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Your Responsibility When Using the Information Provided Below

We did our best to provide useful and accurate information below, including because we cannot give specific advice to all who ask for it. Rules, laws, and CDCR practices sometimes change quickly, and can be looked at in different ways. For these reasons, the information below may not be current. It is your responsibility to make sure that the law and practices have not changed and still apply to your situation.

PERSONAL SAFETY AND REASONABLE SAFETY CLAIMS Updated July 2019

We received your letter requesting help to get safer housing or to bring a lawsuit against prison officials for failure to provide you protection from other residents of your prison. This letter discusses what you should do if you believe you have personal safety concerns and the different types of housing that the California Department of Corrections and Rehabilitation (CDCR) can provide for those with safety problems. It then discusses formal legal actions that can be taken if CDCR fails to provide protection.

A person in prison has the right under the U.S. Constitution's Eighth Amendment to reasonable protection from the threat of violence, sexual assault, or extortion by others in prison.¹ Also, CDCR rules require in general that prison staff "safely keep" and provide for the "safe custody" of people in prison.² In certain circumstances, failing to protect an incarcerated person from harm may result in prison staff being held responsible under state tort law.³

If you believe you are in danger, you should talk to prison staff. You should be prepared to provide as much detail as possible to show why you need protection, such as specific times, dates, places and details of attacks or threats. You can also ask family, friends, or an attorney to contact the prison, but prison officials will usually only act if they receive detailed information about why a person is in danger.

¹ *Farmer v. Brennan* (1994) 511 U.S. 825, 832-34 [114 S.Ct. 1970, 1974; 128 L.Ed.2d 811]; *Berg v. Kincheloe* (9th Cir. 1986) 794 F.2d 457, 459; *Finney v. Arkansas Board of Corrections* (8th Cir. 1974) 505 F.2d 194, 206; *Gates v. Collier* (5th Cir. 1974) 501 F.2d 1291, 1303, 1322, n.14; see also *Rhodes v. Chapman* (1976) 452 U.S. 337, 355 [101 S.Ct. 2392, 2404; 69 L.Ed.2d 59] (concurrency cites extortion as an example of unconstitutional conditions, along with robbery, rape, theft, and assault).

² See Cal. Code of Regs., tit. 15, §§ 3270 and 3271.

³ See *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 245-253 [85 Cal.Rptr.3d] (Inhumane prison conditions, abuse by prison staff, or neglect in failing to protect a person from harm may violate state tort laws, even if they do not rise to the level of unconstitutional cruel and unusual punishment).

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You can also speak to prison staff about changing your housing for the purposes of protection. Housing options are listed below. Some are only available to those in men's prisons.

Administrative Segregation – Immediate protection might be obtained by asking to “lock up” in administrative segregation (Ad Seg).⁴ Placement in Ad Seg is generally only a short-term response to a safety issue. You should carefully consider whether to make a request for such placement, because Ad Seg is a maximum custody, minimum privilege program. Also, while Ad Seg is generally safer than housing in the general population because people are far more isolated from others, it may not be completely safe because you may have a cellmate. An Ad Seg stay might also last longer than expected, because prison officials can take a long time to review and investigate a safety claim, or to decide where to send you for permanent housing.

Transfer to Another Facility – If you have a safety concern with a specific enemy or a few enemies, the problem might be resolved through a transfer to a different prison or yard. Transfer to another facility may help if you had problems at one place, but can start over and program successfully at a different prison or yard. The degree of safety can depend on the circumstances of your situation and at a particular yard or prison.

Sensitive Needs Yards (SNYs) – SNYs are facilities for incarcerated people who have safety issues; they provide programming roughly equivalent to a general population yard. The degree of safety can depend on the circumstances of your situation and at a particular yard or prison. CDCR in recent years has eliminated SNYs in all Level I, most Level II, and some Level III prisons, as well as all EOP buildings and many medical settings. There are still a few Level II, several Level III, and several Level IV SNYs.

Non-Designated Program Facilities (NDPFs) – CDCR says NDPFs safely house incarcerated people with a wide variety of case factors. All Level I, most Level II, and some Level III prisons or yards are NDPFs. The degree of safety can depend on the circumstances of your situation and at a particular yard or prison. If you want more information about which prisons, yards, and buildings are NDPF, please write and ask for our NDPF handout.

Protective Housing Unit (PHU) – CDCR has a Protective Housing Unit (PHU).⁵ It is located at Corcoran State Prison and houses only a few dozen people. PHU is available if you: (1) do not require restricted housing for reasons other than protection; (2) are not affiliated with a Security Threat Group-1; (3) do not pose a threat to the safety or security of the PHU; (4) have specific verified enemies likely to cause you harm if you are placed in general population; (5) have notoriety likely to result in harm if placed in the general population; (6) cannot be safely housed anywhere else; and (7) are in present danger of great bodily harm, as demonstrated by something other than your uncorroborated report, the nature of your commitment offense, or a prior protective custody placement.⁸ The Department Review Board (DRB) must approve all PHU placements.⁹

⁴ See Cal. Code of Regs., tit. 15, § 3335.

⁵ Cal. Code of Regs., tit. 15, § 3341

⁸ Cal. Code of Regs., tit. 15, § 3341.1(a).

⁹ Cal. Code of Regs., tit. 15, § 3341.1(c).

What To Do If Talking With Prison Staff Does Not Resolve Your Concerns

If after talking with prison staff you disagree with how they respond to your safety concerns, you should file an administrative appeal using a CDCR 602 form. You can ask that the 602 be processed as an emergency (write “Emergency Appeal” on the top of the form). CDCR rules require that it be considered an emergency if it involves a threat of death or injury due to enemies or placement concerns, or any serious and imminent threat to safety.¹⁰ An emergency appeal should be sent directly to the appeals coordinator; if your appeal is accepted as an emergency, you should be notified, the first level bypassed, and a second level review completed within five working days.¹¹ If the appeal is accepted as an emergency but then denied, it can be re-submitted to the appeals coordinator for third level review; the coordinator must electronically send it to the Chief of Inmate Appeals, whose review must be completed within five working days.¹²

If prison officials do not respond reasonably to your concern, you might be able to file a formal legal action, including requesting a court order regarding your placement. A court action can usually only be filed after a final level response to a 602 is received. A state court petition for habeas corpus is sometimes permitted without a final level appeal response if the person is suffering or will suffer irreparable injury.

If you are in danger, you need not wait until an assault or other harm occurs to obtain legal relief.¹³ However, mere negligence on the part of prison officials is insufficient to support a constitutional (Eighth Amendment cruel and unusual punishment) claim; the prison officials’ failure to protect must amount to “deliberate indifference” to the incarcerated person’s needs.¹⁴ This is one reason why it is important for you to make prison officials aware of the safety problem (in as much detail as possible) before filing a lawsuit. The law almost always requires you to “exhaust administrative remedies” by completing the appeal process before you file a legal action (but note that if there is a risk of irreparable injury a state court habeas corpus petition can be filed and decided without a final appeal response).

If you are still in danger, you can try to force prison officials to provide safe housing by filing a state petition for writ of habeas corpus or a federal civil rights lawsuit. You can also ask the court to issue a temporary restraining order to make the prison officials provide safe housing during the time while the

¹⁰ Cal. Code of Regs., tit. 15, § 3084.9(a)(1)(A) and (B).

¹¹ Cal. Code of Regs., tit. 15, § 3084.9(a)(2)-(4).

¹² Cal. Code of Regs., tit. 15, § 3084.9(a)(2)-(4).

¹³ See *Helling v. McKinney* (1993) 509 U.S. 25, 33 [113 S.Ct. 2475, 2481; 125 L.Ed.2d 22]; *Clem v. Lomeli*, (9th Cir. 2009) 566 F.3d 1177, 1181 [prison officials may be liable if they act or fail to act in a way that subjects an incarcerated person to an unreasonable risk of harm]; *Ramos v. Lamm* (10th Cir. 1980) 639 F.2d 559, 572; *Woodhous v. Virginia* (4th Cir. 1973) 487 F.2d 889, 890; *Gates v. Collier* (5th Cir. 1974) 501 F.2d 1291, 1303.

¹⁴ *Farmer v. Brennan* (1994) 511 U.S. 825, 828, 844 [114 S.Ct. 1970, 1974; 128 L.Ed.2d 811] (a prison official is deliberately indifferent if he “knows of and disregards an excessive risk to inmate health or safety” and “may be found free from liability if he responded reasonably to the risk, even if the harm ultimately was not averted”); *Leer v. Murphy* (9th Cir. 1998) 844 F.2d 628, 633; *Redman v. County of San Diego* (9th Cir. 1991) 942 F.2d 1435, 1443; *Berg v. Kincheloe* (9th Cir. 1986) 794 F.2d 457, 459; *Harris v. Roberts* (N.D. Cal. 1989) 719 F.Supp. 879, 880; *Vosberg v. Solem* (8th Cir. 1988) 845 F.2d 763, 765-766, cert. denied, 109 S.Ct. 313; *Davidson v. Cannon* (1986) 474 U.S. 344 [106 S.Ct. 668; 88 L.Ed.2d 677].

Personal Safety and Reasonable Safety Claims

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case is pending in the court. If you have been injured because of prison officials' past failure to provide safe housing, you can try to get money damages through a federal civil rights action or a state tort lawsuit.

You can write to the Prison Law Office to request free information on state habeas corpus petitions, personal injury lawsuits, and The California Prison and Parole Law Handbook (2019), which is also available in many CDCR law libraries.