



PRISON LAW OFFICE

General Delivery, San Quentin CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Susan Christian
Rebekah Evenson
Steven Fama
Penny Godbold
Megan Hagler
Alison Hardy
Kelly Knapp
Millard Murphy
Zoe Schonfeld
Lynn Wu

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

THE RIGHTS OF PRISONERS IN ADMINISTRATIVE SEGREGATION

(updated 06/2010)

“Segregation” is the term used to describe a highly restrictive form of custody where a prisoner is separated from the general prison population and placed in a “prison within a prison.” Prisoners who are segregated for disciplinary or for administrative safety and security reasons generally are housed in high-security units (usually an Administrative Segregation Unit (ASU) or Security Housing Unit (SHU)), where they spend about 22 hours each day in a cell (usually with a cellmate), with no work or program opportunities and with out-of-cell time limited to constitutional necessities such as exercise, showers, and medical care.

Following is a discussion of the federal and state law and CDCR regulations governing due process requirements for placement and retention in segregation, as well as the minimum conditions that must be provided in segregation units.

Federal and State Constitutional Law Regarding Segregation Placement

The Fourteenth Amendment to the United States Constitution guarantees that people shall not be deprived of liberty without due process of law. Over the years, prisoners have brought legal challenges asserting that the right to due process should protect them from placement in segregation without notice, a hearing, and reasons supported by good evidence. However, under current interpretations of the law, there are few situations in which prisoners will be successful in arguing that their constitutional due process rights have been violated by placement in segregation.

The U.S. Supreme Court has held that prisoners have no independent federal constitutional due process liberty interest in remaining free from segregation because it is a type of confinement that prisoners “should reasonably anticipate receiving at some point in their incarceration.” Therefore, the

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Honorable John Burton • Felecia Gaston • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

U.S. Constitution itself does not require any due process protections before placing or keeping a person in segregation.¹

Even though a prisoner has no independent federal liberty interest in remaining free from segregation, state laws that establish an expectation in remaining free from segregation can create a liberty interest protected by the federal due process clause. However, in Sandin v. Conner, the U.S. Supreme Court held that state laws do not create a federal due process liberty interest unless the segregation imposes an “atypical and significant hardship” in relation to ordinary prison life.² The Court found that the 30-day disciplinary segregation in the Sandin case was not an atypical and significant deprivation that would trigger due process protections, and left open the question of what circumstances could constitute atypical and significant deprivations. The Court noted that relevant facts might include whether the segregation is likely to post-pone the release date, the length of the segregation, and the conditions in which the prisoner is housed.³

In a more recent case, Wilkinson v. Austin, the Court found that open-ended “supermax” placement for certain types of offenses and gang activities constituted an “atypical and significant hardship;” thus, the Ohio prisoners who brought the case had a liberty interest in being free from such placement and a right to due process protections.⁴ The Court evaluated the adequacy of the state’s procedures by balancing three factors: (1) the significance of the prisoner’s interest in remaining free from segregation, (2) the risk that a prisoner might erroneously be placed or retained in segregation, and the probable value of additional or substitute procedural safeguards, and (3) the monetary or administrative burdens that would result from additional or substitute procedural requirements.⁵ The Court upheld as sufficient Ohio’s policies for giving notice of the reason for supermax placement, holding a classification hearing, allowing the prisoner to offer information or objections opposing the placement, and reviewing the placement after the first 30-days and then annually. The Court held that due process did not require prison officials to provide notice of all the evidence to be relied on, allow the prisoner to present witnesses, prepare a detailed statement of reasons for the decision, or notify the

¹ Hewitt v. Helms (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675] (rejecting claim that prisoners facing placement in segregation should be entitled to the same procedural protections as prisoners facing disciplinary credit losses).

² Sandin v. Conner (1995) 515 U.S. 472, 483 [115 S.Ct. 2293; 132 L.Ed.2d 418]. Sandin overruled the portion of Hewitt v. Helms (1983) 459 U.S. 460, 468 [103 S.Ct. 864; 74 L.Ed.2d 675] that had held that state laws regulating segregation placement created due process liberty interests if they set forth mandatory requirements. Examples of pre-Sandin cases applying the now-obsolete Hewitt analysis include Madrid v. Gomez (N.D. Cal.1995) 889 F.Supp. 1146, 1271-72), Smith v. Noonan (9th Cir. 1993) 992 F.2d 987, 989 and Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1098.

³ Sandin v. Conner (1995) 515 U.S. at pp. 483-485 [115 S.Ct. 2293, 2299; 132 L.Ed.2d 418]; see also Jackson v. Carey (9th Cir. 2003) 353 F.3d 750 (allowing California prisoner who was transferred to SHU for a one-year disciplinary term to proceed with a claim that his due process rights had been violated, remanding the case for further hearings as to whether SHU placement was an “atypical and significant hardship;” Keenan v. Hall (9th Cir. 1996) 83 F.3d 1083, 1088 (remanding Oregon case for findings on whether segregation in an “Intensive Management Unit” imposed an atypical and significant hardship).

⁴ Wilkinson v. Austin (2005) 545 U.S. 209, 223-224 [125 S.Ct. 2384; 162 L.Ed.2d 174]; see also Serrano v. Francis (9th Cir. 2003) 345 F.3d 1071 (holding that placing a wheelchair-reliant prisoner in a non-accessible SHU cell without his wheelchair for two months imposed an atypical and significant hardship).

⁵ Wilkinson v. Austin (2005) 545 U.S. 209, 224-230 [125 S.Ct. 2384; 162 L.Ed.2d 174].

prisoner about what conduct would be necessary to move to a lower security level.⁶ Under Wilkinson's analysis, the CDCR regulations governing segregation placement and retention, if followed, most likely provide sufficient due process protections.⁷

The U.S. Constitution also requires that there be "some evidence" to support a decision to place a prisoner in segregation for more than an initial short period.⁸ This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced." In reviewing whether there is "some evidence," a court is not to make its own assessment of the credibility of witnesses or re-weigh the evidence.⁹ The "some evidence" standard gives great deference to the prison administrators because it means that a court will not reverse a decision to segregate unless there is no reliable evidence to support the decision. Nonetheless, there have been cases where courts have overturned segregation orders due to a lack of "some evidence."¹⁰

There are special due process concerns where a statement of a confidential informant is used to place a prisoner in segregation. The use of confidential information carries great risks because of the possibility of untruthfulness and the lack of opportunity to challenge the informant's reliability. Due process does not prohibit use of confidential information, but it does require that the record contain a statement that safety considerations prevent disclosure of the informant's identity and a summary of facts supporting a reasonable conclusion that the informant is reliable.¹¹ CDCR rules also require that

⁶ Id. at pp. 219-221, 228-229.

⁷ See, e.g., Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146, 1278 (finding CDCR's procedures for indeterminate SHU placement were lawful, except for failure to prevent future reliance on previously-rejected gang validation evidence); Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800, 803 (review of CDCR indeterminate SHU confinement every 120 days per regulations then in effect was sufficient and no violation in using results of polygraph exam to support segregation placement); Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1105-1106 (due process required only that prison officials give the prisoner notice of the charges, hold an informal non-adversary hearing within reasonable time after placement in segregation, and provide the prisoner an opportunity to present his views; also, review of segregation should be conducted more frequently than annually); Jones v. Moran (N.D. Cal. 1995) 900 F.Supp. 1267, 1275 (CDCR procedures for retention in SHU after the expiration of a determinate SHU term provide sufficient due process). See also, Resnick v. Hayes (9th Cir. 2000) 213 F.3d 443 (no due process violation where federal prisoner 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 from 21-day placement in Oregon administrative segregation pending disciplinary hearing).

⁸ Burnsworth v. Gunderson (9th Cir. 1999) 179 F.3d 771, 774-775); Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1105-1106; Jones v. Moran (N.D. Cal. 1995) 900 F.Supp. 1267, 1275; Cato v. Rushen (9th Cir. 1987) 824 F.2d 703.

⁹ Superintendent v. Hill (1985) 472 U.S. 445 [105 S.Ct. 276; 86 L.Ed.2d 356].

¹⁰ See In re Hutchinson (1972) 23 Cal.App.3d 337, 341 [100 Cal.Rptr. 124] (ordering prisoner returned to general population where administrative segregation initially justified but continued retention not supported by any evidence); Cato v. Rushen (9th Cir. 1987) 824 F.2d 703 and Burnsworth v. Gunderson (9th Cir. 1999) 179 F.3d 771, 774-775 (two cases in which disciplinary segregation overturned due to lack of some evidence); but see In re Furnace (June 11, 2010) ___ Cal.App.4th ___ [___ Cal.Rptr.3d __; 2010 WL 2338927] (some evidence to support segregation as gang associate).

¹¹ Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183; In re Jackson (1987) 43 Cal.3d 501 [233 Cal.Rptr. 911]; see also In re Estrada (1996) 47 Cal.App.4th 1688 [55 Cal.Rptr.2d 506] (upholding notice and use of confidential information); 15 CCR § 3321.

other documentation corroborate the information or that the circumstances surrounding the event and informant's reliability satisfy the decision-maker that the information is true.¹² Courts are deferential when reviewing prison officials' determinations on such matters.¹³

Finally, the due process clause of the California Constitution, article I, sections 7 and 15 can be interpreted by state courts as requiring more protections than the federal Constitution.¹⁴ Thus, prisoners may be able to argue that the state constitution requires procedural protections which are not required by federal law, such as the right to an investigative employee in certain circumstances, a conditional right to call witnesses, and a written decision regarding the segregation placement.

CDCR Rules – Reasons for Segregation Placement

Under CDCR regulations, a prisoner may be placed or retained in segregation when:

- (1) the prisoner's presence in the general population would present a threat to the safety of the inmate or others, endanger institution security, or jeopardize the integrity of an investigation into serious misconduct or criminal activity;
- (2) the prisoner has been found guilty of a serious rule violation and a determinate term of confinement in segregation has been established; or
- (3) the prisoner asks to be placed in segregation.¹⁵

These criteria make clear that a prisoner does not have to be found guilty of, or even charged with, a serious rule violation to be placed in segregation. At least initially, segregation may be ordered simply because prison officials need to investigate a matter that could threaten safety. Even rumors can be sufficient to justify the initial placement of a prisoner in temporary segregation, although a lengthy placement would have to be based on reliable facts constituting "some evidence."¹⁶

¹² 15 CCR § 3321(b)(1); see Cato v. Rushen (9th Cir. 1987) 824 F.2d 703 (reversing disciplinary finding of guilt when the only information to support the finding was statement of an unidentified source who was told by someone else that the accused prisoner was involved in the misconduct).

¹³ Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183 (informant reliable because he was an eyewitness to the rule violation, had previously provided accurate information, had passed a polygraph, and his report was corroborated by other information). A prisoner who wants to challenge the reliability of confidential information should request that the court undertake an in camera (private) review of the information. See Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183, 196-187 and fn. 1 (prisoner failed to request in camera review).

¹⁴ See People v. Ramos (1984) 37 Cal.3d 136, 152 [207 Cal.Rptr. 800]; People v. Ramirez (1979) 25 Cal.3d 260 [158 Cal.Rptr. 316].

¹⁵ See 15 CCR §§ 3335(a) and 3341.5(c)(1) and (c)(3)(C).

¹⁶ See Cato v. Rushen (9th Cir. 1987) 824 F.2d 703, 705.

CDCR Rules – Procedures for Administrative (Temporary) Segregation

Nearly every CDCR prison has an ASU in which to house prisoners who have been removed from the general population and are awaiting decisions as to whether they will be returned to the general population, transferred to another facility, or assigned to a SHU or other long-term segregation unit.

An order to remove a prisoner from the general population must be made by an official with the rank of lieutenant or above, except when a lower-level staff member is the highest-ranking official on duty.¹⁷ The order and reasons for placement in segregation must be documented on a CDCR Form 114-D Administrative Segregation Unit Placement Notice, and the prisoner is entitled to receive a copy of that form no later than 48 hours after placement in segregation.¹⁸ The CDCR 114-D will be reviewed by a staff person at no lower level than correctional captain on the first work day following placement in segregation.¹⁹ This initial placement in segregation is called “administrative” or “temporary” segregation.²⁰

A prisoner is entitled to personally appear at a hearing on the segregation placement order before an Institutional Classification Committee (ICC) – which may consist of a single hearing officer – after 72 hours but no later than 10 days following placement in segregation.²¹ A prisoner is entitled to receive assistance at the hearing from an Investigative Employee (IE) or Staff Assistant (SA) if the prisoner is illiterate or non-English-speaking, the issues are complicated, the prisoner wishes to call witnesses or submit documentary evidence, or the prisoner’s need for assistance will require a confidential relationship.²² A prisoner has the right to refuse the first staff member assigned to assist.²³ A prisoner also has the right to request witnesses (the request must be made in writing) and to present

¹⁷ 15 CCR § 3336.

¹⁸ 15 CCR § 3336(a) and (d).

¹⁹ 15 CCR § 3337.

²⁰ 15 CCR § 3335(a) and (b).

²¹ See 15 CCR §§ 3335(c), 3337(c), and 3338(b)-(c). A hearing need not be held if the segregation order is withdrawn and the prisoner returned to the general population before 10 days elapse. 15 CCR §§ 3338(a)(1). The hearing may be delayed longer than 10 days if there is a state of emergency, but then must be held as soon as it is safe and practical to do so. 15 CCR §§ 3338(a)(4). Also the initial hearing need not be held within 10 days if, in the meantime, the prisoner is provided with a disciplinary hearing and referred for post-disciplinary classification review. 15 CCR §§ 3338(a)(2) and (3); see also 3315(g) and 3339(b).

²² See 15 CCR §§ 3336(b), 3337(a)-(b), and 3341; see also 15 CCR §§ 3315(d) and 3318. A Staff Assistant must be assigned if the prisoner is in levels DD1-DD3 of the Developmentally Disabled Program (DDP) or in the Enhanced Outpatient Program (EOP) level of mental health care. See 15 CCR § 3318(d)(2)(E)(1).

²³ 15 CCR § 3337(a).

documentary evidence.²⁴ The prisoner's witnesses and documentary evidence must be allowed unless it would be "unduly hazardous to the institution safety or correctional goals."²⁵

At the initial hearing, the ICC can return the prisoner to the general population, assign the prisoner to a longer-term segregation program unit, or keep the prisoner in administrative segregation pending criminal prosecution, resolution of disciplinary charges or completion of an investigation.²⁶ If the ICC decides to retain the prisoner in administrative segregation, the case must be referred to a Classification Staff Representative (CSR) for review and approval within 30 days.²⁷

There is no specific limit on how long a person may be held in administrative segregation. After the initial review, subsequent ICC and CSR reviews must take place periodically until the issues are resolved. The interval for the reviews varies depending on the reason for the temporary segregation.²⁸ Reviews must occur every 90 days where the prisoner is being held in administrative segregation during on-going investigation of serious misconduct or criminal activity or while waiting for resolution of safety, security, or non-disciplinary issues. 90 day reviews are also required when a prisoner is waiting for a disciplinary hearing for a Division C, D, E, or F rule violation charge. Reviews must occur every 180 days when a prisoner is waiting for a disciplinary hearing on a Division A-1, A-2, or B rule violation charge, resolution of a court proceeding, or completion of the gang validation process.²⁹

When the issue that is the reason for administrative segregation is resolved, the ICC must review the case within 14 days.³⁰ If the prisoner is to be returned to the general population, the change of housing might happen as soon as the ICC review is done. Sometimes a return to the general population requires transfer to a different prison or facility and cannot be carried out immediately. If continued segregation is required pending transfer to a general population facility, the ICC must review the case at least every 90 days.

If the ICC's decision is to transfer the prisoner to a longer-term segregated program housing unit, a CSR's approval is required.³¹ CDCR has a variety of types of segregated housing units for the extended-term programming of inmates not suited for general population. These include Security Housing Units (SHUs), a Protective Housing Unit (PHU), Psychiatric Services Units (PSUs), Behavior Modification Units (BMUs), and Transitional Housing Units (THUs). The criteria for placement, the

²⁴ 15 CCR § 3337(b).

²⁵ 15 CCR § 3338(h). The reason for denying witnesses or evidence must be documented on CDCR Form 114-D.

²⁶ See 15 CCR §§ 3335(c) and 3338(d).

²⁷ 15 CCR § 3335(d) and (e).

²⁸ 15 CCR § 3335(d), (e) and (f).

²⁹ 15 CCR § 3335(d).

³⁰ 15 CCR § 3335(d).

³¹ 15 CCR § 3341.5.

length of the segregation period, and the review procedures vary depending on the reasons why a prisoner is in segregation and the applicable regulations.³²

Conditions of Confinement in Segregation

California prisoners in segregation have few or no program opportunities, are fed all meals in their cells, are not allowed to mix with other prisoners or are allowed to do so only during tightly supervised exercise sessions, and generally spend about 22 hours a day in their cells, which usually are shared with another person. These restrictive conditions frequently raise concerns regarding whether segregation prisoners are subjected to cruel and unusual punishment.

The U.S. Constitution's Eighth Amendment ban on cruel and unusual punishment requires only that a prison meet basic human needs. So long as such needs are met, confinement in segregation, even for a lengthy or indeterminate period, does not constitute cruel and unusual punishment.³³ Where basic human needs are not met, however, courts may find that conditions in segregation violate the Eighth Amendment.

Court decisions over the last 40 years have established the minimum conditions that must be maintained in California's segregation units. In 1966, a federal district court concluded that conditions in "O-Wing" cells at Soledad were cruel and unusual because the prisoners were not provided with the "essentials for survival." According to the court, the "essentials" included food, water, toothbrush, toothpaste, toilet tissue, and a regular shower. The court also expressed disapproval of the lack of any interior light in the cells and of the fact that the in-cell toilets could not be flushed by the prisoners. The court directed prison officials to provide the prisoners with "the basic requirements that are essential to life" and with "such essential requirements as may be necessary to maintain a degree of cleanliness compatible with elementary decency."³⁴

In 1973 a state legislative committee report attacked California's segregation units, citing a lack of medical services and exercise opportunities and singling out San Quentin's Badger Section, which at that time was used for segregation, as "filthy, noisy, rodent infested, and drafty."³⁵ In 1979, the Ninth

³² See 15 CCR § 3334 (BMUs), § 3341.5(a), § 3341.5(b) (PSUs), § 3341.5(c) (indeterminate and determinate SHUs), §§ 3378.1-3378.3 (THU's). See also 15 CCR § 3378 on the process for determining whether a prisoner should be segregated as a validated prison gang member or associate and for reviewing gang segregation placements.

³³ 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, 801 F.2d 1080 (9th Cir. 1986); Bono v. Saxbe (7th Cir. 1980) 620 F.2d 609; see also LeMaire v. Maass (9th Cir. 1993) 12 F.3d 1444 (upholding severe restrictions to control a disruptive inmate in Oregon's disciplinary segregation unit); Anderson v. County of Kern (9th Cir. 1995) 45 F.3d 1310 (short-term use of strip cells and lack of group exercise did not violate the Eighth Amendment).

³⁴ Jordan v. Fitzharris (N.D. Cal. 1966) 257 F.Supp. 674, 682-683.

³⁵ Report of The Assembly Select Committee on Prison Reform and Rehabilitation, Administrative Segregation in California's Prisons (1973), p. 25.

Circuit Court of Appeal affirmed a district court holding that the Eighth Amendment required a minimal amount of outdoor exercise for prisoners housed in San Quentin's Adjustment Center.³⁶

In the 1980s, CDCR segregation units continued to be the subject of legal challenges. In the early 1980s a federal court issued a preliminary injunction requiring the CDCR to provide constitutional conditions in the segregation units at San Quentin, Folsom, Deuel Vocational Institution, and the California Training Facility (Soledad). In 1984, a permanent injunction was entered requiring improvements in the SHUs at San Quentin and Folsom after it was proven that decay and neglect had caused conditions such as sanitation, lighting, clothing, plumbing, heating, noise, and fire safety to become indecent and inhumane. The court also required prison officials to provide segregation prisoners with a minimum amount of outdoor exercise.³⁷ Segregation conditions at San Quentin, Folsom, Soledad, and Deuel Vocational Institute were then analyzed repeatedly and subject to court orders and monitoring until 1990.³⁸ In 1989, a consent decree was filed in federal court requiring that the disciplinary and detention segregation cells at the California Medical Facility be modified so that prisoners could flush their own toilets and control their own lights.³⁹

With respect to other rights, the Ninth Circuit Court of Appeal ruled in 1986 that segregation prisoners had no federal constitutional rights to contact visits or work programs; however, the court did find that segregation prisoners must have reasonable access to an adequate law library or to assistance from persons trained in the law.⁴⁰ The latter ruling resulted in the establishment of a segregation law library at San Quentin and the curtailment of the "paging system" by which prisoners in restricted housing units had to attempt legal research by asking that specific books be brought to their cells. Under regulations adopted in October 2009, such a paging system may be used only in "extraordinary circumstances" such as when a prison is on lockdown, when a prisoner's movement is restricted due to his or her medical condition, or when a prisoner's physical access to the law library is suspended pending investigation of a serious rule violation.⁴¹

In the 1990s, dehumanizing conditions and guard brutality in the Pelican Bay State Prison SHU were challenged in a class action lawsuit, leading to court injunctions. The Pelican Bay SHU, a highly automated unit, was designed to reduce visual, environmental, and social stimulation; an inmate housed

³⁶ Spain v. Proconier (9th Cir. 1979) 600 F.2d 189; the district court opinion, which includes a detailed description of the Adjustment Center, can be found at 408 F.Supp. 534 (N.D. Cal. 1976).

³⁷ Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; Toussaint v. McCarthy (N.D. Cal. 1984) 597 F.Supp. 1388, 1401-1402, 1412, and 1424, aff'd in part and rev'd in part, 801 F.2d 1080 (9th Cir. 1986), cert. denied, 107 S.Ct. 2462 (1987). See also Allen v. Sakai (9th Cir. 1994) 48 F.3d 1082, 1087 (finding that allowing only 45 minutes a week of outdoor exercise violated the Eighth Amendment).

³⁸ Wright v. Rushen (9th Cir. 1987) 642 F.2d 1129; Toussaint v. Rushen (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, aff'd in part and rev'd in part, 801 F.2d 1080 (9th Cir. 1986); Toussaint v. Rowland (N.D. Cal. 1989) 711 F.Supp. 536; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800.

³⁹ Gates v. Deukmejian (E.D. Cal.) No. Civ. S-87-1636 LKK-JFM.

⁴⁰ Toussaint v. McCarthy (9th Cir. 1986) 801 F.2d 1080, 1106-1110, and 1113-1114.

⁴¹ 15 CCR § 3123(c).

there might spend years without seeing any aspect of the outside world and without any opportunity for normal social contact with other people. In addition to challenging the lack of medical and mental health care and the use of excessive force by staff, the prisoners argued that the extreme isolation and environmental deprivation of the SHU were a form of psychological torture amounting to cruel and unusual punishment. The court found that the risk of mental health injury to most prisoners in the SHU was not serious enough to violate the Eighth Amendment. However, the court found that it was cruel and unusual punishment to house prisoners who were mentally ill, mentally retarded, or otherwise particularly vulnerable to psychiatric problems in the Pelican Bay SHU.⁴² During the 1990s, the state's other large SHU, at Corcoran State Prison, also gained notoriety for violence, including staged "gladiator fights" in which prison guards put hostile prisoners on group yards, bet on the resulting fights, and sometimes shot the prisoners involved.⁴³

In addition to the federal constitutional right to be free from cruel and usual punishment, the CDCR has regulations that establish some minimum conditions in segregation.⁴⁴ For example, the regulations require that a prisoner in segregation be permitted a minimum of one hour of out-of-cell time per day, five days a week. When a recreation yard is available, yard time may be substituted for these out-of-cell periods, provided that exercise opportunities are available at least three days a week for a total of 10 hours a week.⁴⁵ Clothing exchange must occur no less often than is provided to general population prisoners.⁴⁶ Segregation prisoners are to be fed the same meals as general population prisoners.⁴⁷ Segregation prisoners are to have visiting under the same conditions as general population prisoners, except that SHU prisoners are prohibited from having any contact visits.⁴⁸ They may send and receive mail with no special limitations, except for rules concerning the number and content of packages.⁴⁹ The rules also state what amount and type of property a prisoner may possess in segregation.⁵⁰ The rules severely limit the amount and type of property a prisoner may possess in

⁴² Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146, 1128-1130, and 1265-1267. Another important case discussing horrendous conditions in Texas administrative segregation units and finding the housing of mentally ill prisoners in those units to be cruel and unusual punishment is Ruiz v. Johnson (S.D. Tex. 1999) 37 F.Supp.2d 855, 907-915. See also Jones'El v. Berge (W.D.Wis. 2001) 164 F.Supp.2d 1096 (granting preliminary injunction removing mentally ill prisoners from "supermax" segregation unit).

⁴³ Events at Corcoran in the mid-to-late 1990s are chronicled in Quinn, ed., Maximum Security University: A Documentary History of Death and Cover-Up at America's Most Violent Prison (California Prison Focus 1999) and in a series of articles by Mark Arax and Mark Gladstone in the Los Angeles Times, including Attorney General's Office to Investigate 24 Shootings by Corcoran Prison Guards (Jan. 14, 1999) and Trial of Guards Opens in Prison Rape Case (Oct. 5, 1999).

⁴⁴ See 15 CCR § 3343.

⁴⁵ 15 CCR § 3343(h).

⁴⁶ 15 CCR § 3343(g).

⁴⁷ 15 CCR § 3343(d).

⁴⁸ 15 CCR § 3343(f).

⁴⁹ 15 CCR § 3343(e).

⁵⁰ See 15 CCR § 3190 and the CDCR's Authorized Personal Property Schedule at DOM § 54030.20.

segregation, which often means that a prisoner will have to send home or donate many personal items if segregation placement is ordered.

CDCR rules also require prison officials to keep a separate record on each prisoner placed in segregation so that all significant information regarding the prisoner can be documented. CDCR Form 114-A Detention/Segregation Record is used for this purpose.⁵¹ CDCR Form 114-A records events such as the dates the prisoner was offered exercise or a shower, or was given supplies or clean clothing.

⁵¹ 15 CCR § 3344.