inmate to prepare a response or defense. Except in case of a genuine emergency, a copy of the order shall be given to the inmate prior to the expiration of the determinate term or terms of confinement. In no case shall notice be given later than 48 hours after the expiration of the determinate term or terms.

(2) A fair hearing before one or more classification officials shall be held not more than 96 hours after the inmate is given a copy of

158 § 3340 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

the segregated housing order, unless the inmate requests, in writing, and is granted additional time to prepare a defense.

(3) Representation by a staff assistant shall be provided if institution officials determine that the inmate is illiterate or that the

complexity of the issues make it unlikely that the inmate can collect or present the evidence necessary for an adequate comprehension of the case. The determination and designation is to be made at the time the segregated housing order is prepared and shall be included on the copy of the order given the inmate.

(4) The inmate shall be given a reasonable opportunity to present witnesses and documentary evidence unless institution officials determine in good faith that presentation of the evidence would be unduly hazardous to institutional safety or correctional goals. The reason for disallowing designated evidence will be explained in writing by the hearing body on the segregated housing order.

(5) A copy of the completed segregated housing order containing a written decision, including references to the evidence relied upon and the reasons for retention in segregated housing beyond the expiration of the expired term of confinement, if so retained, shall be given the inmate upon completion of the hearing.

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

1. Repealer and new section filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).

2. Editorial correction of printing error in subsection (b)(2) (Register 92, No. 5).

3340. Exclusions.

Separation from general population for the reasons and under the circumstances described in this section is not considered administrative segregation and is specifically excluded from the other provisions of this article.

(a) Medical. When an inmate is involuntarily removed from general inmate status for medical or psychiatric reasons by order of medical staff and the inmate's placement is in a hospital setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. When personnel other than medical staff order an inmate placed in administrative segregation for reasons related to apparent medical or psychiatric problems, that information will be immediately brought to the attention of medical staff. The appropriateness of administrative segregation or the need for movement to a hospital setting will be determined by medical staff. When medical and psychiatric reasons are involved, but are not the primary reasons for an inmate's placement in administrative segregation, administrative segregation status will be continued if the inmate is moved to a hospital setting and the requirements of this article will apply.

(b) Orientation and Lay-Over. Newly received inmates and inmates in transit or lay-over status may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing.

(c) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article except as provided in section 3338(a)(2) and (3).

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

(e) Segregated Inmates. When an inmate has been classified for segregated housing in accordance with this article and commits a disciplinary offense while so confined, or is returned to segregated housing upon completion of a disciplinary detention sentence for an offense committed in a segregated unit, the provision of this article will not apply.

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

3341. Staff Assistance.

The duties and functions of a staff member assigned to assist an inmate in a classification hearing on a segregated housing order will be the same as described in section 3318 for a disciplinary hearing. When an inmate requests witnesses at a classification hearing on a segregation order and an investigative employee is assigned, the investigative employee's duties and functions will be essentially the same as described in section 3318 for predisciplinary hearing investigations. In screening prospective witnesses, the investigative employee will do so in accordance with the information to be considered in the classification hearing, as described in section 3338(e) and (f).

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

HISTORY:

1. Editorial correction removing extraneous text (Register 97, No. 5).
2. Change without regulatory effect amending section filed 1-29-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 5).

3341.5. Segregated Program Housing Units.

Special housing units are designated for extended term programming of inmates not suited for general population. Placement into and release from these units requires approval by a classification staff representative (CSR).

(a) Protective Housing Unit (PHU). An inmate whose safety would be endangered by general population placement may be placed in the PHU providing the following criteria are met:

- (1) The inmate does not require specialized housing for reasons other than protection.
- (2) The inmate does not have a serious psychiatric or medical condition requiring prompt access to hospital care.
- (3) The inmate is not documented as a member or an affiliate of a prison gang.
- (4) The inmate does not pose a threat to the safety or security of other inmates in the PHU.
- (5) The inmate has specific, verified enemies identified on CDC Form 812 likely to and capable of causing the inmate great bodily harm if placed in general population.
- (6) The inmate has notoriety likely to result in great bodily harm to the inmate if placed in general population.
- (7) There is no alternative placement which can ensure the inmate's safety and provide the degree of control required for the inmate.
- (8) It has been verified that the inmate is in present danger of great bodily harm. The inmate's uncorroborated personal report, the nature of the commitment offense or a record of prior protective custody housing shall not be the sole basis for protective housing unit placement.

(b) Psychiatric Services Unit (PSU). A PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to Security Housing Unit (SHU), as described in subsection 3341.5(c), at the Enhanced Outpatient Program level of the mental health delivery system.

(c) Security Housing Unit (SHU). An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU.

159

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION § 3341.5

- (1) Assignment criteria. The inmate has been found guilty of an

offense for which a determinate term of confinement has been assessed or is deemed to be a threat to the safety of others or the security of the institution.

(2) Length of SHU Confinement. Assignment to a SHU may be for an indeterminate or for a fixed period of time.

(A) Indeterminate SHU Segregation.

1. An inmate assigned to a security housing unit on an indeterminate SHU term shall be reviewed by a classification committee at least every 180 days for consideration of release to the general inmate population. An investigative employee shall not be assigned at these periodic classification committee reviews.

2. Except as provided at section 3335(a), section 3378(d) and subsection (c)(5), a validated prison gang member or associate is deemed to be a severe threat to the safety of others or the security of the institution and will be placed in a SHU for an indeterminate term.

(B) Determinate SHU Segregation.

1. A determinate period of confinement in SHU may be established for an inmate found guilty of a serious offense listed in section 3315 of these regulations. The term shall be established by the Institutional Classification Committee (ICC) using the standards in this section, including the SHU Term Assessment Chart (see section 3341.5(c)(9)), Factors in Mitigation or Aggravation (see section 3341.5(c)(10)), SHU Term Assessment Worksheet CDC Form 629-A, Rev. 3/96, Assessment of Subsequent SHU Term Worksheet CDC Form 629-B, Rev. 9/90, and SHU Time Computation Table (see CDC Form 629-D, Rev. 7/88).

2. The term shall be set at the expected term for the offense in the absence of mitigating or aggravating factors. Deviation from the expected term shall be supported by findings pursuant to subsection (c)(7).

3. The terms shall be recorded on CDC Form 629-A, SHU Term Assessment Worksheet, using the SHU Time Computation Table which incorporates one-fourth clean conduct credit in the term. The computation shall establish a maximum release date and a minimum eligible release date (MERD). A copy of the CDC Form 629-A shall be given to the inmate.

4. Serious misconduct while in SHU may result in loss of clean conduct credits or an additional determinate term for an inmate serving a determinate term. Such additional term may be concurrent or consecutive and shall be recorded on CDC Form 629-B with a copy given to the inmate. Such cases shall be referred to a CSR for approval; however, all release and retention requirements of section 3339 shall remain in effect pending CSR approval.

5. Up to 45 days of a SHU inmate's clean conduct credits may be forfeited for disciplinary infractions that are not serious enough to warrant the assessment of a subsequent or concurrent SHU term. Such forfeiture may be assessed against credits already earned or future credits.

6. Consecutive SHU terms shall be assessed only for offenses occurring after commencement of a prior determinate SHU term.

7. The ICC may commute or suspend any portion of a determinate term. Once commuted, the term shall not be reimposed. If suspended, the period of suspension shall not exceed the length of the original term imposed. When either action occurs, the case shall be referred to a classification staff representative (CSR) with a placement recommendation.

8. The Unit Classification Committee shall conduct hearings on all determinate cases at least 30 days prior to their MERD or during the eleventh month from the date of placement, whichever comes first.

(3) Release from SHU. An inmate shall not be retained in SHU

beyond the expiration of a determinate term or beyond 11 months, unless the classification committee has determined before such time that continuance in the SHU is required for one of the following reasons:

(A) The inmate has an unexpired MERD from SHU.

(B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct.

(C) The inmate has voluntarily requested continued retention in segregation.

(4) A validated prison gang member or associate shall be considered for release from a SHU, as provided above, after the inmate is verified as a gang dropout through a debriefing process.

(5) As provided at section 3378(e), the Departmental Review Board (DRB) may authorize SHU release for prison gang members or associates categorized as inactive. The term inactive means that the inmate has not been involved in gang activity for a minimum of six (6) years. Inmates categorized as inactive who are suitable for SHU release shall be transferred to the general population of a Level IV facility for a period of observation that shall be no greater than 12 months. Upon completion of the period of observation, the inmate shall be housed in a facility commensurate with his or her safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score. The DRB is authorized to retain an inactive gang member or associate in a SHU based on the inmate's past or present level of influence in the gang, history of misconduct, history of criminal activity, or other factors indicating that the inmate poses a threat to other inmates or institutional security.

(6) As provided at section 3378(f), an inmate categorized as inactive or validated as a dropout of a prison gang and placed in the general population may be returned to segregation based upon one reliable source item identifying the inmate as a currently active gang member or associate of the prison gang with which the inmate was previously validated. Current activity is defined as, any documented gang activity within the past six (6) years. The procedures described in this Article shall be utilized for the removal of the inmate from the general population, the review of the initial segregation order, and all periodic reviews of the indeterminate SHU term.

(7) Determinate SHU terms shall only be served in a departmentally approved SHU or a facility specifically designated for that purpose.

(8) When an inmate is paroled while serving a determinate term, the remaining time on the term is automatically suspended. When an inmate returns to prison, either as a parole violator or with a new prison commitment, ICC shall evaluate the case for reimposition of the suspended determinate term. If reimposed, the term shall not exceed the time remaining on the term at the time of parole.

(9) SHU Term Assessment Chart (fixing of determinate confinement to SHU).

TYPICAL TERM (Mos)

OFFENSE Low Expected High

(A) Homicide:

1.

Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate. (36 48 60)

160

§ 3341.5 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

TYPICAL TERM (Mos)

OFFENSE Low Expected High

2.

Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate. (15 26 36)

(B) Violence Against Persons:

1.

Assault on a non-inmate with a weapon or physical force capable of causing mortal or serious injury. (09 28 48)

2.

Assault on an inmate with a weapon or physical force capable of causing mortal or serious injury. (06 15 24)

3.

Assault on a non-inmate with physical force insufficient to cause serious injury. (06 12 18)

4.

Assault on an inmate with physical force insufficient to cause serious injury. (02 03 06)

5. Throwing a caustic substance on a non-inmate. (02 03 04)

(C) Threat to Kill or Assault Persons:

1. Use of non-inmate as hostage. (18 27 36)

2. Threat to a non-inmate. (02 05 09)

3. Threat to an inmate. (02 03 04)

(D) Possession of a Weapon:

1. Possession of a firearm or explosive device. (18 27 36)

2.

Possession of a weapon, other than a firearm or explosive device which has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury, and which is under the immediate or identifiable control of the inmate. (06 10 15)

(E)

Trafficking in Drugs:

Distributing controlled substances in an institution or camp or causing controlled substances to be brought into an institution or camp for the purpose of distribution. (06 09 12)

(F) Escape with Force or Attempted Escape with Force. (09 16 24)

(G) Disturbance, Riot, or Strike:

1. Leading a disturbance, riot, or strike. (06 12 18)

2.

Active participation in, or attempting to cause conditions likely to threaten institution security. (02 04 06)

(H)

Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means. (06 12 18)

(I)

Arson, Theft, Destruction of Property:

Theft or destruction of State property where the loss or potential loss exceeds \$10,000 or threatens the safety of others. (02 08 12)

(J) Extortion and Bribery: extortion or bribery of a non-inmate. (02 06 09)

(K) Sexual Misconduct

1. Indecent Exposure (03 06 09)

2.

Sexual Disorderly Conduct (two or more offenses within a twelve month period) (03 06 09)

(L) Refusal to Accept Assigned Housing (03 06 09)

TYPICAL TERM (Mos)

OFFENSE Low Expected High

(M)

Except as otherwise specified in this section, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.

(N)

Any inmate who conspires to commit any of the offenses above shall receive the term specified for that offense.

(10) Factors in mitigation or aggravation of SHU term. The SHU term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement. The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in the SHU Term Assessment Chart. In setting the term, the committee shall determine the base offense. If the term being assessed includes multiple offenses, the offense which provides for the longest period of confinement shall be the base offense. Lesser offenses may be used to increase the period beyond expected term. After determining the base offense, the committee shall review the circumstances of the disciplinary offense and the inmate's institutional behavior history using the factors below. The committee shall then determine that either no unusual factors exist or find that specific aggravating or mitigating factors do exist and specify a greater or lesser term. The reasons for deviation from the expected term shall be documented on a CDC 128-G, Classification Chrono, and SHU Term Assessment Worksheet, a copy of which shall be provided to the inmate.

(A) Factors in Mitigation.

1. The inmate has a minor or no prior disciplinary history.
2. The inmate has not been involved in prior acts of the same or of a similar nature.
3. The misconduct was situational and spontaneous as opposed to planned in nature.
4. The inmate was influenced by others to commit the offense.
5. The misconduct resulted, in part, from the inmate's fear for safety.

(B) Factors in Aggravation.

1. The inmate's prior disciplinary record includes acts of misconduct of the same or similar nature.
2. The misconduct was planned and executed as opposed to situational or spontaneous.
3. The misconduct for which a SHU term is being assessed resulted in a finding of guilty for more than one offense.
4. The inmate influenced others to commit serious disciplinary infractions during the time of the offense.

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

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register

87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.

2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).

3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.

161

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION § 3342

4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).

5. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.

6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).

7. Editorial correction of printing errors in subsection (c)(2)(B)1 and CDC Forms 629-B and 629-D (Register 92, No. 5).

8. New subsection (c)(6)(H), subsection relettering, and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93, or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).

10. Amendment of subsection (c)(2)(B)1. and 4., new subsection (c)(2)(B)5. and subsection renumbering, repealer of form CDC 629-A, and new form CDC 629-A filed 2-8-96 as an emergency per Penal Code section 5058(e); operative 2-8-96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 7-18-96 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 2-8-96 order including amendment of form CDC 629-A transmitted to OAL 6-17-96 and filed 7-30-96 (Register 96, No. 31).

12. New subsection (c)(2)(A)1. designator, new subsections (c)(2)(A)2. and (c)(4) and subsection relettering filed 1-21-99 as an emergency; operative 1-21-99 (Register 99, No. 4). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-30-99 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 1-21-99 order transmitted to OAL 6-30-99 and filed 8-12-99 (Register 99, No. 33).

14. Amendment of subsections (c)(2)(A)1. and 2. and (c)(4), new subsections (c)(5) and (c)(6), subsection renumbering, amendment of newly designated subsection (c)(10) and amendment of Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.

15. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).

16. Change without regulatory effect amending subsection (c)(2)(B)1. filed 10-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 42).

17. Amendment of subsection (c)(6) and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).

18. Change without regulatory effect amending subsection (b) filed 6-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 26).

19. New subsections (c)(9)(K)–(c)(9)(K)2., subsection relettering and

amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.

20. Certificate of Compliance as to 2-23-2007 order, including amendment of subsection (c)(9)(K)1.-2., transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).

21. New subsection (c)(9)(L) and subsection relettering filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).

22. Amendment of subsection (b) filed 9-29-2009; operative 10-29-2009 (Register 2009, No. 40).

3342. Case Review.

(a) The case of every inmate assigned to a segregated housing unit will be continuously reviewed and evaluated by custodial and casework staff assigned to the unit. Staff will confer on each case no less frequently than once a week during the first two months of the inmate's segregated status. Such case reviews will not be necessary during any week in which the inmate's case is reviewed

162

§ 3342 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

163

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION § 3341.5

164

§ 3342 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

165

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION § 3345

by a regular or special classification committee or by staff who are authorized to take classification actions. Any significant observations, determinations or recommendations, will be documented on the inmate's Detention/Segregation Record, CDC Form 114-A.

(b) Psychological Assessment. A psychological assessment of the inmate's mental health will be included in the case review and classification committee review of inmates assigned to segregated housing units. When any indication of psychiatric or psychological problems exists, the case will be referred to the institution's psychiatrist or psychologist for further evaluation and recommended classification committee actions, if any.

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

3343. Conditions of Segregated Housing.

(a) Living Conditions. In keeping with the special purpose of a segregated housing unit, and with the degree of security, control and supervision required to serve that purpose, the physical facilities of special purpose segregated housing will approximate those of the general population.

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

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

(d) Meals. Inmates assigned to administrative segregation including special purpose segregated housing, will be fed the same meal and ration as is provided for inmates of the general population,

except that a sandwich meal may be served for lunch. Deprivation of food will not be used as punishment.

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

(f) Visits. Inmates assigned to segregated housing, except for inmates assigned to security housing units in accordance with Section 3341.5, shall be permitted to visit under the same conditions as are permitted inmates of the general population. Inmates assigned to security housing units shall be prohibited from physical contact with visitors.

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

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

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

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

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

(l) Visitation and Inspection. Inmates assigned to administrative segregation, including special purpose segregated units, will be seen daily by the custodial supervisor in charge of the unit and by a physician, registered nurse or medical technical assistant, and, by request, members of the program staff. A timely response should be given to such requests wherever reasonably possible.

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

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

2601(d) and 5054, Penal Code.

HISTORY:

1. Amendment of subsections (e), (f) and (j) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
2. Amendment of subsection (f) filed 8-15-89; operative 9-14-89 (Register 89, No. 33).

3344. Administrative Segregation Records.

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

(b) A separate record will be maintained for each inmate assigned to administrative segregation, including special purpose segregated units. This record will be compiled on CDC Form 114-A, Detention/Segregation Record. In addition to the identifying information required on the form, all significant information relating to the inmate during the course of segregation, from reception to release, will be entered on the form in chronological order.

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

3345. Officer in Charge.

The custodial officer in charge of a disciplinary detention, segregation or security housing unit where inmates are segregated for disciplinary or administrative purposes, will insure that nothing is passed in or out of such units unless it has been thoroughly inspected; that no unauthorized visitors are permitted in such units; that all laundry, shoes, clothing, or other materials and supplies going to or from the units are carefully inspected; that inmates needing medical attention receive it promptly; that all locks and bars are

166

§ 3349 DEPARTMENT OF CORRECTIONS AND REHABILITATION TITLE 15

inspected and maintained in secure and proper working order; that proper precautions are taken in removing inmates from their cells and in passing them from place to place. The general welfare of inmates in segregated housing units and in all facilities therein will be properly maintained and regularly inspected to insure human decency and sanitation.

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