

**State of California
Office of Administrative Law**

In re:

Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Amend sections: 3341.5, 3375.2, 3377.1

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3

OAL File No. 2011-1027-05 EON

This regulatory action has two main purposes. One is to ensure that inmates who have custody designations indicating they are a security risk and who require an Intermediate Care Facility (ICF) will be housed in the most appropriate ICF program, consistent with safety and security requirements. The other purpose is to ensure that an inmate who was in the Segregated Housing Unit (SHU) and suspended from it based on the need for inpatient medical or mental health treatment can be remanded back to the SHU if necessary.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 11/14/2011 and will expire on 4/24/2012. The Certificate of Compliance for this action is due no later than 4/23/2012.

Date: 11/14/2011



George C. Shaw
Senior Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel
Acting Director

Original: Matthew Cate
Copy: Josh Jugum

NOTICE PUBLICATION / REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-102705E0N
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2011 NOV 14 PM 1:25
Scott Kernan
SCOTT KERNAN
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2011 OCT 27 PM 4:35
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 10-099
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Inmate Transfers to Intermediate Care Facilities	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3341.5, 3375.2, 3377.1
TITLE(S) 15	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity PC 5058.3</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Joshua Jugum	TELEPHONE NUMBER (916) 445-2228	FAX NUMBER (Optional) (916) 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Scott Kernan</i>	DATE 10-27-11
TYPED NAME AND TITLE OF SIGNATORY SCOTT KERNAN, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 14 2011

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates additional text, and ~~strikethrough~~ indicates deleted text.

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Article 7. Segregated Housing

3341.5. Segregated Program Housing Units.

Sections 3341.5 through Subsection 3341.5(b) remain unchanged.

(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.

(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.

Subsection 3341.5(c)(2)(A)3. is adopted to read:

3. Indeterminate SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.

(B) Determinate SHU Segregation.

Subsections 3341.5(c)(2)(B)1 through 3341.5(c)(2)(B)7 remain unchanged.

Existing Subsection 3341.5(c)(2)(B)8 is renumbered to 3341.5(c)(2)(B)10.

Subsections 3341.5(c)(2)(B)8 through 3341.5(c)(2)(B)9 are adopted to read:

8. A SHU Term may be reimposed if an inmate placed in the Administrative Segregation Unit (ASU) is found guilty of a serious rule violation and the ICC concludes the inmate poses a threat to the safety of others or the security of the institution.

9. Determinate SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.

10.8. 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.

Subsection 3341.5(c)(2)(C) is adopted to read:

(C) Anytime a SHU term is reimposed, ICC shall record the basis of their decision in the CDC Form 128-G, Classification Chrono (Rev. 10/89), which is incorporated by reference, clearly articulating the inmate's continued threat to the safety of others or the security of the institution.

Subsections 3341.5(c)(3) through 3341.5(c)(6) remain unchanged.

Subsection 3341.5(c)(7) is amended to read:

(7) Determinate/Indeterminate SHU terms shall only be served in a departmentally approved SHU or a facility specifically designated for that purpose, except under those circumstances where the term may be served in ASU. Determinate/Indeterminate SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary.

Subsections 3341.5(c)(8) through 3341.5(c)(10)(B) remain unchanged.

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).

Article 10. Classification

3375.2. Administrative Determinants

Sections 3375.2(a) through Subsection 3375.2(a)(5) remain unchanged.

Subsection 3375.2(a)(6) is amended to read:

(6) An inmate serving a sentence of life without possibility of parole shall not be housed in a facility with a security level lower than Level IV, except when authorized by the Departmental Review Board (DRB). Inmates serving life without the possibility of parole

in need of urgent or emergent medical or psychiatric care may be transferred to a celled in-patient medical or mental health bed pending DRB approval. The DRB shall review the case within 30 days of the transfer.

Subsections 3375.2(a)(7) through 3375.2(b)(27) remain unchanged.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Wright v. Enomoto (N.D. Cal. 1976) 462 F. Supp. 397; and Stoneham v. Rushen (1984) 156 Cal. App. 3d 302.

3377.1. Inmate Custody Designations.

Subsection 3377.1 (a) through 3377.1(c) remain unchanged.

Subsection 3377.1(d) is adopted to read:

(d) A "D" suffix may be affixed by an Institutional Classification Committee (ICC) to a male inmate's Close Custody designation to indicate the inmate may be housed within a dormitory environment. A mental health clinician or physician shall be present during the ICC classification hearing for placement or removal of a D Suffix to an inmate-patient's custody designation.

(1) A "D" suffix shall only be affixed by ICC if the inmate meets one of the following criteria and the ICC determines the inmate can safely program in dormitory housing based on a review of the inmate's case factors:

(A) Inpatient mental health treatment is deemed clinically necessary and health care staff have determined that required care cannot be provided in a celled environment.

(B) Placement in a specialized medical bed has been deemed clinically necessary and the Health Care Placement Oversight Program staff have determined the required care cannot be provided in a celled environment.

(2) Other security precaution requirements set forth in Section 3377.1 for Close Custody still apply to inmates with a "D" suffix.

(3) The D suffix shall be removed when either of the following occur:

(A) A determination is made by health care staff that the in-patient mental health treatment is no longer necessary and/or can be provided within a celled environment.

(B) A determination is made by health care staff that the in-patient medical care is no longer necessary and/or the Health Care Placement Oversight Program staff have determined appropriate celled housing is available.

Note: Authority cited: Section 5058, Penal Code, Reference: Sections 290, 4852.01, 5054 and 5068, Penal Code; Americans With Disability Act (ADA), 42 U.S.C. § 12131, et seq.; and Pennsylvania Department of Corrections v. Yeskey(1998) 524 U.S. 206.

STATE OF CALIFORNIA		CDC-128-G (10/89)	CLASSIFICATION CHRONO	DEPARTMENT OF CORRECTIONS
CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE	
CUSTODY	ASSIGNMENT	WG/PG	NEXT CLASSIFICATION	
OTHER COMMITTEE ACTIONS:		HOUSING	RECOMMENDATION TO CSR:	
COMMENTS:				

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE

STATE OF CALIFORNIA		CDC-128-G (10/89)	CLASSIFICATION CHRONO	DEPARTMENT OF CORRECTIONS
CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE	
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COMMENTS:				

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE