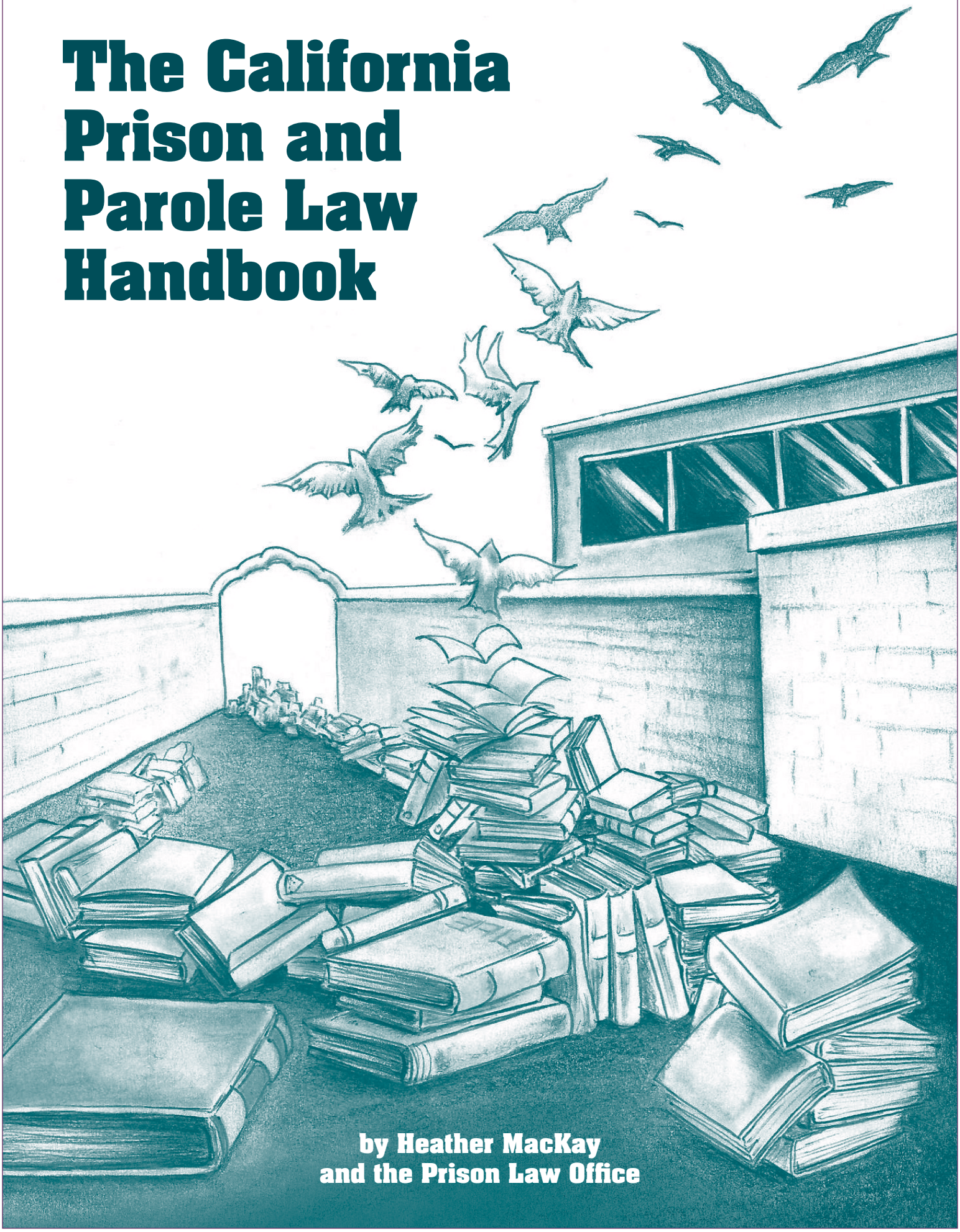
The California Prison and Parole Law Handbook



by Heather MacKay
and the Prison Law Office

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY
&
THE PRISON LAW OFFICE

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Content Editor: Ritika Aggarwal

Production & Style Editor: Brandy Iglesias

Cover Art: Justus Evans

Cover Design: Tara Eglin

Assistance with Chapter 9: Kony Kim, former Staff Attorney at UnCommon Law, a non-profit that represents people at Board of Parole Hearings proceedings, challenges unjust parole policies and decisions, and provides training and information to people serving life terms and their advocates.

Assistance with Chapter 11: Anne Mania, former Staff Attorney at the Prison Law Office and Rosen, Bien, Galvan and Grunfeld, where she worked on ensuring due process for people undergoing parole violation processes.

Assistance with Chapter 13: Theo Cuison, Deputy Director and Clinical Supervisor in the Immigration Unit of the East Bay Community Law Center (EBCLC), a clinic of U.C. Berkeley School of Law.

The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, 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 prison law library or in a public county law library.

CHAPTER 5
PRISON RULE VIOLATIONS

5.1 Introduction

The California Department of Corrections and Rehabilitation (CDCR) has procedures for punishing people who violate prison rules and for removing them from the general population for disciplinary or safety reasons. A disciplinary offense can have significant negative consequences.

5.2 Overview of CDCR Disciplinary Process and Levels of Rule Violations

Penal Code § 2932 and 15 CCR §§ 3310-3326 establish rules for conduct and a disciplinary process for addressing violations of prison rules. The CDCR rules set up a tiered disciplinary system with increasing levels of punishment for increasingly serious misconduct.

CDCR staff can choose to handle very minor misbehavior by just talking to the person without making a report of the misbehavior; this is called "verbal counseling."[1] If the minor misconduct happens again or if the staffperson thinks the misconduct should be documented, the staffperson can verbally counsel the person and record the misbehavior on a Counseling Only Rules Violation Report that will be placed in the person's central file.[2] There is no hearing or other procedural protection, and there is no loss of time credits or other punishment.[3] However, counseling only rule violations may affect a person negatively; for example, such violations may be considered in deciding whether to place that person in a beneficial program or whether they are suitable for parole.

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1 15 CCR § 3312(a)(1).

2 15 CCR § 3312(a)(2). This form was previously called a CDCR Form 128.

3 See *In re Boag* (1973) 35 Cal.App.3d 866, 869-870 [111 Cal.Rptr. 226].

If the misbehavior appears to be a violation of law or is not something minor, it will be documented on a Rules Violation Report (RVR); the RVR will state the type of rule violation, the basic information about what happened, and the name of the staffperson who is reporting the misconduct.[4] The charge will be classified as "administrative" or "serious," depending on the degree of misbehavior.[5] During the disciplinary process, a serious rule violation may be downgraded to an administrative violation and an administrative violation may be downgraded to a counseling only violation. An administrative violation may be upgraded to a serious violation either before the hearing or after the hearing if the Chief Disciplinary Officer or Director orders the charge reheard as a serious violation.[6]

An administrative rule violation is misconduct which is not a felony offense and does not involve use or threat of force, hazard to security, serious disruption of operations, controlled substances or alcohol, dangerous contraband, or continued failure to meet program expectations.[7] Examples of administrative violations are reporting to work late and using vulgar language.[8] A person charged with an administrative violation is entitled to a hearing, but does not have the right to an Investigative Employee (IE) or to call witnesses.[9] If the hearing officer deems it necessary, a Staff Assistant (SA) can be assigned to advise and assist the person.[10] People who are found guilty of administrative violations do not lose time credits. Punishment for administrative violations can include suspension of privileges for up to 30 days, assignment to up to 40 hours of extra duty, or confinement to quarters (CTQ) for not more than five consecutive days or 10 weekend/holiday days, and/or placement of a hold on the person's trust account for the cost of repair or replacement of property involved in the violation.[11]

A serious rule violation is conduct that is a misdemeanor not included in the administrative rule violation regulations, a felony, or behavior that involves violence or force, hazard to prison security, serious disruption of prison operations, dangerous contraband or controlled substances, or an attempt to commit any such violation.[12] Also, misconduct that would normally be an administrative violation can be classified as a serious rule violation if a person has a "repeated pattern of violations for the same offense."[13] There are seven divisions of serious offenses; from most to least serious, they are A1, A2, B, C, D, E, F.[14] A person has a right to a hearing on a serious disciplinary charge, with all the due process rights described in §§ 5.3-5.4. Prison officials can place a person charged with a serious

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4 15 CCR § 3312(a)(3). These reports were previously called CDCR Form 115s.

5 15 CCR § 3313(a).

6 15 CCR § 3313(c); 15 CCR § 3314(f).

7 15 CCR § 3314(a).

8 15 CCR § 3314(a)(3).

9 15 CCR § 3314(b)-(c).

10 15 CCR § 3314(d); 15 CCR § 3318(b).

11 15 CCR § 3314(e).

12 15 CCR § 3315(a).

13 15 CCR § 3315(a)(2)(M); *In re Scott* (2003) 113 Cal.App.4th 38 [5 Cal.Rptr.3d 887]; 15 CCR § 3315(a) (person charged with disrespect to staff could not be charged with a serious offense when he had not previously been found guilty of an administrative rule violation for his disrespectful behavior).

14 15 CCR § 3323.

rule violation in administrative segregation while awaiting the outcome of the disciplinary proceeding (see § 6.3), and can refer the case to the local district attorney for possible criminal prosecution in addition to the disciplinary charge (§ 5.6). Also prison officials can hold a person who is charged with a serious disciplinary violation beyond their release date while the charge is pending; if the person is found not guilty, any excess time in prison should be deducted from the parole term.[15] A person found guilty of a serious rule violation can face a range of sanctions, from loss of privileges to loss of time credits and placement in a Security Housing Unit (SHU) (see § 6.6).

5.3 Constitutional Case Law on Disciplinary Rights

The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution provides that no person may be deprived of liberty without due process of law. When a person in prison can lose time credits as a result of a disciplinary charge, the loss of time credits affects liberty, and the Constitution requires that prison authorities provide some procedural protections for a fair hearing. However, a person accused of a serious disciplinary violation is not entitled to the same level of rights as a person who has criminal charges or parole revocation charges.[16]

People facing serious prison disciplinary charges have a due process right under the Fourteenth Amendment to fair notice of what conduct is prohibited. A person cannot be punished for violating a prison rule if the rule is so vague that it does not give adequate notice that what the person did would be a serious rule violation.[17]

The courts have established due process boundaries for people's rights before being subjected to loss of credits for a prison disciplinary violation. Under the Fourteenth Amendment, a person has the procedural rights to:

- advance written notice of the charges no less than 24 hours before the hearing;[18]
- disclosure of the evidence against them;[19]
- an opportunity to be heard in person;[20]

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15 Penal Code § 2932(g). Presumably, a person held past the release date should be held no longer than the person would be held if found guilty of the charge.

16 *Wolff v. McDonnell* (1974) 418 U.S. 539, 555-556, 560 [94 S.Ct. 2963; 41 L.Ed.2d 935]; see also *In re Gomez* (2016) 246 Cal.App.4th 1082, 1093-1094 [201 Cal.Rptr.3d 124] (loss of credits was a deprivation of liberty, even though credits could be restored for subsequent good behavior].

17 *Newell v. Sauser* (9th Cir. 1996) 79 F.3d 115, 117-119 (regulation did not give adequate notice that preparing legal materials for other people was a disciplinary violation).

18 *Wolff v. McDonnell* (1974) 418 U.S. 539, 563-564 [94 S.Ct. 2963; 41 L.Ed.2d 935]; see *Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183, 188 (charge that a person in prison smuggled drugs with members of a gang over a six-month period provided sufficient notice); *Pratt v. Rowland* (N.D. Cal. 1991) 770 F.Supp. 1399, 1402 (sufficient notice of drug trafficking charges); *In re Estrada* (1996) 47 Cal.App.4th 1688 [55 Cal.Rptr.2d 506] (notice of the charges sufficiently disclosed the victim's name, date of the attack, and nature of the injuries).

19 See *Wolff v. McDonnell* (1974) 418 U.S. 539, 558-560, 564 [94 S.Ct. 2963; 41 L.Ed.2d 935].

20 See *Wolff v. McDonnell* (1974) 418 U.S. 539, 558-560 [94 S.Ct. 2963; 41 L.Ed.2d 935].

- an opportunity to call witnesses and present documentary evidence "when permitting [such action] will not be unduly hazardous to institutional safety or correctional goals;"[21]prison officials need not state their reasons for denying witnesses on the record, but later may have to justify their actions if the reasons are challenged;[22]

- "counsel-substitute" for an illiterate person or if the complexity of the issue makes it unlikely that a person be able to collect and present the evidence necessary for an adequate comprehension of the case;[23] and

- a hearing in front of a decision-maker not actively involved in bringing the disciplinary charge;[24]

- a written statement by the fact finder as to the evidence relied on and reasons for the disciplinary action.[25]

The courts have rejected some constitutional claims. There is no absolute right to confront or cross-examine witnesses, or to have counsel in prison disciplinary proceedings; also, due process does not require prison officials to provide written reasons for disallowing a person from confronting or cross-examining witnesses.[26] It does not violate the right to avoid self-incrimination for a disciplinary hearing officer to deem that a charged person's silence at the disciplinary hearing is an indication of guilt.[27] There is no right to an attorney, even if the disciplinary violation might lead to criminal

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21 *Wolff v. McDonnell* (1974) 418 U.S. 539, 566 [94 S.Ct. 2963; 41 L.Ed.2d 935]; *Edwards v. Balisok* (1997) 520 U.S. 641, 646-647 [117 S.Ct. 1584; 137 L.Ed.2d 906] (failure to allow a defendant to present witness statements was an "obvious procedural defect"); *In re Fratus* (2012) 204 Cal.App.4th 1339, 1348 [139 Cal.Rptr.3d 660] (refusal to allow person to call a friendly witness violated due process); but see *Koenig v. Vannelli* (9th Cir. 1992) 971 F.2d 422, 423 (person facing a drug use disciplinary charge not entitled to independent drug analysis test, even at person's own expense); see *Bostic v. Carlson* (9th Cir. 1989) 884 F.2d 1267, 1271-1272overruled on other grounds *by Nettles v. Grounds* (9th Cir. 2016) 830 F. 3d 922 (no due process violation in refusal to call additional witnesses who would add nothing).

22 *Ponte v. Real* (1985) 471 U.S. 491, 497 [105 S.Ct. 2192; 85 L.Ed.2d 553]; *Baxter v. Palmigiano* (1976) 425 U.S. 308, 322 [96 S.Ct. 1551; 47 L.Ed.2d 810].

23 *Wolff v. McDonnell* (1974) 418 U.S. 539, 570 [94 S.Ct. 2963; 41 L.Ed.2d 935]; *Clutchette v. Enomoto* (N.D. Cal. 1979) 471 F.Supp. 1113 (setting forth standards for appointment of staff assistants); but see *Bostic v. Carlson* (9th Cir. 1989) 884 F.2d 1267, 1274, overruled on other grounds by *Nettles v. Grounds* (9th Cir. 2016) 830 F. 3d 922 (no right to have effective assistance by staff representative).

24 *People v. Superior Court (Hamilton)* (1991) 230 Cal.App.3d 1592, 1597-1598 [281 Cal.Rptr. 900] (violation of due process where Lieutenant who evaluated disciplinary report and classified the violation presided over the disciplinary hearing).

25 *Wolff v. McDonnell* (1974) 418 U.S. 539, 563-564 [94 S.Ct. 2963; 41 L.Ed.2d 935].

26 *Baxter v. Palmigiano* (1976) 425 U.S. 308, 322 [96 S.Ct. 1551; 47 L.Ed.2d 810]; *Wolff v. McDonnell* (1974) 418 U.S. 539, 567-568 [94 S.Ct. 2963; 41 L.Ed.2d 935].

27 *Baxter v. Palmigiano* (1976) 425 U.S. 308, 316-320 [96 S.Ct. 1551; 47 L.Ed.2d 810].

charges.[28] A disciplinary charge may be heard and decided by prison officials; an outside hearing officer is not required.[29] There is no requirement that a guilty plea to a disciplinary charge be voluntary.[30]

There is no due process right to judicial review of a disciplinary holding that does not result in a denial of sentence credits, such as CDCR "administrative" level disciplinary offenses. This is so even though an administrative violation could affect whether the person is found suitable for parole.[31]

For court cases addressing particular rights regarding use of confidential information in disciplinary proceedings, see § 5.7. For cases addressing the standards by which courts review prison disciplinary findings of guilt, see § 5.12.

5.4 Checklist: California Law Rights Regarding Serious Rule Violation Charges

Penal Code § 2932 and the CDCR regulations set forth the rights of people in California prisons who are charged with serious rule violations that may involve loss of sentence credits (see § 5.2 for more information on the differences between serious disciplinary violations and administrative disciplinary violations). As discussed in § 5.3, some of these rights are also protected by the U.S. Constitution.

Defending against a rule violation charge can be difficult, particularly when a person is placed in segregation pending the disciplinary hearing.[32] To effectively defend against a disciplinary charge, it is critical that people know their rights, take advantage of their rights, and do their best to ensure that the CDCR follows its own rules.

A person charged with a serious rule violation has the following rights:

1. **Written notice of the rule violation charge**. The notice must include certain information, including stating "the specific charge, the date, the time, [and] the place the alleged misbehavior took place."[33] Notice is by means of a Rules Violation Report (RVR).[34] Notice usually must be given within 15 days after the prison officials discover

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28 *Baxter v. Palmigiano* (1976) 425 U.S. 308, 315 [96 S.Ct. 1551; 47 L.Ed.2d 810]; *Wolff v. McDonnell* (1974) 418 U.S. 539, 569-570 [94 S.Ct. 2963; 41 L.Ed.2d 935].

29 *Wolff v. McDonnell* (1974) 418 U.S. 539, 570-571 [94 S.Ct. 2963; 41 L.Ed.2d 935].

30 *Bostic v. Carlson* (9th Cir. 1989) 884 F.2d 1267, 1274overruled on other grounds *by Nettles v. Grounds* (9th Cir. 2016) 830 F. 3d 922.

31 *In re Johnson* (2009) 176 Cal.App.4th 290, 296-299 [97 Cal.Rptr.3d 692].

32 When a person is charged with a serious disciplinary violation, prison officials may allow them to remain in the same housing and job assignment, confine them to quarters, or place them in segregation. 15 CCR § 3312(a)(3).

33 Penal Code § 2932(c)(1).

34 15 CCR § 3312(a)(3).

the violation, although there are some circumstances in which notice can be given later.[35] If the CDCR fails to provide notice within the required time period, it is prohibited from taking away time credits as punishment for the offense.[36]

2. **Written notice of any referral for criminal prosecution**.[37] In some cases, the CDCR may ask the district attorney to consider filing criminal charges based on the person's misconduct.[38] Criminal referrals, and a person's options regarding the disciplinary case while the criminal referral is pending, are discussed in § 5.6.

3. **Assignment of an Investigative Employee (IE)** when the issues are complex and require further investigation, the housing status of the person being charged makes it unlikely that they can collect the necessary evidence, additional information is necessary or a fair hearing, and/or the disciplinary charge may be related to Security Threat Group (STG) activity. A person cannot choose a specific staffperson to be the IE, but can object to the first IE who is assigned (before the IE begins the investigation), in which case a different IE will be substituted.[39] The IE gathers information, and interviews the person who is being charged with the violation and any witnesses, then prepares a written report for the disciplinary hearing officer; a copy of the report must be provided to the at least 24 hours before the hearing.[40]

4. **Assignment of a Staff Assistant (SA)** (instead of or addition to an IE) if the person being charged is illiterate or non-English speaking, or if the issues are so complex that assistance is necessary for the person to comprehend the charges or the disciplinary process, or if the person has a disability such that assistance is necessary for them to participate in the disciplinary process.[41] The person being charged cannot choose a specific staffperson to be the SA, but can object to the first SA who is assigned, in which case a different SA will be substituted.[42] An SA must be assigned and cannot be waived in any disciplinary proceeding involving a person in the Developmentally Disabled Program (DDP) or in the Enhanced Outpatient Program (EOP) or Mental Health Crisis Bed (MHCB) levels of mental health care.[43] An SA should inform the person of their

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35 Penal Code § 2932(c)(1); 15 CCR § 3320(a). Note that the notice period for escape starts when the person is returned to CDCR custody, and the notice period for an offense leading to removal of an ACP participant from the community starts when the person is returned to a CDCR institution. Notice may be delayed by up to an additional 30 days (a total of 45 days) if the misconduct could be prosecuted as murder, attempted murder, or an assault/battery on staff, an investigation is continuing to identify people involved in the misconduct; the investigating officer requests a delay, and the request is approved by the Chief Disciplinary Officer (CDO). Penal Code § 2932(c)(1); 15 CCR § 3320(a)(2). Notice may also be delayed for up to a total of 45 days if the misconduct is referred to the district attorney for possible prosecution, and the district attorney requests in writing that the person not be notified in order to protect the confidentiality of the criminal investigation. Penal Code § 2932(f).

36 15 CCR § 3320(f)(1).

37 15 CCR § 3316(a)(3).

38 Penal Code § 2932(f); 15 CCR § 3316(c)(1)(A).

39 Penal Code § 2932(c)(2); 15 CCR § 3315(d)(1).

40 15 CCR § 3318(a).

41 Penal Code § 2932(c)(2); 15 CCR § 3315(d)(2).

42 15 CCR § 3315(d)(2).

43 15 CCR § 3315(d)(2); *Clark v. California* (N.D. Cal. Mar. 1, 2002) No. C96-1486, Remedial Plan, § VI.L.2.

rights and of the disciplinary hearing procedures, and assist and advise the person in preparing for the hearing and presenting any defense. An SA must keep information received from the person confidential, unless the information concerns commission of a future crime.[44]

5. **Mental health evaluation when mental illness, developmental disability, or cognitive deficits may have contributed to the misconduct.** CDCR mental health staff should prepare an assessment whenever a rule violation allegation concerns a person in the EOP or higher level of mental health care or the DDP. An assessment is also required for a person in the Clinical Case Management System (CCCMS) if the charge is a Division A, B, or C offense or may result in a SHU term. An assessment is required if a person engages in indecent exposure or sexual disorderly conduct or bizarre or unusual behavior, even if they are not receiving mental health treatment.[45] If mental illness or developmental/cognitive disability contributed to the rule violation, the hearing officer must consider the mental health assessment in determining whether the person should be disciplined and the appropriate method of any discipline.[46] Also, if the person's behavior was so strongly influenced by mental illness or developmental or cognitive disability, mental health staff can recommend that the behavior should be documented in an alternative manner, and the charges might be reduce in level or dismissed and documented on a general chrono.[47] There are some circumstances in which mentally ill people cannot be punished for acting out, unless they commit a Division A-1 offense or an assault or battery on a correctional officer or other staffperson. For example, if a mental health clinician determines that a person was actually attempting suicide or self-mutilation, the person cannot be subjected to disciplinary proceedings for that behavior.[48]

6. **Effective communication** for disabled people of the notice and other documents, at the hearing, and of all other communications involving the disciplinary proceeding. Depending on the nature of the disability, this may be accomplished through assignment of a staff assistant, a qualified interpreter, a reader, or accommodations such as large print materials, sound amplification devices or a TDD (Telecommunication Device for the Deaf) phone.[49]

7. **Request witnesses** to attend the hearing. A person who is charge with a rule violation can request either friendly or adverse witnesses; the requests should be made in writing in advance. The employee who reported the disciplinary violation must attend if requested. Witnesses may testify in person or by telephone. Witnesses may be denied only if the hearing officer determines that appearance at the hearing would endanger the witness, the witness has no relevant or additional information, or the witness is

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44 15 CCR § 3318(b).

45 15 CCR § 3317(b). CDCR, *Mental Health Services Delivery System Program Guide*, Ch 1, § I and Attachment B.

46 15 CCR § 3317(a), (g).

47 15 CCR § 3317.1.

48 15 CCR § 3317.2(c); see also 15 CCR § 3317(d).

49 *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2037, Remedial Plan, § II.D *Clark v. California* (N.D. Cal. Mar. 1, 2002) No. C96-1486, Remedial Plan, § VI.L.2 and 4; see also *Duffy v. Yost* (9th Cir. 1996) 98 F.3d 447 and *Bonner v. Lewis* (9th Cir. 1988) 857 F.2d 559 (cases allowing deaf people to proceed with claims of ineffective communication in disciplinary hearings).

unavailable. The reasons must be documented on the RVR form.[50] Note that witnesses who are at other institutions will not be transferred to testify at a disciplinary hearing unless the chief disciplinary officer determines the transfer is necessary for a fair hearing.[51]

8. **Question all witnesses**. The person being charged with a rule violation may question the witnesses, although the hearing officer can screen the questions to ensure they are relevant to the charge.[52]

9. **Present documentary evidence in defense or mitigation of the charge**.[53]

10. **Copies of all non-confidential information at least 24 hours before the hearing**. This information includes the RVR, the IE's report, and all non-confidential reports (such as incident reports) that might be relied upon at the hearing.[54]

11. **Notification of use of confidential information and disclosure of as much of the information as possible without identifying the source**.[55] (See § 5.7 for further discussion of confidential information.)

12. **A hearing within 30 days of receiving written notice of the charge**, unless the person being charged with the rule violation has been transferred out of CDCR custody or there are exceptional circumstances.[56] Failure to hold a hearing within 30 days of the notice (or within 30 days of notification of the outcome of a criminal prosecution referral or within 30 days of the person revoking a request for postponement of the hearing) bars the CDCR from taking away time credits as punishment for the offense, unless there are exceptional circumstances, the person is provided a written explanation of those circumstances, and the hearing officer finds that the delay did not prejudice the person.[57]

13. **Request postponement of the hearing pending the outcome of a referral for possible criminal prosecution or for up to 30 days based on a reasonable need**. The request for postponement must be made in writing. A request for postponement pending criminal prosecution may be revoked by the person who is facing rule violation charges up until the time that formal criminal charges are filed.[58]

14. **Be present at the hearing, the right to be present may be waived**. Unless there is a waiver, the hearing may be conducted without the person being present only if the person has been convicted of escape and has not been returned to the prison, or the person

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50 5 CCR § 3315(e); see also *Serrano v. Francis* (9th Cir. 2003) 345 F.3d 1071, 1080 (court observed that disciplinary finding had been vacated for failure to comply with rule that officials document reasons why witnesses denied).

51 15 CCR § 3320(i).

52 15 CCR § 3315(e)(5); *In re Fratus* (2012) 204 Cal.App.4th 1339 [139 Cal.Rptr.3d 660] (refusing to allow to question adverse witnesses violated CDCR regulation).

53 15 CCR § 3320(l).

54 15 CCR § 3320(c).

55 15 CCR § 3321(b)(3).

56 Penal Code § 2932(c); 15 CCR § 3320(b).

57 15 CCR § 3320(f)(3), (4), (5); see also 15 CCR § 3000 (defining exceptional circumstances).

58 Penal Code 2932(f) (criminal prosecution); 15 CCR § 3316(c) (criminal prosecution); 15 CCR § 3320(d) (reasonable need).

suffers from a serious mental disorder preventing participation in the hearing and there is a compelling reason to proceed with the hearing.[59]

15. **An impartial decision-maker**, which means that the hearing officer may not be someone who reported, observed, classified, or investigated the violation, who assisted the person in preparing for the hearing, or who has a predetermined belief that the person is guilty or innocent.[60] The hearing officer will usually be a correctional lieutenant. The hearing officer will review the evidence, determine whether to find the person guilty or not guilty, and then order a punishment.

16. **Proof of guilt by a preponderance of the evidence**.[61] This means the evidence as a whole must show that it is more probable than not that the person is guilty of the charge.[62] If confidential information is used to find the person guilty, the hearing officer must also determine whether that information is reliable.[63] (See § 5.7 for more discussion of confidential information.)

17. **Review of the disposition by the Chief Disciplinary Officer (CDO)**, who has the discretion to order a different disposition or a new hearing. Any punishment imposed after a rehearing may not exceed the original punishment, except when there is new information or evidence that was not reasonably available at the time of the original disciplinary action.[64]

18. **A written statement of the disposition, findings, and evidence relied** upon within 5 working days after the decision is reviewed by the CDO.[65]

19. **Appeal a finding of guilt through the CDCR's administrative appeal process**.[66] (Administrative appeals of disciplinary findings are discussed in § 1.30.)

20. **Have disciplinary records removed from the Central File if charges are dismissed or the person is found not guilty**.[67] If a person is found guilty of a rule violation, a copy of the completed RVR and other documents used in the proceedings is placed in the person's central file.[68] But if the charge is dismissed, the person is found not guilty, or a guilty finding is reversed, the RVR cannot be in the person's file.[69] Any documents reflecting the pre-hearing suspicion of guilt or original finding of guilt must be updated and annotated with a cross-reference to a CDCR Form 128-B showing the final

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59 15 CCR § 3320(g).

60 Penal Code § 2932(c)(1); 15 CCR § 3320(h).

61 Penal Code § 2932(c)(5); 15 CCR § 3320(l).

62 *Black's Law Dictionary* (6th ed. 1990).

63 15 CCR § 3321(b)-(c).

64 15 CCR § 3312(b).

65 Penal Code § 2932(d); 15 CCR § 3320(l).

66 Penal Code § 2932(d).

67 15 CCR § 3326(a)(2).

68 15 CCR § 3326(a)(1)

69 15 CCR § 3326(a)(3), (c).

disposition of the charge.[70] However, information developed during the disciplinary process that needs to be considered during future classification committee determinations still may be placed in the person's file, documented on a CDCR Form 128-B chrono.[71]

5.5 Defending Against Rule Violation Charges

The key to defending against disciplinary charges is to assert all rights and prepare a defense.

The golden rule is never waive any rights. For example, although a person may feel that an IE or SA will not fairly investigate the matter, it is better for the person to request and accept an IE or SA because waiving the IE or SA essentially also waives the right to a full and fair investigation.

In preparing a defense, a person should decide what witnesses the IE or SA should talk to and what questions the IE or SA should ask. They should then tell the IE to ask those questions. For example, if confidential information is being used, the IE or SA should ask the staff member who documented the informant's statement whether the informant had personal knowledge or simply repeated something heard on the yard. The person should also ask the IE or SA to gather or check any documentary evidence relevant to the defense. The person should put all requests for assistance from the IE or SA in writing, and the requests should be signed, dated, and state the log number of the RVR. The person should keep copies of the requests.

In addition to accepting the assistance of an IE or SA, a person who is charged with a rule violation should independently prepare a defense to the charge and present evidence at the hearing in support of the defense. Thus, to the extent possible, the person should conduct their own investigation. For example, a person may be able to interview witnesses and get written statements from them to present at the hearing.

It is impossible to discuss all possible defenses to a disciplinary charge since a defense depends upon the particular facts of a case. However, simple denials of guilt will generally be insufficient; a person should do everything possible to attempt to show why they should be found not guilty, or at least why the violation charge should be reduced or why the least severe punishment should be imposed.

If prison staff do not follow the rules regarding pre-hearing procedures, the person who is facing the rule violation charges should file an administrative appeal immediately, before the hearing. (See Chapter 1 regarding administrative appeals.) In addition, at the hearing, the person should object to any failure to follow procedures; objections can be made orally and/or in writing.

Administrative appeals and court actions to challenge a disciplinary finding of guilt are discussed in §§ 1.30 and 5.11.

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[70] 15 CCR § 3326(d).

[71] 15 CCR § 3326(a)(3), (b).

5.6 Referral of Rule Violations to the District Attorney for Criminal Prosecution

Prison officials may refer misconduct which is a crime to the local district attorney (DA) for possible criminal prosecution.[72] The DA will decide whether to actually bring criminal charges against the person. There is no time limit for a DA to decide whether to bring criminal charges based on a prison disciplinary offense, other than the statute of limitations for the crime, which is usually at least several years for a felony offense.[73]

The person must be notified if their case is referred to the DA, although the notification may be delayed if the DA requests that the person not be notified to protect the confidentiality of the criminal investigation.[74]

DA referrals do not suspend the CDCR disciplinary process or change the 30-day time limit for the disciplinary hearing unless the person facing the rule violation charges submits a written request to postpone the disciplinary hearing pending the outcome of the DA referral.[75] There is a space for requesting postponement on the RVR form. If the person requests postponement, no further disciplinary proceedings will be held until:

- the DA informs prison officials that no charges will be filed in the case, that the DA's policy is not to prosecute that type of case, or that formal criminal proceedings have ended. The disciplinary hearing must then be held within 30 days.

or

- the person revokes the postponement request. A person may revoke a request to postpone the disciplinary process at any time before a formal criminal charge is filed. The disciplinary hearing must then be held within 30 days.[76]

A person with a disciplinary charge that has been referred to the DA should seriously consider exercising the right to postpone the disciplinary hearing. There is a danger that anything said at the hearing could be used against the person if the DA undertakes a criminal prosecution.[77] A person may at least want to postpone the prison disciplinary hearing until they can try to consult with an attorney about the potential criminal penalties and any possible defenses. While there is no constitutional right to appointment of a lawyer on the criminal case until formal charges are filed,[78] a person could hire a lawyer or ask the local public defender office for advice.[79]

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72 Penal Code § 2932(f); 15 CCR § 3316(a)-(b).

73 The time limits for filing criminal charges are in Penal Code §§ 799-805.

74 Penal Code § 2932(f); 15 CCR § 3316(a)(3).

75 15 CCR § 3316(c); see also *In re Davis* (1979) 25 Cal.3d 384 [158 Cal.Rptr. 384].

76 Penal Code § 2932(f); 15 CCR § 3316(c).

77 *People v. Fraudine* (2000) 80 Cal.App.4th 15 [95 Cal.Rptr.2d 1] (statement to IE during disciplinary proceeding was admissible in criminal trial; defendant not entitled to warnings about the right to remain silent).

78 *United States v. Gouveia* (1984) 467 U.S. 180 [104 S.Ct. 2292; 81 L.Ed.2d 146].

79 *In re Brindle* (1979) 91 Cal.App.3d 660 [154 Cal.Rptr. 563] (ruling that prison must give public defenders access to people under investigation for crimes).

There are other factors that may lead a person to decide not to postpone the hearing or to revoke a postponement. If the person is in segregation or has lost other privileges pending the disciplinary hearing, and strongly believes there will be a not guilty finding, the person might want to proceed with the disciplinary hearing. Also, a person who postpones a hearing on the disciplinary charge pending a DA referral could be held in prison past the original release date based on the pending disciplinary; thus, a person should consider going ahead with the disciplinary proceedings if the DA has not filed charges by the time the person is near their release date.

If the DA decides not to file criminal charges or if criminal charges are filed and then dismissed, the CDCR can still go ahead with the disciplinary proceedings.[80]

If the DA prosecutes a criminal charge, the outcome of the criminal case will determine whether the CDCR can proceed with the disciplinary charge. If the person is convicted of the criminal charge by a trial, the person will automatically be deemed guilty of the disciplinary violation.[81] The CDCR can impose separate disciplinary punishment in addition to the new criminal sentence.[82]

If a person pleads guilty to a lesser criminal offense than was originally charged, the CDCR can still proceed with the original disciplinary charge.[83]

If a person is found not guilty after a criminal trial, the disciplinary charge will be dismissed; if the person has already been found guilty of a disciplinary violation, the disciplinary finding will be reversed.[84] However, even if the person is found not guilty of the criminal charge, the CDCR can proceed with disciplinary proceedings on lesser offenses than that charged in the criminal case.[85]

5.7 Rule Violation Charges Based on Confidential Information

People sometimes face prison disciplinary charges based on confidential information provided by a source whose identity is not revealed. In addition to keeping the identity of informant secret, the CDCR will not disclose any information that could reveal the informant's identity.[86]

The courts have ruled that prison officials may use confidential information in disciplinary proceedings.[87] Still, people must be provided with some due process protections. A person who is being charged with the disciplinary violation must be told that confidential information is being used.

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80 15 CCR § 3316(c)(2).

81 Penal Code§ 2932(f); 15 CCR § 3316(c)(3).

82 See *United States v. Brown* (9th Cir. 1995) 59 F.3d 102 (prohibition against double jeopardy does not bar criminal prosecution for conduct which is also subject of prison disciplinary sanctions).

83 15 CCR § 3316(c)(3). Also, a guilty finding on a lesser disciplinary charge does not bar criminal prosecution for a more serious charge. *People v. O'Daniel* (1987) 194 Cal.App.3d 715 [239 Cal.Rptr. 790].

84 Penal Code § 2932(f); 15 CCR § 3316(c)(3).

85 15 CCR § 3316(c)(4).

86 15 CCR § 3321(b)(3).

87 *Wolff v. McDonnell* (1974) 418 U.S. 539, 568-569 [94 S.Ct. 2963; 41 L.Ed.2d 935]; *In re Jackson* (1987) 43 Cal.3d 501, 505 [233 Cal.Rptr. 911].

Prison officials must also determine that safety considerations prevent disclosure of the informant's name and that there is evidence supporting a reasonable conclusion that the informant is reliable.[88]

It also appears that due process requires that the source of the information must have firsthand knowledge of the information provided. Even if an informant is a reliable person, it is not sufficient for the informant to simply repeat someone else's hearsay statement.[89]

The CDCR regulations reflect most of these due process requirements.[90]Confidential information is defined as any information which, if known by the person against who the information is being used, would endanger the safety of any person, jeopardize the security of the prison, or be medical or psychological information detrimental to the person, as well as information classified as confidential by another agency.[91] Confidential information is placed in a "confidential folder" in the person's central file, and cannot be viewed by the person nor an attorney representing the person.[92]

When CDCR staff receive confidential information, they must evaluate the informant's reliability and state why the information is not to be disclosed.[93] If the information is to be considered in a disciplinary proceeding (or any other type of administrative decision), the CDCR must notify the person about the confidential information, disclose as much of the information as possible without identifying the informant, and state why the identity of the source is not being disclosed, and state reasons why the information is considered reliable.[94] This is usually done on a CDCR Confidential Information Disclosure Form.

The CDCR rules also state that one or more of the following circumstances may establish that an informant is reliable: the informant previously provided information that turned out to be true, another confidential informant has provided the same information, the information is self-incriminating, part of the information is corroborated by non-confidential witnesses or other evidence, the informant is the victim, or the informant passed a polygraph test.[95]

Disciplinary charges based on confidential information are particularly difficult to defend against because the person who is being charged cannot question the key witness, and may not even know all the information that has been provided. A person may need to focus on whether prison staff complied with all the rules governing the use of confidential information. A person should check to see if prison officials have disclosed sufficient information, either on the RVR or on the CDCR Confidential Information Disclosure Form, to allow the person to prepare a defense. The person

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88 *Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183, 186 (also finding information reliable based on first-hand knowledge, previously supplying information that turned out to be true, passing a polygraph, and some corroboration). *In re Jackson* (1987) 43 Cal.3d 501, 511-512 [233 Cal.Rptr. 911]; *In re Estrada* (1996) 47 Cal.App.4th 1688 [55 Cal.Rptr.2d 506] (prison officials properly deemed information confidential and provided required notice).

89 See *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703 (uncorroborated hearsay statements of confidential informant who had no firsthand knowledge and whose polygraph test was inconclusive were not shown to be reliable).

90 15 CCR § 3321; see also DOM §§ 61020.8-61020.11.

91 15 CCR § 3321(a).

92 15 CCR § 3321(d); see also DOM § 61020.11.

93 15 CCR § 3321(b).

94 15 CCR § 3321(b).

95 15 CCR § 3321(c).

should also object if the disclosure form or other documentation does not indicate whether the confidential source had personal knowledge of the information provided. A person should request that the staff member who received the confidential information be present at the disciplinary hearing so that the person can question them about the informant's reliability and personal knowledge. If an investigative employee (IE) is assigned, the person should also ask the IE to question the staff member about these concerns. The staff member should also be asked if there was a determination as to whether the source had any motive to lie, such as holding a grudge or needing to clear him or herself as a suspect in the misconduct. If such a motive exists, or was not ruled out, the person can argue that the informant is unreliable.

5.8 Rule Violation Charges For Possession or Use of Drugs or Alcohol

Disciplinary charges for use or possession of drugs or alcohol generally are covered by the same rules as other rule violation proceedings. However, there are some rules that are unique to drug and alcohol misconduct.

The CDCR rules on when a person in prison can be subjected to drug and alcohol testing are described in § 2.37. Refusal to submit to a drug test is a serious rule violation,[96] and credits lost for refusing to test can never be restored.[97]

A person who tests positive for drugs or alcohol may be found guilty of a disciplinary charge for use or being under the influence.[98] The person may also be found guilty of possessing a controlled substance or alcohol, because the positive test provides "some evidence" that the person had possessed a controlled substance or alcohol.[99]

The CDCR rules also permit trained prison staff to perform a field test of any urine sample taken from a person in prison or of any suspected controlled substance or alcohol found on prison grounds.[100] The results of a field test may be used to charge a person with a drug or alcohol related rule violation. However, prison officials cannot take away the person's time credits, pay, or paid work assignment for the violation unless a laboratory confirms the positive drug test or the person admits to the violation.[101] (Note that unauthorized medications need not be tested in a lab, so long as a licensed pharmacists identifies the medication.[102])

The CDCR policy is that notice of a drug or alcohol violation need not be given until 15 days after the laboratory test result is received by the prison.[103]

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96 15 CCR § 3315(a)(3)(R).

97 15 CCR § 3327(a)(4).

98 See 15 CCR § 3315(f).

99 *In re Dikes* (2004) 121 Cal.App.4th 825 [18 Cal.Rptr.3d 9].

100 15 CCR § 3290(a)-(b).

101 15 CCR § 3290(e)-(h).

102 15 CCR § 3290(i).

103 See *In re Semons* (1989) 208 Cal.App.3d 1022, 1028 [256 Cal.Rptr. 641].

5.9 Rule Violation Charges for Security Threat Group (STG) Behavior

There are special rules regarding misconduct related to a Security Threat Group (STG). These rules are important because STG rule violations can be considered in deciding whether to validate a person as an STG affiliate (see §§ 4.29-4.31).[104] Furthermore, in some circumstances, a person who commits a SHU-eligible rule violation that has a nexus (connection) to an STG may have to spend more time in SHU before they can return to the general population (see § 6.7).[105]

It is an administrative rule violation to engage in behavior such as participating in STG roll call or group exercise, wearing STG clothing, possessing items with STG symbols, possessing contact information for STG affiliates, or making STG gestures.[106] It is a serious rule violation to engage in any STG behavior that is controlling, directive, disruptive, or violent.[107] Other behaviors that are serious rule violations include getting an STG-related tattoo while in prison, possessing communication with coded or explicit messages about STG activities, or possessing an STG roster, enemy list, constitution, or training materials.[108] Moreover, other types of serious rule violations can be deemed to be STG behavior if a nexus is established between the violation and an STG; among the offenses that could be related to an STG are murder, assault, weapon possession, theft, bribery, or gambling, plus many more.[109]

To be STG behavior, the nexus between the rule violation and an STG must be clearly described in the RVR. Also, the RVR hearing officer must clearly state the relationship between the rule violation and the STG.[110] If evidence of an STG connection is discovered after the disciplinary process has been completed, and the person is still serving a SHU term for the violation, the CDO can order the rule violation reissued and reheard to decide whether the rule violation was STG behavior.[111]

5.10 Punishments for Serious Rule Violations

A person who is found guilty of a serious prison rule violation can face a variety of punishments, including those that will significantly affect the person's release date.

The main punishment for serious rule violations is loss of credits earned for good conduct in prison. The CDCR rules govern how many credits can be lost for various divisions of serious disciplinary offenses: A-1 (181 to 360 days), A-2 (151 to 180 days), B (121 to 150 days), C (91 to 121

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104 15 CCR § 3378.2(b)(1)-(14).

105 15 CCR § 3341.8(b), (e); 15 CCR § 3378.4(b).

106 15 CCR § 3314(a)(3)(M); 15 CCR § 3378.4(a).

107 15 CCR § 3315(a)(3)(Z)-(AA); 15 CCR § 3378.4(a).

108 15 CCR § 3378.4(a).

109 15 CCR § 3378.4(a).

110 15 CCR § 3378.4(a).

111 15 CCR § 3378.4(c).

days), D (61to 90 days), E (31 to 60 days) and F (0 to 30 days).[112] The effect of credit loss on a release date is discussed in § 8.38.In some cases, the lost credits may be restored if the person serves a period of time with no more disciplinary violations (see §§ 8.39-8.40).

A person who is found guilty of a serious rule violation can also be subject various restrictions and loss of privileges, including any of the penalties that are authorized for administrative rule violations.[113] This can include suspension of privileges or placement in privilege group B or C for up to 90 days.[114] A person may also be ordered to serve disciplinary detention or confinement to quarters for not more than 10 days.[115] People who are in segregation units may have their entertainment appliances removed for a period of time.[116] Certain rule violations can lead to other types of punishments. For example, a person found guilty of a drug-related charge can be required to submit to a period of random drug testing, required to attend substance abuse meetings or programs, and/or lose visiting privileges.[117] Another example is that a person found guilty of sexual activity in a visiting room will lose visiting privileges for a period of time[118]

A person who has been found guilty of a serious rule violation can be referred to a classification committed for reconsideration of the person's program, work group, or housing assignment.[119] A person may be referred to a classification committee to consider placement in Work Group C.[120] Indeed, even if a person is found not guilty of a rule violation, the person may still be referred to a classification committee if the incident raises housing, program or enemy concerns.[121]

People who are found guilty of some highly serious prison rule violations and who are deemed to pose a threat to security or safety may be placed in a Security Housing Unit (SHU), which is a high-security "prison within a prison," for a determinate (set-length) term.[122] Determinate SHU terms can range in length from one month up to five years; the CDCR has a matrix setting forth what range of terms can be imposed for various offenses.[123] In some circumstances, a person who commits a SHU-

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112 15 CCR § 3323; see also Penal Code § 2932(a). The amount of credit a person can lose for a disciplinary offense has increased over the years. Ex post facto principles do not prohibit applying the new credit loss maximums to people who are in prison for crimes committed before the new maximums were enacted, so long as the disciplinary offense itself occurs after the law was revised. *In re Ramirez* (1985) 39 Cal.3d 931 [218 Cal.Rptr. 324].

113 15 CCR § 3315(f); see also 15 CCR § 3314(e).

114 15 CCR § 3315(f)(5)(B)-(C).

115 15 CCR § 3315(f)(5)(D); 15 CCR § 3322.

116 15 CCR § 3315(f)(5)(L).

117 15 CCR § 3315(f)(4)-(f)(5)(H)-(J).

118 15 CCR § 3315(f)(5)(O)-(P).

119 15 CCR § 3315(g).

120 15 CCR § 3315(f)(5)(E).

121 See 15 CCR § 3326(b).

122 15 CCR § 3341.3.

123 15 CCR § 3341.9.

eligible rule violation that has a nexus (connection) to an STG may be kept in a SHU for an additional two years in a Step Down Program (SDP), after serving any determinate SHU term[124]

In addition, a person who is found guilty of a serious disciplinary violation and placed in SHU will often be placed in Work Group D-2 for a period of time, which means the person will be ineligible to earn participation or worktime credits.[125] Thus, a serious rule violation resulting in a SHU term has a "double-whammy" effect — the person loses credits previously earned *and* is ineligible to earn credits for a future period.

The process for assessment of a SHU term or getting a SHU term suspended are discussed in § 6.6. Extended determinate SHU placement for some people validated as STG-affiliates is described in § 6.7. Indeterminate-length Administrative SHU placement for people who repeatedly commit very serious rule violations is covered in § 6.9.

5.11 Administrative Appeals and Rehearing of Rule Violation Findings

A person may challenge any disciplinary action or decision through the CDCR Form 602 administrative appeal process. The CDCR administrative appeal process is described in Chapter 1; special rules for disciplinary appeals are discussed in § 1.30.

It is very difficult to win a challenge to a disciplinary finding of guilt based on a claim that there is insufficient evidence to support the charge. Nonetheless, in some cases a person may be able to make a persuasive claim for reversal due to lack of evidence or the existence of new favorable evidence. Sometimes prison staff will undertake an additional investigation as a result of an administrative appeal raising such issues.

Challenging any procedural irregularities which resulted in a hearing that was unfair or not in accord with CDCR rules is somewhat more likely to be successful. Examples of procedural violations include refusal to call requested witnesses, failure to assign an IE, an inadequate investigation by the IE, or improper use of confidential information. A challenge based on such errors will be stronger if it can be shown that the violations hurt the person's ability to defend against the charge.

In addition, a person should check to see whether the disciplinary punishment was authorized. In some cases, a person might be able to argue that CDCR unlawfully took away time credits after failing to comply with time limits for notice and hearing, or took more time credits than allowed by the rules.

If prison officials grant an appeal challenging a disciplinary finding of guilt, the remedy will depend on the type of violation. The disciplinary charges may be dismissed entirely, the guilty finding may be vacated and a new hearing ordered, or the guilty finding may be upheld but the punishment modified. The CDCR has policies on when each of these dispositions is appropriate.[126]

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124 15 CCR § 3341.8(b), (e); 15 CCR § 3378.4(b).

125 Penal Code § 2932(a)(4); Penal Code § 2933.6. 15 CCR § 3044(b)(6). See § 8.30 for information about D-2 status.

126 DOM §§ 54100.20-54100.20.3.

If the disciplinary charges are to be re-heard, the rule violation report must be rewritten and processed as a new disciplinary charge with all the original rights and procedural safeguards.[127] Time limits for the re-issued charge are the same as those for an original disciplinary charge, starting on the day the CDO issues the rehearing order. The exception to this rule is that if the person has been transferred to another prison, the time limits do not begin until the person is returned to the original institution for the re-hearing proceedings.[128] A rehearing of disciplinary charges shall not result in a greater penalty than that originally imposed, unless new unfavorable evidence is presented that was not reasonably discoverable at the time of the original hearing.[129] If the time limits on either the original or reheard charge are violated, the CDCR cannot take away any time credits for the rule violation.[130]

5.12 Court Challenges to Rule Violation Findings

A person who has completed the CDCR administrative appeal process can continue challenging a disciplinary finding by filing a petition for a writ of habeas corpus in the local superior court. A habeas petition could be based on the violation of any of the rights protected by the U.S. constitution, California statutes, or CDCR regulations. State court habeas corpus petitions are discussed in Chapter 15. In some cases, the state habeas case may be followed by a federal petition for writ of habeas corpus, as discussed in Chapter 16. In cases in which a disciplinary finding does not affect the person's release date, a person may be able to pursue a federal civil rights lawsuit, as discussed in Chapter 17 and § 17.12.

A person who claims that that they are not guilty of the rule violation must show that no evidence supports the disciplinary finding. This is because due process requires only that a disciplinary decision resulting in the loss of sentence credits must be supported by "some evidence in the record." In determining whether this standard is met, a court need not examine the entire record, independently assess the credibility of witnesses, or re-weigh the evidence.[131] Still, courts sometimes do overturn disciplinary actions for lack of evidence.[132]

Cases challenging use of confidential information for a rule violation involve special procedures, since the person and any attorney appointed for the person will not be allowed to learn

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127 15 CCR § 3313(c)(4); DOM § 54100.20.3.1.

128 15 CCR § 3320(b)(1); DOM §§ 54100.20.3.1-54100.20.3.2. See also 15 CCR § 3320.1 regarding hearings for persons who have been transferred.

129 15 CCR § 3312(b)(1).

130 15 CCR § 3313(c)(4); 15 CCR § 3320(f).

131 *Superintendent v. Hill* (1985) 472 U.S. 445, 545-456 [105 S.Ct. 276; 86 L.Ed.2d 356]; see also *In re Rothwell* (2008) 164 Cal.App.4th 160, 166 [78 Cal.Rptr.3d 723] (rejecting argument that a higher standard of judicial review should apply to California prison rule violations).

132 Compare *In re Zepeda* (2006) 141 Cal.App.4th 1493, 1498 [47 Cal.Rptr.3d 172] (upholding disciplinary finding) with *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703 (disciplinary finding overruled where only evidence was the uncorroborated hearsay statement of an informant with no firsthand knowledge); *Burnsworth v. Gunderson* (9th Cir. 1999) 179 F.3d 771, 772, 774 (disciplinary finding reversed because no evidence supported it); *In re Gomez* (2016) 246 Cal.App.4th 1082, 1094-110 [201 Cal.Rptr.3d 124] (participation in hunger strike did not amount to violation of the rule prohibiting behavior that "might lead to disorder); *In re Rothwell* (2008) 164 Cal.App.4th 160, 166 [78 Cal.Rptr.3d 723] (no evidence that person possessed controlled substance).

the identity of the informant or all of the information provided by the informant.[133] However, a person can ask a court to find that there is not "some evidence" to support the disciplinary finding, as well as arguing that the information should not have been kept confidential and that the information was unreliable. In the habeas petition, the person should request that the court order prison officials to produce the confidential information to the court with an explanation of what safety and security concerns require the information to be kept secret. The person should also ask the court to undertake an *in camera* (private) review of the confidential information to determine whether the hearing officer reasonably determined that the information was reliable and whether the information, if reliable, is sufficient to support the guilty finding.[134]

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133 See, e.g., *Ochoa v. Superior Court* (2011) 199 Cal.App.4th 1274 [132 Cal.Rptr.3d 233] (in parole suitability case, court could lawfully not order warden to choose between either providing person's attorney with unredacted confidential information or opposing the person's habeas corpus petition without relying on that confidential information).

134 *Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183, 186-187 and fn. 1 (*in camera* review is one way to assess reliability); *In re Jackson* (1987) 43 Cal.3d 501, 516 [233 Cal.Rptr. 911] (disciplinary record must contain information -- confidential or otherwise -- from which a reviewing court can conclude the hearing officer made a reliability determination and that the determination is supported by evidence); *In re Estrada* (1996) 47 Cal.App.4th 1688, 1697-1699 [55 Cal.Rptr.2d 506] (indicating court reviewed confidential information in determining that information was properly kept confidential and deemed reliable).