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Your Responsibility When Using the Information Provided Below:

When we wrote the information below we did our best to give you useful and accurate information because we know that people in prison often have a hard time getting legal and other information and we cannot give specific advice to all the people who request it. However, the laws and CDCR practices change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use the information below, it is your responsibility to make sure that the law and CDCR practices have not changed and are applicable to your situation. Information may be available in your institution's law library.

NON-DESIGNATED PROGRAMMING FACILITIES (NDPFs) **Revised April 2023**

We are sending this information in response to your concerns about the California Department of Correction and Rehabilitation's (CDCR's) changing of some prisons, buildings, or yards to "Non-Designated Programming Facilities (NDPFs). In NDPFs, people who are or were designated Sensitive Needs Yard (SNY) and General Population (GP) are housed and program together. We know these changes have caused or are causing some people anxiety and concern.

CDCR has regulations about who can be housed in an NDPF or SNY.¹ A copy of those regulations (15 CCR §§ 3269.2-3269.4) is attached to this letter. The CDCR website (www.cdcr.ca.gov/family-resources/) also has answers to frequently asked questions about NDPFs and integrating Security Threat Group (STG) members. The regulations state that NDPFs are for housing people "who demonstrate positive behavior and a willingness to participate in rehabilitative programs and conform to departmental policies, free from Security Threat Group (STG) influence and behavior." CDCR's policy is that anyone who refuses to be housed at an NDPF will be charged with a rule violation and can be placed into higher level housing. CDCR has said that when a prison, building, or yard is going to become an NDPF, a multi-disciplinary team will meet with people living there, custody and healthcare staff, Inmate Advisory Councils, and Inmate Family Councils to discuss and prepare for a smooth transition. SNYs are now specifically limited to housing people "whose safety would be endangered by a portion of the inmate general population" and who "have documented and verified Systemic Safety Concerns indicating no other viable housing options are available."

In March 2023, CDCR reported that although many STG members are successfully programming in NDPFs, some individual STG members could not safely be housed in NDPFs. Effective March 17, 2023, CDCR began endorsing certain Level III and IV STG members to Salinas Valley State Prison (SVSP), California State Prison, Corcoran (COR), and Pleasant Valley State Prison (PVSP). All Level II STG members will be endorsed to NDPFs.

¹ In October 2022, a court barred CDCR from using "underground rules" about NDPF placements. (See *Villareal v. Allison* (Sacramento Superior Court No. 34-2021-80003779.) However, in November 2022, CDCR satisfied the requirements for adopting its NDPF and SNY policies as formal regulations.

New Subsections 3269.2 adopted to read:

3269.2 Sensitive Needs Yard Designation

(a) Sensitive Needs Yard (SNY) Designation. An SNY houses designated inmates whose safety would be endangered by a portion of the inmate general population. SNY designated inmates shall have documented and verified Systemic Safety Concerns indicating no other viable housing options are available within the inmate general population.

(b) An inmate may be designated as SNY in accordance with all the following criteria:

(1) The inmate expresses Safety Concerns and requests SNY designation.

(2) The inmate has specific, documented and verified Systemic Safety Concerns, as defined in section 3000.

(3) The inmate does not pose a threat to the safety or security of other inmates similarly housed in the SNY.

(4) If the inmate is documented as a validated Security Threat Group I (STG-I), as defined in section 3000, and the inmate has completed the debriefing process pursuant to section 3378.5.

(c) The Department shall not rely solely on an inmate's uncorroborated personal report, the nature of their commitment offense, incarcerated behavior, a record of their prior designation and housing, or their current designation and housing, when making a determination for SNY designation or retaining SNY designation.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: sections 5054 and 5068, Penal Code.

New section 3269.3 is adopted to read:

3269.3 Sensitive Needs Yard Designation Process

(a) The following processes shall be used for evaluation, documentation, approval or disapproval of, and removal from a Sensitive Needs Yard (SNY) designation.

(1) Reception Center.

(A) Inmate expresses Safety Concerns and requests SNY designation.

1. The assigned Correctional Staff shall complete an evaluation of the inmate's alleged Safety Concerns utilizing all available inmate information, including, but not limited to:

a. Court documents (e.g., Abstract of Judgment, probation report, arrest report, Minute Order, and sentencing transcripts).

b. If applicable, prior incarceration documentation (e.g., Incident Report, Rules Violation Report, non-confidential and confidential documentation, classification reports, and prior housing reviews).

c. County jail documentation (e.g., misconduct reports, non-confidential and confidential informational documentation, and housing reviews).

d. Any applicable parole or probation documentation (e.g., Security Threat Group (STG) affiliation report, non-confidential and confidential documents, and violation reports).

e. Any safety related information provided by the requesting inmate.

2. The assigned Correctional Staff shall document their findings of the inmate's alleged Safety Concerns and make a recommendation pursuant to subsections 3269.2(b) – (c) on a Confidential Chrono pursuant to section 3321. However, if the recommendation is to approve SNY designation pursuant to subsection 3269.2(a), the Correctional Counselor I shall make the appropriate Administrative Determinant and Institution Recommendation on the Institutional Staff Recommendation Summary.

3. The Correctional Counselor II Supervisor shall either concur or not concur with the Correctional Counselor I recommendation pursuant to subsections 3269.2(b) – (c) on the Institutional Staff Recommendation Summary, or return the Institutional Staff Recommendation Summary to the Correctional Counselor I for correction.

4. The Classification Staff Representative (CSR) shall either approve the Institutional Staff Recommendation Summary for SNY administrative determinant designation or return the case for correction pursuant to subsection 3269.2(b) – (c).

5. During Reception Center processing, if an inmate is returning to prison with a prior SNY designation, the inmate shall be re-evaluated to determine if the inmate meets SNY designation criteria in subsections 3269.2(b) – (c).

(2) General Population Housing.

(A) Inmate expresses Safety Concerns and requests SNY designation.

1. The assigned correctional staff shall complete an evaluation of the inmate's alleged Safety Concerns utilizing all available inmate information, including, but not limited to:

a. Court documents (e.g., Abstract of Judgment, probation reports, arrest report, Minute Order, and sentencing transcripts).

b. If applicable, prior incarceration documentation (e.g., Incident Report, Rules Violation Report, non-confidential and confidential documentation, classification reports, and prior housing reviews).

c. County jail documentation (e.g., misconduct reports, non-confidential and confidential informational documentation, and housing reviews).

d. Any applicable parole or probation documentation (e.g., STG affiliation report, non-confidential and confidential documents, and violation reports).

e. Any safety related information provided by the requesting inmate.

2. The assigned correctional staff shall document the findings from their evaluation on a Confidential Inmate Safety Closure Report, pursuant to sections 3000 and 3321.

3. The Institution Classification Committee (ICC) shall review the correctional staff's Confidential Inmate Safety Closure Report and make a recommendation of the inmate's Safety Concerns pursuant to subsections 3269.2(b) – (c).

4. The CSR shall either approve or disapprove the Institution Classification Committee recommendation for SNY administrative determinant designation pursuant to subsections 3269.2(b) – (c).

(3) Sensitive Needs Yard

(A) An inmate's SNY designation may be removed. A Confidential Inmate Safety Closure Report, pursuant to sections 3000 and 3321 shall be required before the ICC makes their recommendation. The ICC may recommend removal of an inmate's SNY designation in accordance with either of the following:

1. The inmate requests removal of SNY designation.

2. The ICC determines the inmate's current SNY designation is based on subsection 3269.2(c).

3. The CSR shall either approve or disapprove the ICC recommendation to remove the inmate's SNY administrative determinant designation pursuant to subsections 3269.2(b) – (c).

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: 5054 and 5068

New section 3269.4 is adopted to read:

3269.4 Non-Designated Programming Facility

(a) Non-Designated Programming Facility (NDPF). NDPF houses inmates who demonstrate positive behavior and a willingness to participate in rehabilitative programs and conform to departmental policies, free from Security Threat Group (STG) influence and behavior.

(b) An inmate shall be excluded or removed from NDPF placement in accordance with either of the following criteria:

(1) The inmate was found guilty and assessed a Security Housing Unit (SHU) term pursuant to subsection 3341.9(e) (1) – (3) or (9), or any SHU related offense pursuant to subsection 3341.9(e) with an STG nexus.

(A) An inmate shall be evaluated or re-evaluated for NDPF twelve months after the Minimum Eligible Release Date (MERD), or the date the Institution Classification Committee (ICC) elected to suspend the remainder of the MERD, during the inmate's first annual classification committee review, and annually thereafter.

(2) The inmate was found guilty of a serious Rules Violation Report (RVR) related to documented or referenced STG behavior.

(A) An inmate shall be re-evaluated for NDPF twelve months after the date of the RVR, during the inmate's first annual classification committee review, and annually thereafter.

(c) A classification committee may temporarily exclude or remove an inmate from NDPF for twelve months from the date the projected SHU term expires or the date ICC elected to release the inmate from segregated housing, when the inmate has elected to postpone the disciplinary hearing of a RVR that qualifies as exclusionary criteria as delineated in subsection 3269.4(b)(1).

(d) An ICC may review and approve an inmate to NDPF or return to NDPF at any time during the twelve-month period described within these regulations, when an ICC determines the inmate does not pose an unreasonable threat to the safety and security of the NDPF.

(1) Only the Warden or their designee shall have the discretion to grant the ICC review.

(2) The Warden or their designee's familiarity with the case may result in the decision to review the case or it may be based on the recommendation of institutional staff.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code.