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Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that people in prison often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. The laws 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 this pamphlet 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 law library.

CDCR RESTRICTED HOUSING UNITS (RHUS): RIGHTS REGARDING PLACEMENT AND CONDITIONS

(updated January 2024)

“Administrative segregation” or “Ad Seg” used to be common terms for when prison officials for safety or security reasons removed a person from the general prison population and placed them in a maximum security / minimum privilege housing unit. These units were and sometimes still are called “the hole,” “solitary” or a “prison within a prison.” . California Department of Corrections and Rehabilitation (CDCR) used to have several different types of these units, such as ASUs, SHUs, and PSUs.

However, under new rules that went into effect in November 2023, all maximum custody / minimum privilege units are called Restrictive Housing Units (RHUs). RHUs house people (1) while prison officials decide whether they will be returned to the general population, transferred to another prison, or kept in restrictive housing on a longer-term basis; (2) while serving Determinate RHU Terms as punishment for prison rule violations, or (3) while serving Administrative RHU Terms for being an on-going threat to safety or security. There are ordinary RHUs (called General Population (GP) RHUs) and special RHUs for people who are receiving mental health treatment (called Enhancement Outpatient Treatment (EOP) RHUs and Correctional Clinical Case Management System (CCCMS) RHUs).

This letter is for people with questions about being placed in an RHU, time credits and living conditions in RHUs, and what they can do to challenge an unfair placement or inhumane living conditions.

TABLE OF CONTENTS

RIGHTS REGARDING PLACEMENT AND CONDITIONS	1
REASONS AND PROCESSES FOR RHU PLACEMENTS	3
Reasons for RHU Placement.....	3
Overview of the RHU Placement Process	3
Initial RHU Placement Order	4
Review Within 1 Business Day of RHU Placement.....	4
Classification Hearing Within 10 Days of RHU Placement	6
Transfer to an EOP RHU or CCCMS RHU	7
Further Reviews of On-Going RHU Placement.....	8
Assessment of a Determinate RHU Term	10
Assessment of an Administrative RHU Term	11
GOOD CONDUCT CREDITS IN AN RHU	12
LIVING CONDITIONS IN AN RHU	13
Special Rules for EOP RHUs and CCCMS RHUs.....	16
CONSTITUTIONAL AND STATUTORY RIGHTS RE: RHU PLACEMENT AND LIVING CONDITIONS.....	17
Rights to Due Process Before Placement or Retention in an RHU.....	17
Rights to Humane Living Conditions in an RHU.....	18
CHALLENGING RHU PLACEMENT OR RHU LIVING CONDITIONS	20

REASONS AND PROCESSES FOR RHU PLACEMENTS

Reasons for RHU Placement

You can be placed in an RHU if staff believe that keeping you in the prison general population poses an immediate threat to your own safety or the safety of others; endangers institution security; or jeopardizes an investigation into serious misconduct, criminal activity, or safety concerns.¹

CDCR uses the term Non-Disciplinary Restricted Housing (NDRH) if you are in an RHU for reasons that are not your fault, like a safety concern that is not due to misconduct by you, an investigation of other people's misconduct or criminal activity, if you are a victim of sexual abuse ("a PREA incident", or if you are related to a CDCR staff member. You can also be on NDRH status if you have just finished serving a Determinate RHU Term and are waiting for a transfer to the general population, if there is a lack of appropriate bed space for you, or if you have come back after being out-to-court and you cannot safely be released to the general population.²

Any special circumstances or exceptions to the RHU placement criteria must be referred to and decided by CDCR's Departmental Review Board (DRB).³

CDCR also can assign a person to a Determinate RHU Term as punishment for a rule violation or an Administrative RHU Term for being an on-going threat to safety or security. These types of RHU placements are discussed in separate sections of this letter.

Overview of the RHU Placement Process

As explained in the following sections, when you are first moved to an RHU, you must receive a written explanation of the reason for the placement, a review of the placement within one day by a Captain or other high-ranking custody staff, and a classification hearing within 10 days. If the classification committee keeps you in RHU, the placement must be approved by a headquarters level classification official. You must then get further classification hearing reviews until you are released back to general population. The frequency of those reviews will depend on why you are being kept in the RHU.

¹ Cal. Code Regs., tit. 15, § 3335(a).

² Cal. Code Regs., tit. 15, § 3335(b)(1).

³ Cal. Code Regs., tit. 15, § 3335(g).

Initial RHU Placement Order

A staff member with at least the rank of lieutenant or correctional counselor II can order you moved to an RHU; the only circumstances in which a person of lower rank can make the order is if that person is the highest-ranking official on duty at the time.⁴ The staff member making the order must prepare a Restrictive Housing Unit Placement Notice (RHUPN) with enough information for you to know why you are being moved to an RHU and to prepare a defense to the RHU placement if you wish to do so.⁵ You should be given a copy of the notice when you are moved to the RHU.⁶ If you have limited English, a disability, or other communication difficulty, the person who orders the RHU placement must document what assistance was provided to ensure that you understood the information on the notice form.⁷

Review Within 1 Business Day of RHU Placement

The RHU placement notice must be reviewed by a staff member of at least the rank of captain or CCIII on the first business day after you are moved to the RHU. The reviewer should look at your case factors and the reasons why you were moved to the RHU, and should interview you unless you refuse to be interviewed. The reviewer should offer any assistance or accommodation that is needed to communicate with you. The reviewer then will decide whether to keep you in the RHU, return you to the general population, or move you somewhere else. They can also decide to grant you NDRH status temporarily. The reviewer should document their decision on the RHU placement notice and provide you with a copy.⁸

If the reviewer decides to keep you in the RHU, a staff member of at least the rank of lieutenant or Correctional Counselor III can rescind the placement order and order you released from the RHU at any time up until the Institution Classification Committee (ICC) holds a hearing about your RHU placement.⁹

⁴ Cal. Code Regs., tit. 15, § 3335(c)(2).

⁵ Cal. Code Regs., tit. 15, § 3335(a), (c).

⁶ Cal. Code Regs., tit. 15, § 3335 (c)(3).

⁷ Cal. Code Regs., tit. 15, § 3335(c)(3). If you were in an RHU, and then went out-to-court or out-to-medical, staff are not required to issue an updated placement notice when you return to the RHU unless you have missed your next scheduled ICC hearing or the reasons for your RHU placement have changed. Cal. Code Regs., tit. 15, § 3335(c)(4).

⁸ Cal. Code Regs., tit. 15, § 3336(a)-(b).

⁹ Cal. Code Regs., tit. 15, § 3335(e).

The staff member who reviews your placement also will decide whether to appoint an Investigative Employee (IE) and/or Staff Assistant (SA) for the ICC hearing about your RHU placement.¹⁰ The rules say:

- The reviewer must assign an SA if you are in the Developmentally Disabled Program (DDP) in the Mental Health Services Delivery System (MHSDS), or if the circumstances surrounding your placement involve bizarre or unusual behavior.¹¹ Also, the reviewer shall assign an SA if you can't speak, read, or write English well or if the issues are so complex that it is unlikely you can understand the issues or hearing process.¹² You can refuse to accept the first SA who is assigned to you and have a different SA assigned.¹³ You can refuse to accept the second SA or can entirely waive (give up) your right to an SA, unless you are in the DDP or MHSDS or the reviewer determines that a fair hearing cannot be held without an SA.¹⁴ If you have an SA, they should meet with you at least 24 hours prior to your ICC hearing, inform you about the hearing procedures and your rights, help you prepare for the hearing, and represent your position at the hearing.¹⁵ An SA must keep confidential any information you tell them unless you give permission for the information to be revealed. The exception is that if you tell the SA that you are thinking about committing a crime, the SA must disclose information necessary to protect potential victims or prevent the crime.¹⁶
- The reviewer may assign an IE if you have been placed in RHU for non-disciplinary reasons and you ask for witnesses to be present or for evidence to be considered at your hearing.¹⁷ You may object to the assigned IE prior to the start of the investigation by writing to the RHU reviewer and explaining the reasons for your objection. If the staff

¹⁰ Cal. Code Regs., tit. 15, § 3336(c); Cal. Code Regs., tit. 15, § 3340(a).

¹¹ Cal. Code Regs., tit. 15, § 3344(b)(4); see also *Clark v. California*. (N.D. Cal. Mar. 1, 2002) No. C96-1486FMS, Remedial Plan, § VI.L.2 (SAs required for people in DDP). If you are receiving CCCMS mental health treatment, mental health staff will present information about you at your ICC hearing, and the ICC will decide whether or not you will need an SA for future hearings. Cal. Code Regs., tit. 15, § 3344(b)(4)(A).

¹² Cal. Code Regs., tit. 15, § 3344(b)(1)-(3).

¹³ Cal. Code Regs., tit. 15, § 3344(c).

¹⁴ Cal. Code Regs., tit. 15, § 3344(d).

¹⁵ Cal. Code Regs., tit. 15, § 3344(e)-(f).

¹⁶ Cal. Code Regs., tit. 15, § 3344(e)(6), (8).

¹⁷ Cal. Code Regs., tit. 15, § 3344(h).

member finds your request is reasonable, they will assign a different IE.¹⁸ An IE can interview you to get your statement and questions you want to have the witnesses answer, gather documents, interview witnesses, and write a report prior to the hearing.¹⁹ An IE's job is to assist the ICC, not to represent you, and statements you make to an IE are not confidential.²⁰ If you are in the RHU because of a serious rule violation charge, you will not get an IE for your RHU hearing, but might get an IE for your rule violation hearing.²¹

If you have mobility, seeing, or hearing disabilities, staff should arrange to provide you with any accommodations you need to review the RHU placement notice and prepare for and participate in ICC hearing. The type of accommodation will depend on your disability. Examples include assignment of an SA, an interpreter, or a reader, or providing large print materials or sound amplification devices.²²

Classification Hearing Within 10 Days of RHU Placement

If the reviewer keeps you in the RHU, the Institution Classification Committee (ICC) must hold a hearing within 10 days after you are placed in the RHU.²³ You must be given at least 72 hours to prepare for the hearing, unless you sign a form saying that you are giving up that right.²⁴ You should be given copies of all documents about the reason for your RHU placement at least 24 hours before the hearing, unless you give up that right.²⁵

You have the right to appear at the ICC hearing unless you have a serious mental health disorder that prevents you from understanding or participating in the hearing and there is a need to proceed with the hearing without you, if you were convicted of escape and have not yet been returned to the facility, if you refuse to attend the hearing, or if you sign a written waiver giving up your right to be at the hearing. If you are not at the hearing, a staff member should interview you

¹⁸ Cal. Code Regs., tit. 15, § 3344(k).

¹⁹ Cal. Code Regs., tit. 15, § 3344(l).

²⁰ Cal. Code Regs., tit. 15, § 3344(l)(3), (l)(8).

²¹ Cal. Code Regs., tit. 15, § 3344(h); see also Cal. Code Regs., tit. 15, § 3318 (rules about IEs for disciplinary hearings).

²² *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2037CW, Remedial Plan, § II.E.

²³ Cal. Code Regs., tit. 15, § 3340(a)(1).

²⁴ Cal. Code Regs., tit. 15, § 3340(a)(2); Cal. Code Regs., tit. 15, § 3336(c)(3) (waiver process).

²⁵ Cal. Code Regs., tit. 15, § 3340(a)(3)-(4).

and tell the ICC any relevant information that you provide. If you have been assigned an SA, they must be at the hearing even if you are not personally at the hearing.²⁶

You have rights regarding the use of confidential information at the ICC hearing. Confidential information can be considered only if other documents corroborate the information, or other evidence about the event and reliability of the source satisfies the ICC that the information is true. You should be provided with as much of the information as can be disclosed without identifying the source, as well as the reasons why the information is deemed to be reliable and why further information is not being disclosed to you.²⁷

At the hearing, the ICC shall consider all available information.²⁸ The ICC will then decide whether to return you to the general population or keep you in the RHU due to an on-going safety or security issue, investigation, or rule violation charge.²⁹ If you are kept in the RHU, the ICC will decide whether your status is regular RHU or Non-Disciplinary RH (NDRH).³⁰ These decisions shall be documented on a Classification Committee Chrono that includes an explanation of the information that the ICC relied on and the reasons for the ICC's decision.³¹

If the ICC decides to keep you in the RHU, the decision must be reviewed by a Classification Staff Representative (CSR) within 30 calendar days.³²

Transfer to an EOP RHU or CCCMS RHU

There are special RHUs for people who are receiving mental health treatment. There is one type of unit called EOP RHU for people in the EOP. There is another type of unit called CCCMS RHU for people in CCCMS.³³ If you are an EOP or CCCMS patient and are placed in a regular RHU, you must be transferred to an EOP RHU or CCCMS RHU no later than 30 days after you are

²⁶ Cal. Code Regs., tit. 15, § 3340(a)(5)-(7); Cal. Code Regs., tit. 15, § 3375(f)(3); Cal. Code Regs., tit. 15, § 3320(g).

²⁷ Cal. Code Regs., tit. 15, § 3340(a)(3); Cal. Code Regs., tit. 15, § 3321.

²⁸ Cal. Code Regs., tit. 15, § 3340(b).

²⁹ Cal. Code Regs., tit. 15, § 3335(b)(2).

³⁰ Cal. Code Regs., tit. 15, § 3335(a)(2).

³¹ Cal. Code Regs., tit. 15, § 3340(b).

³² Cal. Code Regs., tit. 15, § 3340(c).

³³ Cal. Code Regs., tit. 15, § 3335.2(a)-(b). Under old CDCR rules, these units were called EOP Ad Seg Hubs, Psychiatric Services Units (PSUs), Short Term Restricted Housing (STRH) or Long Term Restricted Housing (LTRH).

first placed in an RHU. The rules require faster transfers if you are at Calipatria State Prison, Centinela State Prison, Chuckawalla Valley State Prison, or Ironwood State Prison. At those four prisons, you must be transferred with 72 hours if you are already in the EOP or CCCMS when you are first moved into an RHU, and within 14 days if you are assigned to EOP or CCCMS after you are in the RHU. CDCR can make exceptions to all of these transfer requirements when (1) there are medical reasons why you cannot be moved, (2) your refusal to transfer causes a delay, (3) you are sent out to court, or (4) you are in a Mental Health Crisis Bed or higher level of mental health care.³⁴ Also, if you are an EOP or CCCMS patient and you are put on NDRH status due to safety concerns, an investigation, or being a related or associate of a prison staff member, then you must be transferred to an EOP RHU or CCCMS RHU within 72 hours of being classified as NDRH.³⁵

Further Reviews of On-Going RHU Placement

After your first ICC hearing, the ICC must review your RHU placement at least every so often:

ICC Review every 30 days:

- If you are waiting for completion of an investigation into the safety of any person. However, if the issues are complicated, staff can request a 90-day extension of your RHU placement.³⁶

ICC Review every 90 days:

- If you are waiting for: (1) a transfer to general population to be carried out; (2) a hearing on a rule violation charge that may result in a Determinate RHU term and you have not postponed the rule violation hearing pending a referral for criminal prosecution; (3) resolution of a DRB referral for a possible Administrative RHU Term; or (4) action on your request to start the STG debriefing process.³⁷

ICC Review every 180 days:

- If you are facing a rule violation charge that may result in a Determinate RHU Term and you have postponed your rule violation hearing while the matter is being referred for criminal prosecution. However, if you are in the RHU for this reason, you normally

³⁴ Cal. Code Regs., tit. 15, § 3335.2 (EOP RHUs); Cal. Code Regs., tit. 15, § 3335.3 (CCCMS RHUs); Cal. Code Regs., tit. 15, § 3335.4(c) (shorter timelines for transfers from specified prisons).

³⁵ Cal. Code Regs., tit. 15, § 3335(b)(3)(A).

³⁶ Cal. Code Regs., tit. 15, § 3340(c)(4).

³⁷ Cal. Code Regs., tit. 15, § 3340(c)(2)-(3), (5)-(6).

cannot be kept in the RHU longer than any Determinate RHU Term that you could get for the rule violation.³⁸

In some circumstances, staff should refer your case to the ICC for a hearing sooner than the regular review period:

- If you are on NDRH status to due being the victim of sexual abuse (called a Prison Rape Elimination Act or PREA incident), your RHU placement normally should not be for longer than 30 days. If you are kept in RHU longer than that, the custody supervisor should review your case every 30 days to see if there is a continuing need to keep you in the RHU. If there is no longer a need to keep you in RHU, the custody supervisor shall refer your case to the ICC to decide where you will be housed.³⁹
- If you have been in an RHU EOP for more than 90 days, the Facility Captain and Correctional Counselor II must review your case every 30 days to try to resolve any issues that are keeping you in the RHU.⁴⁰
- If you have been waiting for a rule violation hearing or completion of an investigation, ICC should review your RHU placement within 14 calendar days after your RVR hearing or the investigation is completed.⁴¹

If the reason for your RHU placement is resolved, but CDCR staff think that RHU placement is still necessary, they should issue a new RHU placement notice stating the new reason for keeping you in the RHU. You should then get ICC hearings at the time intervals that apply to your new RHU placement.⁴²

Each ICC decision about whether to keep you in an RHU must be reviewed by a CSR.⁴³

CDCR rules do not set any limit on how long you may be kept in an RHU for “administrative segregation” reasons, so long as there is an active RHU placement notice and the ICC periodically reviews your RHU placement. However, the rules say that the ICC should release

³⁸ Cal. Code Regs., tit. 15, § 3340(c)(1).

³⁹ Cal. Code Regs., tit. 15, § 3335(b)(1)(d).

⁴⁰ CDCR, *Mental Health Services Delivery System Program Guide* (2021 rev.), Ch. 7, § H.5.

⁴¹ Cal. Code Regs., tit. 15, § 3340(c)(1), (c)(3)-(c)(4).

⁴² Cal. Code Regs., tit. 15, § 3340(c)(1); Cal. Code Regs., tit. 15, § 3342; Cal. Code Regs., tit. 15, § 3343(c).

⁴³ Cal. Code Regs., tit. 15, § 3340(d); see also

from an RHU at the earliest possible time in keeping with your case factors and the reason for your RHU placement.⁴⁴

Assignments to a Determinate RHU Term as punishment for a rule violation or an Administrative RHU Term for being an on-going severe threat to safety or security are governed by separate rules, which are discussed in the next two sections of this information letter.

Assessment of a Determinate RHU Term

For some types of serious rule violations, ICC can punish you by imposing a Determinate (set-length) RHU Term.⁴⁵ CDCR rules list the types of rule violations that shall be punished by a Determinate RHU Term and the length of the term that can be imposed for each type of violation.⁴⁶ The longest possible term is 24 months, which is for murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-incarcerated person.⁴⁷ The current list of rule violations that can be punished by a term in a maximum custody/ minimum privilege housing unit is much shorter than under CDCR's pre-November 2023 rules, and the maximum lengths of such terms are much shorter. For the types of rule violations that used to be "SHU-able offenses" but that no longer are punishable by Determinate RHU Terms, CDCR intends for hearing officers to place you on Privilege Group C as part of your punishment, which limits your privileges such as phone calls and canteen.⁴⁸

⁴⁴ Cal. Code Regs., tit. 15, § 3343(c).

⁴⁵ Cal. Code Regs., tit. 15, § 3337-§ 3338.

⁴⁶ Cal. Code Regs., tit. 15, § 3337(g).

⁴⁷ Cal. Code Regs., tit. 15, § 3337(g).

⁴⁸ See Cal. Code Regs., tit. 15, § 3044(f)(1)(C), (f)(2); Cal. Code Regs., tit. 15, § 3315(f)(5)(C) (hearing officer can assess 90 days in Privilege Group C as punishment for a serious rule violation). Other situations in which you can be placed in Privilege Group C are if you are facing rule a violation charge for either (1) indecent exposure or (2) sexual disorderly conduct within 12-months of a prior violation for sexually disordered conduct or if you are facing rule violation charges for refusing housing, twice refusing to program, or being deemed a program failure. Cal. Code Regs., tit. 15, § 3044(b)(4), (f)(1)(A)-(B). Note that Privilege Group C is different from "Work Group C," which limits a person to zero credit earning and is only for people who refuse housing or repeatedly refuse to program.

An ICC decision to assess a Determinate RHU Term must be referred for review by a CSR.⁴⁹ The date on which you are expected to finish serving your Determinate RHU term is called the RHU Maximum Release Date (MRD).⁵⁰

If you have more than one RHU term at a time, the terms are served concurrently (simultaneously) and cannot be run consecutively.⁵¹ Likewise, if you get a Determinate RHU Term while you are serving an Administrative SHU Term, the two terms will run concurrently.⁵²

During your Determinate RHU Term, you can earn RHU Programming Credits of 5 days for every 20 hours of programming, not to exceed 25% of your Determinate RHU Term.⁵³ However, RHU Programming Credits do not reduce your sentence (unlike Rehabilitative Achievement Credits, Education Merit Credits, or Milestone Credits), with some exceptions if you are classified as EOP or DDP.⁵⁴

ICC may commute or suspend any portion of a Determinate RHU Term if you no longer pose a threat to safety or security or if medically necessary to provide you with inpatient medical or mental health care. An ICC action to suspend a Determinate RHU Term may require CSR review for placement consideration and/or auditing, but the ICC can exercise discretion to release you to the general population pending CSR review.⁵⁵

Assessment of an Administrative RHU Term

You can be assessed an indeterminate-length Administrative RHU Term if you cannot be housed in general population because:

- ◆ you have just finished a Determinate RHU Term and there is overwhelming evidence that you pose an immediate and on-going threat to safety or security, or
- ◆ you have had three or more RHU (or SHU) terms within the past five years and there is substantial justification for keeping you in RHU because you pose an on-going threat to safety or security, or

⁴⁹ Cal. Code Regs., tit. 15, § 3337(f).

⁵⁰ Cal. Code Regs., tit. 15, § 3337(h).

⁵¹ Cal. Code Regs., tit. 15, § 3337(b)(2).

⁵² Cal. Code Regs., tit. 15, § 3337(d).

⁵³ Cal. Code Regs., tit. 15, § 3345.

⁵⁴ Cal. Code Regs., tit. 15, § 3345(b)(2); Cal. Code Regs., tit. 15, § 3043.3(f)(2) (exceptions).

⁵⁵ Cal. Code Regs., tit. 15, § 3338(a)(1).

- ◆ you are currently serving an Administrative RHU Term, and keeping you in RHU is necessary due to overwhelming evidence that you pose an immediate threat to safety or security or that you have a disciplinary history of three or more RHU terms within the past five years.⁵⁶

Only CDCR's Departmental Review Board (DRB) can impose an Administrative RHU Term.⁵⁷ If you receive an Administrative RHU Term, the ICC must review your placement at least every 180 days to consider releasing you from the RHU. If the ICC keeps you in RHU, the DRB must then review your case every year to consider the availability of alternative housing, evidence of behavioral change, and your willingness to comply with CDCR rules. If the DRB decides to keep you in Administrative RHU, it must explain its reasons.⁵⁸

The ICC can end your Administrative RHU Term when medically necessary to provide you with inpatient medical or mental health treatment.⁵⁹ ICC also shall refer your case to the DRB for review at any time if ICC decides that you no longer pose a threat to safety or security.⁶⁰

GOOD CONDUCT CREDITS IN AN RHU

Your eligibility to earn sentence-reducing good conduct credits while you are in an RHU depends on why you are in the RHU. This section explains the common situations.

In most situations, you will be placed in Work Group D-1 while you are in RHU, which means you will still earn your regular good conduct credits, except that you cannot earn the increased credits that apply to most people who are in Work Group F (fire camp) or Work Group M (Minimum Custody).⁶¹ There are a few exceptions to this general rule:

- If you are placed in an RHU on NDRH status, and you were in Work Group F or Work Group M before you went to the RHU, then you will continue to earn your Work Group F or Work Group M good conduct credits.⁶² You will get retroactive Work Group F or Work Group M good conduct credits if you were in one of those groups, then were

⁵⁶ Cal. Code Regs., tit. 15, § 3339.

⁵⁷ Cal. Code Regs., tit. 15, § 3339.

⁵⁸ Cal. Code Regs., tit. 15, § 3341(b).

⁵⁹ Cal. Code Regs., tit. 15, § 3338(b)(1).

⁶⁰ Cal. Code Regs., tit. 15, § 3338(b)(2).

⁶¹ Cal. Code Regs., tit. 15, § 3044(b)(5); see also Cal. Code Regs., tit. 15, 3043.2 (good conduct credit rates).

⁶² Cal. Code Regs., tit. 15, § 3044(b)(7)(D) (b)(8)(E); Cal. Code Regs., tit. 15, § 3335(b)(4).

placed in RHU pending a rule violation hearing, but later were found not guilty of the rule violation charge.⁶³

- You will be in Work Group D-2, which means you will earn zero good conduct credits, for a period of time while you are serving a Determinate RHU Term. For most types of rules violations, the period you will be on D-2 status is whatever is less: the number of credits that were forfeited for the rule violation or 180 days. For a Division A-1 rule violation that resulted in serious bodily injury on a non-incarcerated person, the period you will be on D-2 status is whatever is less: the number of credits forfeited for your rule violation or 360 days. D-2 status also will end if you reach your RHU MRD or the ICC suspends the remainder of your RHU Term. If the rule violation finding of guilt is later overturned, you should get retroactive credits for the period you were on D-2 status.⁶⁴
- You will be in Work Group D-2, earning zero credits, if you are deemed to be a program failure because you refuse to accept or perform program or work assignment while you are in the RHU. The period you will be on D-2 status is whatever is less: the number of credits that were forfeited for your program-related rule violation(s) or 180 days.⁶⁵

LIVING CONDITIONS IN AN RHU

When you are placed in an RHU, the staff member who orders your placement should prepare a CDCR Form 114-A1 Inmate Restricted Housing Profile, with information about your mental health or disability issues, history of rule violations, safety concerns, enemies, and yard status.⁶⁶

When you are in an RHU, you will spend most of your time in a cell, usually double-celled with another person. However, CDCR rules state that you have rights to some basic living conditions:

- out-of-cell time for a total of 20 hours a week, unless that would endanger security and safety; the 20 hours must include exercise periods at least three days a week for not less than a total of 10 hours, with the remaining time being additional exercise periods, individual or group programs, and/or rehabilitative programs;⁶⁷

⁶³ Cal. Code Regs., tit. 15, § 3044(b)(7)(E), (b)(8)(F).

⁶⁴ Cal. Code Regs., tit. 15, § 3044(b)(6)(A)-(B), (D).

⁶⁵ Cal. Code Regs., tit. 15, § 3044(b)(6)(C).

⁶⁶ Cal. Code Regs., tit. 15, § 3335(d).

⁶⁷ Cal. Code Regs., tit. 15, § 3348(i).

- the same visiting opportunities as people in general population, except no contact visits;⁶⁸
- telephone access consistent with your privilege group;⁶⁹
- sending and receiving mail with no special limitations.⁷⁰
- the same meals as people in general population, except that a sandwich meal may be served for lunch;⁷¹
- access to showers and shaving at least three times a week and access to clean clothing and linens as often as people in general population.⁷²
- possession of some reading materials and regular access to library and law library materials;⁷³ a paging system (where you have to request that books be brought to your cell) may be used only in “extraordinary circumstances” such as during a lockdown, when your movement is restricted due to a medical condition, or when your physical access to the library is suspended pending investigation or as punishment for a serious rule violation;⁷⁴
- participation in programs and services as can be reasonably provided without endangering security or safety including education, commissary, library services, social services, counseling, religious guidance, and recreation;⁷⁵
- limited access to personal, religious, and legal property;⁷⁶ (you may have to send home or donate some of your items);
- daily review by custody and medical staff, and access to program staff upon request, as well as immediate referral for evaluation if you are in medical or mental health distress;⁷⁷

⁶⁸ Cal. Code Regs., tit. 15, § 3348(g).

⁶⁹ Cal. Code Regs., tit. 15, § 3348(k); Cal. Code Regs., tit. 15, § 3044(c)(6)(A), (g).

⁷⁰ Cal. Code Regs., tit. 15, § 3348(f).

⁷¹ Cal. Code Regs., tit. 15, § 3348(e).

⁷² Cal. Code Regs., tit. 15, § 3348(h).

⁷³ Cal. Code Regs., tit. 15, § 3348(j); Cal. Code Regs., tit. 15, §§ 3122-§ 3124.

⁷⁴ Cal. Code Regs., tit. 15, § 3123(c)-(f).

⁷⁵ Cal. Code Regs., tit. 15, § 3348(i).

⁷⁶ Cal. Code Regs., tit. 15, § 3190; Inmate Property: Matrix-Authorized Personal Property Schedule (11/23); Transgender Inmates Authorized Personal Property Schedule (11/23); Religious Personal Property Matrix (11/23).

⁷⁷ Cal. Code Regs., tit. 15, § 3348(m)-(n).

- reasonable accommodations and necessary health care appliances if you have a disability;⁷⁸
- screening by mental health staff to determine your mental health needs, daily monitoring by mental health staff, and appropriate mental health treatment;⁷⁹
- necessary medical and dental treatment.

CDCR rules describe the “Privilege Groups” for people in RHUs. Your privilege group depends on why you are in RHU:

- If you are on Non-Disciplinary Restricted Housing (NDRH) status, you will stay in the same privilege group you were in before you went to the RHU.⁸⁰ There also is a special Non-Disciplinary Restricted Housing (NDRH) Personal Property Matrix that allows you to have more personal property than other people in an RHU.⁸¹ However, you still will be subject to the basic limits on communication and movement that apply to everyone in an RHU, including access to only non-contact visits, as described above in this section.⁸²
- If you are on regular RHU status awaiting resolution of a safety or security issue, investigation, or rule violation charge (what used to be called “ad seg”) or if you are serving a Determinate RHU Term, you will be in Privilege Group D. You are limited to no family visits, 25% of the maximum monthly canteen draw, one package of up to 30 pounds per year after the first year in RHU, one personal telephone access per week, no kiosk access, and a tablet with restricted calling capabilities and paid services.⁸³ You will be allowed less personal property than if you were in general population. However, CDCR’s new property matrix allows all people in RHUs to have significantly more property than used to be allowed in ASUs under past rules.⁸⁴
- If you are serving an Administrative RHU Term, you will be in Privilege Group AS. You are limited to no family visits, 25% to 75% of the maximum monthly canteen draw (as

⁷⁸ *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2037CW, Remedial Plan; *Clark v. California*. (N.D. Cal. Mar. 1, 2002) No. C96-1486FMS, Remedial Plan.

⁷⁹ CDCR, *Mental Health Services Delivery System Program Guide* (2021 rev.), Ch. 7.

⁸⁰ Cal. Code Regs., tit. 15, § 3044(c)(6)(A).

⁸¹ Cal. Code Regs., tit. 15, § 3190(d); NDRH Personal Property Matrix (11/23).

⁸² 5 CCR § 3044(i).

⁸³ Cal. Code Regs., tit. 15, § 3044(g).

⁸⁴ Cal. Code Regs., tit. 15, § 3190; Inmate Property: Matrix-Authorized Personal Property Schedule (11/23); Transgender Inmates Authorized Personal Property Schedule (11/23); Religious Personal Property Matrix (11/23).

designated by the ICC), one package of up to 30 pounds per year after the first year in RHU, one personal telephone access per week, no kiosk access, and a tablet with restricted calling capabilities and paid services.⁸⁵ You will be allowed the same personal property as people who are on regular RHU status or who are serving Determinate SHU terms.⁸⁶

Prison staff must keep a record documenting your out-of-cell time, any unusual behavior, and other activities such as exercise, showers, and receipt of hygiene supplies or clean clothing.⁸⁷ Staff also must document if you are deprived of any usually authorized item or activity and the reason for that deprivation.⁸⁸ In addition, custodial and casework staff must review your case at least once a week during your first two months in RHU and document and significant information.⁸⁹ Reviews should include a psychological assessment of your mental health, and if there is any indication of a psychological problem, you should be referred to a mental health professional for an evaluation and recommendations.⁹⁰

Special Rules for EOP RHUs and CCCMS RHUs

There are some special rules regarding EOP RHUs and CCCMS RHUs. In an EOP RHU, you should have mental health services and at least 10 hours per week of structured therapeutic activities.⁹¹ You should not be strip-searched when leaving or returning to your cell for activities within the unit, and any strip-searches that do take place must be done in a setting with privacy.⁹² Before staff apply controlled use of force in an EOP RHU, there must be a cool down period during which a mental health staff member will try to resolve the problem and evaluate your mental state, and staff cannot use chemical agents (like pepper spray) unless granted special approval by the

⁸⁵ Cal. Code Regs., tit. 15, § 3044(g).

⁸⁶ Cal. Code Regs., tit. 15, § 3190; Inmate Property: Matrix-Authorized Personal Property Schedule (11/23); Transgender Inmates Authorized Personal Property Schedule (11/23); Religious Personal Property Matrix (11/23).

⁸⁷ Cal. Code Regs., tit. 15, § 3349.

⁸⁸ Cal. Code Regs., tit. 15, § 3348(c).

⁸⁹ Cal. Code Regs., tit. 15, § 3347(a).

⁹⁰ Cal. Code Regs., tit. 15, § 3347(b).

⁹¹ CDCR, *Mental Health Services Delivery System Program Guide* (2021 rev.), Ch. 7, § H.6. The MHSDS Program Guide is on the California Correctional Health Services website at <https://cchcs.ca.gov/policies/>. The *Mental Health Services Delivery System Program Guide* has not yet been updated to use the new CDCR terminology for EOP RHUs and CCCMS RHUs.

⁹² DOM § 52050.16.6. The DOM has not yet been updated to use the new CDCR terminology for EOP RHUs and CCCMS RHUs.

Warden, Chief Deputy Warden, or Administrative Officer of the Day.⁹³ In a CCCMS RHU, your out-of-cell time should include at least 1.5 hours of structured therapeutic activity per week. You also should be offered in-cell activities, and should see your mental health clinician once per week. You can have a personal radio or television and CDCR may provide a radio or TV.⁹⁴

CONSTITUTIONAL AND STATUTORY RIGHTS RE: RHU PLACEMENT AND LIVING CONDITIONS

Rights to Due Process Before Placement or Retention in an RHU

The Fourteenth Amendment to the United States Constitution states that people shall not be deprived of liberty without due process of law. However, the U.S. Supreme Court has held that the Fourteenth Amendment itself does not require any due process protections before a person is placed or kept in segregation, because people “should reasonably anticipate receiving [a segregation placement] at some point in their incarceration.” Nonetheless, when there is (1) state law or policies establish an expectation of remaining free from segregation *and* (2) segregation imposes an “atypical and significant hardship” compared to ordinary prison life, there arises a liberty interest that is protected by the federal constitution’s due process clause. Facts that are relevant to whether segregation is an “atypical and significant hardship” include whether the segregation is likely to postpone the person’s release date, how long the segregation lasts, and how harsh the living conditions are in the segregation unit.⁹⁵

In a case involving people in Ohio prisons who were on open-ended “supermax” segregation placements for disciplinary violations and gang activities, the U.S. Supreme Court found there was a protected liberty interest in avoiding such segregation. The Court then balanced three factors in deciding whether Ohio’s policies provided enough due process: (1) the significance of the people’s interest in remaining out of segregation, (2) the risk that someone might erroneously be

⁹³ DOM § 51020.15.3.

⁹⁴ CDCR, *Mental Health Services Delivery System Program Guide* (2021 rev.), Appendix C: 16-0208 Policy, 16-0204 Memorandum, 15-0115 Memorandum, 16-0303 Memorandum.

⁹⁵ *Sandin v. Conner* (1995) 515 U.S. 472, 483-487 [115 S.Ct. 2293; 132 L.Ed.2d 418]; see *Resnick v. Hayes* (9th Cir. 2000) 213 F.3d 443 (no due process violation where person in federal prison 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 for 21-day placement in Oregon administrative segregation pending disciplinary hearing); but see *Serrano v. Francis* (9th Cir. 2003) 345 F.3d 1071 (placing wheelchair-reliant person in non-accessible segregation cell without wheelchair for two months was atypical and significant hardship).

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 procedures. Applying these factors, the Court found that Ohio had adequate policies of giving notice of the reason for the placement, holding a hearing, allowing the person to present information or objections, and reviewing the placement after the first 30 days and then every year.⁹⁶

The due process clause of the California Constitution, article I, sections 7 and 15 protects people from arbitrary governmental action. California courts may apply this state due process right more broadly than the federal constitutional due process right,⁹⁷ although so far this has not been done in a case involving ASU placement.

Federal and California courts have found that due process is violated if there is not “some evidence” to justify keeping person in segregation beyond a short initial period.⁹⁸

Rights to Humane Living Conditions in an RHU

The U.S. Constitution’s Eighth Amendment ban on cruel and unusual punishment requires that prison living conditions meet basic human needs. So long as such needs are met, confinement in an RHU – even for a lengthy period of time – does not constitute cruel and unusual punishment.⁹⁹

⁹⁶ *Wilkinson v. Austin* (2005) 545 U.S. 209, 224-230 [125 S.Ct. 2384; 162 L.Ed.2d 174].

⁹⁷ See *People v. Ramos* (1984) 37 Cal.3d 136, 152 [207 Cal.Rptr. 800] (California due process rights are not necessarily limited to same scope as federal due process rights); *People v. Ramirez* (1979) 25 Cal.3d 260, 265-268 [158 Cal.Rptr. 316] (state due process requires certain procedures when deciding whether to exclude someone from civil drug treatment); *In re Rosekenkrantz* (2002) 29 Cal.4th 616, 655 [128 Cal.Rptr.2d 104] (California right to due process requires that parole suitability denials or reversals be supported by some evidence).

⁹⁸ Cases applying this standard include *In re Hutchinson* (1972) 23 Cal.App.3d 337, 341 [100 Cal.Rptr. 124]; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1105-1106; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703; *Jones v. Moran* (N.D. Cal. 1995) 900 F.Supp. 1267, 1275; *Burnsworth v. Gunderson* (9th Cir. 1999) 179 F.3d 771, 774-775; *In re Furnace* (2010) 185 Cal.App.4th 649 [110 Cal.Rptr.3d 820]; *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]; *In re Alvarez* (2013) 222 Cal.App.4th 1064 [166 Cal.Rptr.3d 271]; *Castro v. Terhune* (9th Cir. 2013) 712 F.3d 1304.

⁹⁹ See *Hewitt v. Helms* (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675]; *Toussaint v. McCarthy* (N.D. Cal. 1984) 597 F.Supp. 1388, aff’d in part, rev’d in part, and remanded, (9th Cir. 1986) 801 F.2d 1080; see also *LeMaire v. Maass* (9th Cir. 1993) 12 F.3d 1444 (upholding severe restrictions to control a disruptive person in Oregon’s segregation unit); *Anderson v. County of Kern* (9th Cir. 1995) 45

Court decisions over the last 50 years have addressed various issues about living conditions in California's maximum security / minimum privilege housing units. Courts have held that humane living conditions in these units must include:

- “essentials for survival” such as food, water, hygiene supplies, access to toilets and showers, sanitary conditions, appropriate clothing, reasonable noise levels and lighting levels, and adequate plumbing, heating, and fire safety;¹⁰⁰
- minimum amounts of exercise, programming, and out-of-cell time;¹⁰¹
- reasonable access to a law library or to assistance from persons trained in the law;¹⁰²
- being free from excessive use of force and other abuse by correctional officers;¹⁰³
- visual, environmental, and social stimulation for people who are mentally ill, developmentally disabled, or otherwise particularly vulnerable to mental health problems.¹⁰⁴

In addition, people in RHUs have the same general constitutional, statutory, and regulatory rights as other incarcerated people, though some of those rights may be limited when prison officials have a reasonable justification for doing so.¹⁰⁵ For example, the federal Americans with Disabilities Act (ADA) requires prison officials to provide reasonable accommodations so that incarcerated

F.3d 1310 (short-term use of strip cells and lack of group exercise did not violate the Eighth Amendment).

¹⁰⁰ *Jordan v. Fitzharris* (N.D. Cal. 1966) 257 F.Supp. 674, 682-683; *Toussaint v. Rusben* (N.D. Cal. 1983) 553 F.Supp. 1365, aff'd in part, *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Toussaint v. McCarthy* (N.D. Cal. 1984) 597 F.Supp. 1388, 1401-1402, 1412, 1424, aff'd in part and rev'd in part, (9th Cir. 1986) 801 F.2d 1080; *Wright v. Rusben* (9th Cir. 1987) 642 F.2d 1129; *Toussaint v. Rowland* (N.D. Cal. 1989) 711 F.Supp. 536; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800.

¹⁰¹ *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Toussaint v. McCarthy* (N.D. Cal. 1984) 597 F.Supp. 1388, 1401-1402, 1412, 1424, aff'd in part and rev'd in part, (9th Cir. 1986) 801 F.2d 1080; *Allen v. Sakai* (9th Cir. 1994) 48 F.3d 1082, 1087; *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190; *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190; *Spain v. Procnier* (N.D. Cal. 1976) 408 F.Supp. 534, affirmed at (9th Cir. 1979) 600 F.2d 189; but see *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1106-1110, 1113-1114 (no federal constitutional rights to contact visits or work programs).

¹⁰² *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1106-1110, 1113-1114.

¹⁰³ *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1128-1130, 1265-1267.

¹⁰⁴ *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1128-1130, 1265-1267.

¹⁰⁵ See, e.g., *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1113-1114 (upholding non-contact visiting restriction for people in segregation).

people with disabilities can access services and participate in programming.¹⁰⁶ If you have questions about the ADA, please write to us.

CHALLENGING RHU PLACEMENT OR RHU LIVING CONDITIONS

If you think your rights have been violated and you want to challenge your placement in an RHU or poor living conditions in the RHU, you should file an administrative grievance, such as a CDCR Form 602-1 (for most types of issues), CDCR Form 1824 (for disability accommodation issues), or CDCR Form 602-HC (for health care issues.) If your grievance is denied, you should file an administrative appeal (CDCR 602-1 or CDCR HC).

If you are not satisfied with the response to your administrative grievance and appeal *and* your problem is about poor health care or mental health care or lack of accommodations for your disability, you can send a letter and a copy of your administrative grievance/appeal and responses to Prison Law Office, General Delivery, San Quentin, CA 94964. Attorneys at the office will review your letter and decide whether there is anything we can do to assist you as part of our work on class action cases.

If you do not get a satisfactory response to your administrative grievance and appeal, you can consider filing a state court petition for writ of habeas corpus, a federal civil rights (“§ 1983”) lawsuit, or a state tort lawsuit. Choosing the right type of action and where to file it can be complicated, and will depend on factors like (1) whether the law that you want to enforce is a state regulation or a federal constitutional or ADA right; (2) whether you want the court to order prison officials to do something (like send you back to the general prison population or provide you with clean living conditions) or to pay you money damages, or both; and (3) which type of lawsuit is easier to file and litigate.

You can write to Prison Law Office, General Delivery, San Quentin, CA 94964 to request free manuals that explain how to file administrative grievances and appeals, state habeas petitions, and lawsuits for money damages, and with information on many other topics. The information manuals are also available for free under the Resources tab at www.prisonlaw.com.

There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at www.prisonlaw.com. As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.

¹⁰⁶ 42 USC § 12101 et seq.; *Pennsylvania Dept. of Corrections v. Yeskey* (2009) 524 U.S. 206; 118 S.Ct. 1952; 141 L.Ed.2d 215].