

CLASSIFICATION AND DISCIPLINE WORKGROUP

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**Bold and italics indicate proposed revision; underline indicates proposed new regulation.*

Regulation and Recommended Revision

§ 1006. Definitions.

The following is an excerpt from Section 1006 in the Administration Workgroup section. The Classification and Discipline Workgroup proposes the following regulation revision for this section.

“Gender expression/identity” means how one expresses oneself, in terms of dress, mannerisms and/or behaviors that society characterizes as “masculine” or feminine.”

Workgroup Notes

- The term “gender expression/identity” was added to describe an additional element of consideration in the complex classification process currently utilized in jails today.
- The Classification and Discipline Workgroup determined that defining gender expression/identity would be important as this element is added to classification categories to be considered (Section 1050 Classification Plan).

.....

The following is an excerpt from Section 1006 in the Administration Workgroup section. The Administration Workgroup proposes the following regulation revisions, which are most applicable to the Classification and Discipline Workgroup section.

“Disciplinary ~~separation~~ isolation” means that punishment status assigned an inmate as the result of violating facility rules and which consists of confinement in a cell or housing unit, ~~separate from regular jail inmates.~~

“Rated capacity” means the number of inmate occupants for which a facility’s single and double occupancy cells or dormitories, except those dedicated for health care or disciplinary separation ~~isolation~~ housing, were planned and designed in conformity to the standards and requirements contained in Title 15 and in Title 24.

Workgroup Notes

- The definition of “disciplinary isolation” was edited by removing the phrase “separate from regular jail inmates” because the deleted phrase was unnecessary and included an undefined term (“regular jail inmates”). The word “isolation” was replaced with “separation” to more closely define the condition of confinement.
- The definition of “rated capacity” was edited to replace “disciplinary isolation” with “disciplinary separation” to more accurately describe the condition of confinement.

- The Administration Workgroup felt that the definitions for disciplinary isolation, facility watch commander, rated capacity and sobering cell would benefit from the reduction of ambiguity and unnecessary words.

ESC Action/Response

1. Regulation and Recommended Revision

§ 1050. Classification Plan.

(a) Each administrator of a temporary holding, Type I, II, or III facility shall develop and implement a written classification plan designed to properly assign inmates to housing units and activities according to the categories of sex, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior, gender expression/identity -and other criteria which will provide for the safety of the inmates and staff. Such housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility.

The written classification plan shall be based on objective criteria and include receiving screening performed at the time of intake by trained personnel, and a record of each inmate's classification level, housing restrictions, and housing assignments.

Each administrator of a Type II or III facility shall establish and implement a classification system which will include the use of classification officers or a classification committee in order to properly assign inmates to housing, work, rehabilitation programs, and leisure activities. Such a plan shall include the use of as much information as is available about the inmate and from the inmate and shall provide for a channel of appeal by the inmate to the facility administrator or designee. An inmate who has been sentenced to more than 60 days may request a review of his classification plan no more often than 30 days from his last review.

(b) Each administrator of a court holding facility shall establish and implement a written plan designed to provide for the safety of staff and inmates held at the facility. The plan shall include receiving and transmitting of information regarding inmates who represent unusual risk or hazard while confined at the facility, and the segregation of such inmates to the extent possible within the limits of the court holding facility.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input, while giving attention to the following:

1. If "least restrictive" is used,
 - a. it needs to be defined, and
 - b. include that it is the use of the least restrictive housing available.

Rec A

At a minimum, subsection (a) should include:

1. *In-text Addition:* That Type I, II, or III facilities shall develop and implement written classification plans designed to properly assign inmates to the least restrictive housing units. **The Classification and Discipline Workgroup (CDWG) opted not to make this change.**

2. This subsection should also specify that institutional behaviors shall be considered in classification decisions. **The CDWG opted not to make this change.**

Reference: 15 CCR § 3375

Rec B

Further definitions are needed, such as for gender identity. **The CDWG added a definition in Section 1006 Definitions, and with the same terminology added a category in this regulation for consideration in the classification process.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

The regulation currently does not address the complex classification systems needed today as it relates to gender issues. Specifying “gender expression/identity” adds a gender-related category for consideration when classifying inmates.

The addition of “or designee” in the channel of appeal allows for the appropriate designation of a position below the administrator. The administrator is typically not part of the appeal chain.

4. What is the operational impact that will result from this revision; how will it change operations?

Regarding “gender expression/identity,” this change to the regulation brings it more in line with the classification considerations required today with gender issues, as well as compliance with the Prison Rape Elimination Act standards.

The addition of “or designee” allows for the appropriate designation of a position below the administrator in the chain of appeal.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

No fiscal impact.

6. How will BSCC measure compliance with this revision?

Inspectors will review classification policy and procedures, as well as classification records.

7. Summary of Workgroup Discussion and Intent

The workgroup decided to add the “gender expression/identity” category to the classification considerations, which allows agencies to more appropriately address the complex gender issues facility operators are faced with as part of the classification process.

Additionally, the workgroup determined a clarification was needed for the chain of appeal, and added “or designee” after administrator to better reflect the appropriate chain.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1051. Communicable Diseases.

The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures specifying those symptoms that require segregation of an inmate until a medical evaluation is completed. At the time of intake into the facility, an inquiry shall be made of the person being booked as to whether or not he/she has or has had any communicable diseases, such as tuberculosis or has observable symptoms of tuberculosis or any other communicable diseases, ~~including but not limited to, tuberculosis, other airborne diseases,~~ or other special medical problem identified by the health authority. The response shall be noted on the booking form and/or screening device.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

This regulation contains redundant language. The sentence was reworded to provide clarity.

4. What is the operational impact that will result from this revision; how will it change operations?

No operational impact.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

No fiscal impact.

6. How will BSCC measure compliance with this revision?

This change will not affect how compliance is measured.

7. Summary of Workgroup Discussion and Intent

The Medical/Mental Health Workgroup agreed that this regulation contained redundant language. The Classification and Discipline Workgroup concurred, and accepted the change proposed by the Medical/Mental Health Workgroup.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1052. Mentally Disordered Inmates.

The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures to identify and evaluate all mentally disordered inmates, and may include telehealth. If an evaluation from medical or mental health staff is not readily available, an inmate shall be considered mentally disordered for the purpose of this section if he or she appears to be a danger to himself/herself or others or if he/she appears gravely disabled. An evaluation from medical or mental health staff shall be secured within 24 hours of identification or at the next daily sick call, whichever is earliest. Segregation may be used if necessary to protect the safety of the inmate or others.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** and the **Medical/Mental Health Workgroup** consider the input, while giving attention to the following:

1. “Timely” is vague.
2. Timely referral to qualified licensed mental health staff could be an RN initially.
3. Telemedicine would be acceptable.
4. “Restrictive setting” needs further consideration.

Rec A

In-Text Additions: At a minimum, this section should be revised to include that:

1. The written policies and procedures shall require *timely* evaluation of all mentally disordered offenders by *qualified, licensed* mental health staff. **Medical/Mental Health Workgroup (MMHWG) opted not to make this change. CDWG concurred.**
2. Segregation in the least restrictive setting may only be used if necessary to protect the safety of the inmate or others. **MMHWG opted not to make this change. CDWG concurred.**

Reference: 28 CFR §§ 35.130, 35.149, 35.152

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

This amendment provides an additional resource for facilities to accomplish needed medical or mental health evaluations.

4. What is the operational impact that will result from this revision; how will it change operations?

Adding telehealth as an option could make it much easier for inmates to receive appropriate health care.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

If an agency elected to purchase video equipment, this amendment could result in increased up-front costs. However, there could be long-term cost savings because health professionals could be providing services by video camera in lieu of potentially driving long distances to see inmates. Any costs may be justified by the improved quality of inmate health care.

6. How will BSCC measure compliance with this revision?

This change will not affect how compliance is measured.

7. Summary of Workgroup Discussion and Intent

The Medical/Mental Health Workgroup agreed that adding telehealth would be an acceptable method to identify and evaluate mentally disordered inmates. While it is preferable to have face-to-face contact with inmates, telehealth provides more options to obtaining appropriate health care.

The Classification and Discipline Workgroup agrees with the telehealth addition.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1053. Administrative Segregation.

Except in Type IV facilities, each facility administrator shall develop written policies and procedures which provide for the administrative segregation of inmates who are determined to be prone to: promote activity or behavior that is criminal in nature or disruptive to facility operations; demonstrate influence over other inmates, including influence to promote or direct action or behavior that is criminal in nature or disruptive to the safety and security of other inmates or facility staff, as well as to the safe operation of the facility; escape; assault, attempted assault, or participation in a conspiracy to assault or harm staff or other inmates or facility staff; ~~disrupt the operations of the jail,~~ or likely to need protection from other inmates, if such administrative segregation is determined to be necessary in order to obtain the objective of protecting the welfare of inmates and staff. Administrative segregation shall consist of separate and secure housing but shall not involve any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

Rec A

In-text Additions: Administrative segregation shall consist of separate and secure housing but shall not involve any other deprivation of privileges, including but not limited to out of cell time, than is necessary to obtain the objective of protecting the inmates and staff. **CDWG opted not to make this change.**

Before assigning any inmate to ad seg, staff will ascertain whether the conduct is the result of a disability. If so, they will attempt to accommodate the inmate in current housing prior to segregation and provide notation of the attempt or its unfeasibility. **CDWG opted not to make this change.**

Rec B

At a minimum, this section should be revised to include the following:

1. Inmates in administrative segregation must be housed in the *least restrictive setting* to achieve the objective of protecting the welfare of inmates and staff. **CDWG opted not to make this change.**
2. Inmates with serious mental illness or developmental disabilities shall be housed in administrative segregation only with the approval of the designated physician or psychiatrist. **CDWG opted not to make this change.**
3. Inmates with serious mental illness or developmental disabilities who are placed in administrative segregation shall have their status reviewed every two weeks by the facility

manager and designated physician or psychiatrist to determine if they can be safely housed in less restrictive housing units. **CDWG opted not to make this change.**
Reference: 15 CCR §§ 3335(d), 3342, 3343; 28 CFR §§ 35.130, 35.149, 35.152

Rec C

In-text Addition: Except in Type IV facilities, each facility administrator shall develop written policies and procedures which provide for the administrative segregation of inmates who are determined to be prone to: promote activities or behavior that are criminal in nature or disruptive to facility operations; demonstrate influence over other inmates, including influence to promote or direct action or behavior that are criminal in nature or disruptive to the safety and security of other inmates or facility staff, as well as to the safe operation of the facility; escape; assault, attempted assault, or participation in a conspiracy to assault or harm other inmates or facility staff; **CDWG agreed to accept this change with minor modification.**

Fiscal/Operational Impact: The revision will have an operational impact. The facility administrator will eliminate the direct pressure and influence on the inmate population to promote behavior that is criminal in nature. It will decrease the movement of jail contraband and it will prevent assaults on other inmates and staff.

Rec D

Change “Segregation” to “Separation.” The last sentence starting with “Administrative segregation shall consist of . . .” can be removed and should be moved to its own section. **CDWG opted not to make this change.**

Rec E

- People should always be housed in the least restrictive setting possible. **CDWG opted not to make this change.**
- People in administrative segregation must be housed in the least restrictive setting to achieve the objective of protecting the welfare of the incarcerated people and staff. **CDWG opted not to make this change.**
- Their status should be reviewed every week, at a minimum, to determine if they can be safely housed in less restrictive housing units. **CDWG opted not to make this change.**
- People with serious mental illness or developmental disabilities shall be housed in administrative segregation only with the approval of the designated physician or psychiatrist. **CDWG opted not to make this change.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

The current administrative segregation regulation is broad and brief in discussion of the cases in which an inmate may be placed in administrative segregation. This change provides a more detailed description of behavior and needs that may require placement, and provides clearer parameters when addressing classification.

4. What is the operational impact that will result from this revision; how will it change operations?

The facility administrator may eliminate the direct pressure and influence on the inmate population to promote behavior that is criminal in nature. It may decrease the movement of jail contraband and reduce assaults on other inmates and staff.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

No fiscal impact.

6. How will BSCC measure compliance with this revision?

Inspections will include a review of policy and procedures, and classification records.

7. Summary of Workgroup Discussion and Intent

The Classification and Discipline Workgroup determined the addition of this language strengthens and clarifies the reasoning for the usage of administrative segregation, and allows agencies to address the significant impacts to jail operations that often result in the need to remove inmates from the general population.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1054. Administrative Removal-Type IV Facility.

In Type IV facilities, the facility administrator shall develop written policies and procedures which provide for the administrative removal of an inmate for the safety and well being of the inmate, the staff, the program, the facility, and/or the general public. Such removal shall be subject to review by the facility administrator or designee on the next business day.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

The addition of “or designee” in the review of administrative removal allows for the appropriate designation of a position below the administrator who can act on these occurrences. The administrator him/herself does not need to review each of the removals.

4. What is the operational impact that will result from this revision; how will it change operations?

The addition of “or designee” allows for the appropriate designation of a position below the administrator to review removals.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

No fiscal impact.

6. How will BSCC measure compliance with this revision?

Inspectors will review policy and procedures, and facility documentation.

7. Summary of Workgroup Discussion and Intent

The Classification and Discipline Workgroup determined the addition of “or designee” was warranted so the facility administrator is not tasked with each review. It is an appropriate delegation to a designee.

8. ESC Action/Response

1. Regulation and Recommended Revision

Note to ESC: This regulation was reviewed first by the Medical/Mental Health Workgroup whose proposed changes were forwarded to the Classification and Discipline Workgroup. Note the two areas of the regulation (highlighted in yellow) which reflect two options for your consideration.

1. The minimum timeframe for continued retention review by facility manager or health care staff:
 - MMHWG proposes a change to every four hours.
 - CDWG proposes leaving this portion of the regulation as currently written at eight hours.
2. The timeframe for mental health opinion on placement and retention:
 - MMHWG proposes a change to 12 hours.
 - CDWG proposes leaving this portion of the regulation as currently written at 24 hours.

§ 1055. Use of Safety Cell.

The safety cell described in Title 24, Part 2, Section 1231.2.5, shall be used to hold only those inmates who display behavior which results in the destruction of property or reveals an intent to cause physical harm to self or others. The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures governing safety cell use and may delegate authority to place an inmate in a safety cell to a physician.

In no case shall the safety cell be used for punishment or as a substitute for treatment.

An inmate shall be placed in a safety cell only with the approval of the facility manager or designee ~~the facility watch commander~~, or ~~the designated physician responsible health care staff~~; continued retention shall be reviewed a minimum of every eight/four hours. A medical assessment shall be completed within a maximum of 12 hours of placement in the safety cell or at the next daily sick call, whichever is earliest. The inmate shall be medically cleared for continued retention every 24 hours thereafter. A mental health opinion on placement and retention shall be secured within 24/12 hours of placement. Direct visual observation shall be conducted at least twice every thirty minutes. Such observation shall be documented.

Procedures shall be established to assure administration of necessary nutrition and fluids. Inmates shall be allowed to retain sufficient clothing, or be provided with a suitably designed “safety garment,” to provide for their personal privacy unless specific identifiable risks to the inmate’s safety or to the security of the facility are documented.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

With regards to Recommendation B, give attention to the following:

1. Look at NCCHC standards. **MMHWG: There are no NCCHC standards for this issue.**
2. “Least restrictive” needs to be defined. **MMHWG opted not to use this vague term.**
3. Add “or designee” to the facility administrator. **CDWG made this change.**
4. Rather than “responsible physician,” use “responsible health care staff.” **MMHWG used responsible health care staff.**
5. Time and qualified staff are significant issues.
6. #2 of this recommendation: 12-hour references are too short, and being taken to a facility for 72-hour treatment is not practical.

Rec A

In-text Addition: (to end of section) Safety cell will only be used if it is the least restrictive manner to prevent physical harm to self or others, or destruction of property. **MMHWG opted not to make this change. With the exception of "least restrictive manner" (see comment above), this language is already in the regulation. CDWG concurred; opted not to make change.**

Rec B

At a minimum, this section should be revised to include the following:

1. Inmates shall only be held in safety cells after the facility administrator, in cooperation with the responsible physician, reaches the conclusion that no other less restrictive housing is appropriate. **Neither MMHWG nor CDWG opted to use this vague term (less restrictive housing).**
2. No inmates shall be housed in safety cells for longer than 12 hours at a time. If the facility administrator, in cooperation with the responsible physician, determines that there is no less restrictive housing appropriate after 12 hours, the inmate shall be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and Section 4011.6 of the Penal Code. **Neither MMHWG nor CDWG opted to accept this change and agreed with the ESC that the 12-hour references are too short, and being taken to a facility for 72-hour treatment is not practical.**
3. Continued retention shall be reviewed a minimum of every *four hours*.
 - **The MMHWG offers the option of changing to every four hours.**
 - **The CDWG offers the option of maintaining every eight hours.**
4. A medical assessment shall be completed within a maximum of *two hours* of placement, and the inmate shall be medically cleared by *qualified medical staff* for continued retention every four hours thereafter. **MMHWG nor CDWG opted to make this change.**
5. A mental health opinion on placement and retention shall be secured from *qualified, licensed mental health staff* within two hours of placement. **MMHWG nor CDWG opted to make this change.**
6. Direct visual observation shall be conducted at least twice every thirty minutes *by health trained personnel or health services staff*. **MMHWG nor CDWG opted to make this change.**

Reference: National Commission on Correctional Health Care Standard J-1-01; 28 CFR §§ 35.130, 35.149, 35.152; 15 CCR § 3365; Cal. Penal Code § 4011.6; Cal. Welfare & Institutions Code § 5150.

Rec C

In regards to the use of a safety cell, Title 15 Section 1055 states, "Direct visual observation shall be conducted at least twice every thirty minutes." This has led to confusion as the terminology can be construed in different ways. I believe the language should be more explanatory, such as "direct visual observation shall be conducted at least once every fifteen minutes. Whenever possible these checks will occur more frequently." **MMHWG deferred to CDWG. CDWG opted not to make this change.**

Operational/Fiscal Impact for Rec #3 and #4: Redesign/repurpose of physical plant to accommodate group housing, and associated cost.

Rec D

- Group housing of suicidal inmates when possible based on level and classification. Isolation only when absolutely necessary.
- Mental Health professionals complete an objective assessment of suicide risk level to determine which inmate necessitate isolation in a safety cell, and which may be housed in a group setting for a better outcome. **Neither MMHWG nor CDWG opted to make these changes.**

Rec E

Last sentence- Clarify in regulation intent that all inmates are seen by mental health, not just if they're there for more than 24 hours. **MMHWG nor CDWG opted to make this change. MMHWG: Regulation calls for mental health opinion. This may be obtained over the telephone.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

CDWG: The addition of "or designee" in the approval of safety cell placement by the facility manager allows for the appropriate designation of a position below the manager who can act on these events. Whether or not an agency utilizes the "watch commander" (deleted) terminology, the broader "designee" term captures the intent of the position designated by the manager, or next in the chain of command.

MMHWG: The use of a designated physician in this regulation is overly restrictive. "Designated physician" was deleted and "responsible health care staff" was added because it isn't necessary to have a physician approve placement and continued retention. Responsible health care staff as defined by the new definition in Section 1006, would be appropriately qualified to place inmates in a safety cell and approve continued retention.

Inmates may be placed in safety cells due to behavior which results in the destruction of property or reveals an intent to cause physical harm to self. In these cells, inmates could 1) harm themselves and require health care interventions or 2) their behavior could be masking a medical condition.

Changing the timeframe for continued retention from eight hours to four hours will improve inmate safety.

Changing the timeframe that a mental health opinion on placement and retention is secured from 24 to 12 hours will improve inmate safety.

4. What is the operational impact that will result from this revision; how will it change operations?

CDWG: The addition of “or designee” allows for the appropriate designation of a position below the facility manager, or next in command, to approve safety cell placements.

MMHWG: The use of a designated physician in this regulation is overly restrictive. "Responsible health care staff," as newly defined in these regulations (Section 1006), will provide flexibility by opening up access and services to inmates by utilizing available staff within their scope of practice.

Changing the timeframe for continued retention from eight hours to four hours will increase the oversight that the facility manager, the facility watch commander, or responsible health care staff will have with inmates in safety cells.

Changing the timeframe for the mental health opinion from 24 hours to 12 hours will require increased involvement from health care staff.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

CDWG: No fiscal impact associated with utilizing “or designee.”

MMHWG: The use of "responsible health care staff" may reduce costs because it gives the health authority more options to hire and use staff at varying levels within the appropriate scope of practice.

Depending on who is approving the continued retention, changing the timeframe for continued retention from eight hours to four hours should not increase costs. For example, a watch commander will be on duty in the facility. However, if responsible health care staff are required by policies and procedures to approve continued retention, there could be an increased cost. This is justified by the improved quality of inmate health care.

Changing the timeframe for the mental health opinion from 24 hours to 12 hours will increase costs because the involvement of the health care staff has increased. The increased costs are justified by the improved quality of inmate health care.

6. How will BSCC measure compliance with this revision?

The inspector will review custody policies and procedures and documentation for the use of the safety cell.

7. Summary of Workgroup Discussion and Intent

CDWG: The Classification and Discipline Workgroup discussed the change of the term “watch commander” to “or designee” to capture the broad use of the position which may be designated by the facility manager to approve safety cell placements.

The group discussed the Medical/Mental Health Workgroup’s proposed changes to timeframes associated with the facility manager or responsible health care staff’s review of continued retention, and the mental health opinion on placement and retention, and believe further consideration is warranted due to the impact of creating a minimum standard that is too restrictive given staffing and the competing facility operational demands.

MMHWG: The Medical/Mental Health Workgroup felt that amending this regulation by changing "designated physician" to "responsible health care staff" will provide flexibility by opening up access and services to inmates by utilizing available staff within their scope of practice and will add clarity and consistency to these regulations. "Responsible health care staff" as defined by the new definition in Section 1006, would be appropriately qualified to place inmates in a safety cell and approve continued retention.

The group discussed that with the placement of inmates in safety cells, inmates could 1) harm themselves and require health care interventions or 2) their behavior could be masking a medical condition. For these reasons, the group agreed that continued retention should be acquired sooner than eight hours from the time of placement and agreed to the four hour timeframe. They also agreed that a mental health opinion (that may be obtained over the telephone) should be acquired sooner than 24 hours and agreed to the 12 hour timeframe.

8. ESC Action/Response

1. Regulation and Recommended Revision

Note to ESC: This regulation was reviewed first by the Medical/Mental Health Workgroup whose proposed changes were forwarded to the Classification and Discipline Workgroup. Note the one area of the regulation (highlighted in yellow) which reflects options for your consideration with regards to the minimum timeframe for observations.

1. MMHWG proposes a change to twice every half hour.
2. CDWG proposes leaving this portion of the regulation as currently written at every half hour.

§ 1056. Use of Sobering Cell.

The sobering cell described in Title 24, Part 2, Section 1231.2.4, shall be used for the holding of inmates who are a threat to their own safety or the safety of others due to their state of intoxication and pursuant to written policies and procedures developed by the facility administrator. Such inmates shall be removed from the sobering cell as they are able to continue in the processing. In no case shall an inmate remain in a sobering cell over six hours without an evaluation by a medical staff person or an evaluation by custody staff, pursuant to written medical procedures in accordance with section 1213 of these regulations, to determine whether the prisoner has an urgent medical problem. At 12 hours from the time of placement, all inmates will receive an evaluation by responsible health care staff. Intermittent direct visual observation of inmates held in the sobering cell shall be conducted no less than **every/twice every** half hour. Such observation shall be documented.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

Additionally, with regards to Recommendation B, give attention to pertinent portions of the ESC comments in 1055 Use of Safety Cell.

Rec A

In-text Addition: Such inmates shall be removed from the sobering cell as soon as they are able to continue in the processing. **MMHWG and CDWG opted not to make this change due to redundancy.**

Reference: National Commission on Correctional Health Care Standard J-G-07

Rec B

At a minimum, this section should be revised to include the following:

1. Inmates placed in sobering cells shall be immediately evaluated by qualified medical staff. **MMHWG opted not to make this change.**

2. Inmates suffering severe or progressive intoxication (overdose) or severe alcohol/sedative withdrawal shall be transferred immediately to an appropriate, licensed care facility. **MMHWG opted not to make this change because the detoxification process is addressed in Section 1213. Additionally, a new definition was added to describe “medical detoxification.”**
3. Inmates placed in sobering cells shall be appropriately monitored by qualified medical staff until they are removed. **MMHWG opted not to make this change.**
4. Direct visual observation shall be conducted no less than twice every half hour by medical staff or correctional personnel trained in recognizing the signs and symptoms of intoxication and withdrawal.
 - **MMHWG offered the option of changing to twice every half hour; but opted not to add language regarding training as it is already required by regulation.**
 - **CDWG offered the option of maintaining every half hour.**

Rec C

Clarify the time frame of the safety checks. For example a sobering cell safety check shall be performed "no less than every half hour." This wording would not allow for random checks ten to twenty minutes after the initial observation. The language has been interpreted to mean within the 30 minute period or at the 31 minute. **CDWG opted not to make this change.**

Rec D

Clarify safety checks: Intermittent direct visual observation of inmates held in the sobering cell shall be conducted at least once every half hour. **CDWG opted not to make this change.**

Rec E

Such inmates shall be removed from the sobering cell as they are able to continue in the process. This should be modified to say they shall be removed when they are “no longer a threat to their own safety or the safety of others.” **MMHWG nor CDWG opted to make this change.**

3. **a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)**

MMHWG and CDWG: Due to their level of intoxication, inmates placed in sobering cells could be prone to medical situations that require interventions for their safety. Increasing the involvement of responsible health care staff would address this concern.

MMHWG: Increasing the number of documented checks of inmates in sobering cells would address this concern.

4. **What is the operational impact that will result from this revision; how will it change operations?**

MMHWG and CDWG: Adding "At 12 hours from the time of placement all inmates will receive an evaluation by responsible health care staff" will require increased involvement by health care staff.

MMHWG: Increasing documented safety checks from every half hour to twice every half hour will require custody or responsible health care staff to make more frequent documented observations of inmates in sobering cells.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

MMHWG and CDWG: Adding "At 12 hours from the time of placement all inmates will receive an evaluation by responsible health care staff" will require increased involvement of health care staff, thereby increasing health care costs. Any increased costs are justified by the improved quality of inmate health care.

MMHWG: Increasing documented safety checks from every half hour to twice every half hour will require custody or responsible health care staff to make more frequent documented observations of inmates in sobering cells and could increase staffing costs. Any increased costs are justified by the improved quality of inmate health care.

6. How will BSCC measure compliance with this revision?

The inspector will review custody policies and procedures and documentation for the use of the safety cell.

7. Summary of Workgroup Discussion and Intent

MMHWG: The Medical/Mental Health Workgroup agreed that due to their level of intoxication, inmates placed in sobering cells could be prone to medical situations that require interventions for their safety. The existing regulation requires that "In no case shall an inmate remain in a sobering cell over six hours without an evaluation by a medical staff person or an evaluation by custody staff, pursuant to written medical procedures ..." The group felt that this did not go far enough in assuring that the intoxicated inmate in the sobering cell for over six hours was being appropriately monitored.

The group agreed to amend this regulation by adding "At 12 hours from the time of placement all inmates will receive an evaluation by responsible health care staff." This will require increased involvement by health care staff.

Additionally, they agreed to increase the documented safety checks from every half hour to twice every half hour. Both of these will require custody or responsible health care staff to make more frequent documented observations of inmates in sobering cells.

CDWG: The Classification and Discipline Workgroup discussed the changes proposed by the Medical/Mental Health Workgroup.

The group agreed that increasing the number of safety checks of inmates in sobering cells warrants further discussion due to the impact on staffing and the competing facility operational demands.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1057. Developmentally Disabled Inmates.

The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the identification and evaluation, appropriate classification and housing, protection, and nondiscrimination of all developmentally disabled inmates.

The health authority or designee shall contact the regional center on any inmate suspected or confirmed to be developmentally disabled for the purposes of diagnosis and/or treatment within 24 hours of such determination, excluding holidays and weekends.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

At a minimum, revise this section to include the following language:

1. “The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the identification and evaluation, appropriate classification and housing, protection, and nondiscrimination of all developmentally disabled inmates.”

Reference: National Commission on Correctional Health Care Standard J-G-02; 28 CFR §§ 35.130, 35.149, 35.152 **MMHWG added this language. CDWG concurred.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

As defined in Section 1006, “developmentally disabled” means those persons who have a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. This term includes mental retardation, cerebral palsy, epilepsy, and autism, as well as disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.

Due to their disability, developmentally disabled inmates could be vulnerable in a jail setting. The Medical/Mental Health Workgroup agreed that adding "appropriate classification and housing, protection, and nondiscrimination" clarifies the intent of this regulation and will emphasize the special considerations these inmates require.

4. What is the operational impact that will result from this revision; how will it change operations?

There should be no operational impact as these inmates already receive special considerations.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

While the Medical/Mental Health Workgroup felt that the amendments to this regulation were clarifying in nature, by definition, developmentally disabled inmates include those with cerebral palsy. There could be significant costs related to remodeling an existing facility to accommodate those with cerebral palsy. Any costs associated with improving physical plant accommodations for those inmates are justified by increased inmate safety.

6. How will BSCC measure compliance with this revision?

The inspector will review custody policies and procedures.

7. Summary of Workgroup Discussion and Intent

The Medical/Mental Health Workgroup agreed that due to their disability, developmentally disabled inmates could be vulnerable in a jail setting. The group agreed that adding "appropriate classification and housing, protection, and nondiscrimination" will emphasize the special considerations these inmates require.

The Classification and Discipline Workgroup concurs with the changes.

8. ESC Action/Response

1. Regulation and Recommended Revision

Note to ESC: This regulation was reviewed first by the Medical/Mental Health Workgroup whose proposed changes were forwarded to the Classification and Discipline Workgroup. Note the one area of the regulation (highlighted in yellow) which reflects options for your consideration with regards to the terminology associated with “restraints.”

1. MMHWG proposes removing “physical” from its association with “restraints.”
2. CDWG proposes leaving the regulation as currently written as “physical restraints.”

§ 1058. Use of Restraint Devices.

The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the use of restraint devices and may delegate authority to place an inmate in restraints to a ~~physician~~ responsible health care staff. In addition to the areas specifically outlined in this regulation, at a minimum, the policy shall address the following areas: acceptable restraint devices; signs or symptoms which should result in immediate medical/mental health referral; availability of cardiopulmonary resuscitation equipment; protective housing of restrained persons; provision for hydration and sanitation needs; and exercising of extremities.

In no case shall restraints be used for punishment or as a substitute for treatment.

Restraint devices shall only be used on inmates who display behavior which results in the destruction of property or reveal an intent to cause physical harm to self or others. Restraint devices include any devices which immobilize an inmate’s extremities and/or prevent the inmate from being ambulatory. Physical restraints/Physical rRestraints should be utilized only when it appears less restrictive alternatives would be ineffective in controlling the disordered behavior.

Inmates shall be placed in restraints only with the approval of the facility manager, the facility watch commander, or ~~the designated physician~~ responsible health care staff; continued retention shall be reviewed a minimum of every ~~two~~ hours. A medical opinion on placement and retention shall be secured ~~as soon as possible within one hour, but no later than four hours~~ from the time of placement. A medical assessment shall be completed within four hours of placement. The inmate shall be medically cleared for continued retention at least every six hours thereafter. A mental health consultation shall be secured as soon as possible, but in no case longer than eight hours from the time of placement, to assess the need for mental health treatment. If the facility manager, or designee, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation.

Direct visual observation shall be conducted at least twice every thirty minutes to ensure that the restraints are properly employed, and to ensure the safety and well-being of the inmate. Such observation shall be documented. While in restraint devices all inmates shall be housed alone or in a specified housing area for restrained inmates which makes provisions to protect the inmate from abuse. ~~In no case shall restraints be used for discipline, or as a substitute for treatment.~~

The provisions of this section do not apply to the use of handcuffs, shackles or other restraint devices when used to restrain inmates for security reasons.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

Rec A

At a minimum, this section should be revised to include the following:

1. In no case shall restraints be used for punishment or as a substitute for treatment. **MMHWG and CDWG agreed with this change.**
2. Health care staff shall be notified of the use of restraints at the time of placement. **MMHWG determined that notification (or medical option on placement and retention) must take place w/in one hour. CDWG concurred.**
3. A medical opinion on placement and retention shall be secured as soon as possible, but no later than one hour from the time of placement. **MMHWG and CDWG agreed with this change.**
4. The inmate shall be medically cleared for continued retention at least every hour thereafter, and *shall not be held in restraints longer than four hours from the time of placement.* **MMHWG determined that inmates shall not be held beyond eight hours. CDWG concurs.**
5. A mental health consultation shall be secured as soon as possible, but in no case longer than *two* hours from the time of placement, to assess the need for mental health treatment. **MMHWG and CDWG opted not to make this change.**
6. If the facility manager, in consultation with the responsible physician, determines that an inmate cannot be safely removed from restraints after four hours, the inmate shall be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and Section 4011.6 of the Penal Code. **MMHWG agreed to transfer to medical facility after eight hours. CDWG concurred.**
7. Direct visual observation shall be conducted by *licensed* health services staff or *licensed* health-trained personnel *every 15 minutes.* **MMHWG and CDWG opted not to make this change.**

Reference: National Commission on Correctional Health Care Standard J-I-01; 28 CFR §§ 35.130, 35.149, 35.152; 15 CCR § 3268.2(e); Cal. Penal Code §§ 3407, 4011.6; Cal. Welfare & Institutions Code § 5150.

Rec B

In-Text Changes & Additions: ~~Physical~~ restraints should be utilized only when it appears less restrictive alternatives would be ineffective in controlling the disordered behavior. The attempted use and/or the unfeasibility of less restricted alternatives will be documented.

- **The MMHWG offers the option of agreeing to the first change by eliminating “physical.”**

- **The CDWG offers the option of maintaining “physical restraints.”**

The inmate shall be medically cleared for continued retention at least every ~~six~~ two hours thereafter. A mental health consultation shall be secured as soon as possible, but in no case longer than ~~eight~~ two hours from the time of placement, to assess the need for mental health treatment.

MMHWG and CDWG opted not to make this change.

Rec C

After “the following areas,” insert “restraint during pregnancy”. **MMHWG agreed to add a regulation addressing restraints and pregnant inmates (Sections 1058.5 and 1122.5). CDWG concurred.**

Rec D

- In no case shall restraints be used for punishment or as a substitute for treatment. **MMHWG and CDWG agree with this change.**
- Health care staff shall be notified of the use of restraints at the time of placement. **MMHWG determined that notification (or medical opinion on placement and retention) must take place w/in one hour. CDWG concurred.**
- A medical opinion on placement and retention shall be secured as soon as possible, but no later than one hour from the time of placement. **MMHWG and CDWG agree with this change.**
- The person shall be medically cleared for continued retention at least every hour thereafter, and shall not be held in restraints longer than four hours from the time of placement. **MMHWG determined that inmates shall not be held beyond eight hours. CDWG concurred.**
- A mental health consultation shall be secured as soon as possible, but in no case longer than two hours from the time of placement, to assess the need for mental health treatment. **MMHWG and CDWG opted not to make this change.**
- If the facility manager, in consultation with the responsible physician, determines that a person cannot be safely removed from restraints after four hours, the person shall be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and Section 4011.6 of the Penal Code. **MMHWG agreed to transfer to medical facility after eight hours. CDWG concurred.**
- Direct visual observation shall be conducted by licensed health services staff or licensed health-trained personnel every 15 minutes. **MMHWG opted not to make this change.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

MMHWG: The use of a physician in this regulation is overly restrictive. In the first paragraph, "physician" was deleted and "responsible health care staff" was added because it isn't necessary to have a physician approve placement in restraints. Responsible health care staff as defined by the new definition in Section 1006, would be appropriately qualified to place inmates in restraints.

To be consistent with Section 1055 Use of Safety Cell and to clarify the intent of this regulation, the following sentence was added as a second paragraph: "In no case shall restraints be used for punishment or as a substitute for treatment." To eliminate redundancy, the last sentence in this regulation was deleted.

"Physical" was deleted before "restraints" in the now third paragraph because it was redundant.

The use of a designated physician in this regulation is overly restrictive. In the now fourth paragraph, "designated physician" was deleted and "responsible health care staff" was added because it isn't necessary to have a physician approve continued retention. Responsible health care staff as defined by the new definition in Section 1006, would be appropriately qualified to approve continued retention.

Inmates may be placed in restraint devices due to behavior which results in the destruction of property or reveals an intent to cause physical harm to self. In restraints, inmates could 1) harm themselves and require health care interventions or 2) their behavior could be masking a medical condition. Increasing the involvement of facility management/responsible health care staff would address this concern.

The following amendments were made in the fourth paragraph: the timeframe for approval for continued retention was changed from a minimum of every two hours to every hour; the timeframe to secure a medical opinion on placement and retention was changed from "as soon as possible, but no later than four hours" to "within one hour;" a "medical assessment shall be completed within four hours of placement" was added.

Also in the fourth paragraph, the following was added: "If the facility manager, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation."

CDWG: The addition of "or designee" in relation to the safe removal of restraints or further action by the facility manager, allows for the appropriate designation of a position below the manager, or next in command, who can act on these events.

4. What is the operational impact that will result from this revision; how will it change operations?

MMHWG: In the first and now fourth paragraph, the use of a physician in this regulation is overly restrictive. "Responsible health care staff," as newly defined in these regulations (Section 1006), will provide flexibility by utilizing qualified available staff within their scope of practice.

Adding: "In no case shall restraints be used for punishment or as a substitute for treatment" will not affect jail operations.

Deleting "Physical" before "restraints" in the second paragraph will not affect jail operations.

Changing the timeframe for approval for continued retention from a minimum of every two hours to every hour will increase facility management/responsible health care staff involvement with inmates in restraints. Changing the timeframe that a medical opinion on placement and retention is secured from "as soon as possible, but no later than four hours" to "within one hour" and adding that a "medical assessment shall be completed within four hours of placement" will require increased involvement from health care staff.

Adding the language that "if the facility manager, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation," will require increased coordination between the facility manager and responsible health care staff. It may also require appropriate staff to drive the inmate to a medical facility.

Deleting "In no case shall restraints be used for discipline, or as a substitute for treatment" will not have an operational impact.

CDWG: The addition of "or designee" allows for the appropriate designation of a position below the facility manager, or next in command, to approve the safe removal of restraints or taking further action.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

MMHWG: The use of "responsible health care staff" may reduce costs because it gives the health authority more options to hire and use staff at varying levels within the appropriate scope of practice.

Adding: "In no case shall restraints be used for punishment or as a substitute for treatment" will not result in a fiscal impact.

Deleting "Physical" before "restraints" in the second paragraph will not result in a fiscal impact.

Changing the timeframe for approval for continued retention from a minimum of every two hours to every hour, changing the timeframe that a medical opinion on placement and retention is secured from "as soon as possible, but no later than four hours" to "within one hour" and adding that a "medical assessment shall be completed within four hours of placement" will require increased involvement from facility management/health care staff and could increase costs. This is justified by the increased inmate safety that the additional oversight brings.

Adding the language that "if the facility manager, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation," will require increased coordination between the facility manager and responsible health care staff. It may also require appropriate staff to drive the inmate to a medical facility and could increase costs. This is justified by the increased inmate safety that the additional oversight brings.

CDWG: No fiscal impact associated with utilizing “or designee.”

6. How will BSCC measure compliance with this revision?

The inspector will review custody policies and procedures and documentation for the use of the safety cell.

7. Summary of Workgroup Discussion and Intent

MMHWG: The Medical/Mental Health Workgroup felt that amending this regulation by changing "physician" or "designated physician" to "responsible health care staff" will provide flexibility by opening up access and services to inmates by utilizing available staff within their scope of practice and will add clarity and consistency to these regulations. "Responsible health care staff" as defined by the new definition in Section 1006, would be appropriately qualified to place inmates in a safety cell and approve continued retention.

The Medical/Mental Health Workgroup agreed that adding "In no case shall restraints be used for punishment or as a substitute for treatment" was appropriate and consistent with Section 1055 Use of Safety Cell. They also agreed to delete the last sentence of this regulation because it was redundant.

The group agreed that deleting "Physical" before "restraints" in the second paragraph and changing "designated physician" to "responsible health care staff" brought consistency to this regulation.

The group also agreed that changing the timeframe for continued retention from two hours to one hour, changing the timeframe for the medical opinion to within one hour of the time of placement and adding that a medical assessment shall be completed within four hours of placement will improve inmate safety and the quality of inmate health care.

Finally, the workgroup agreed that adding the language that "if the facility manager, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation," will assure that the inmate will receive appropriate health care.

CDWG: The addition of “or designee” allows for the appropriate designation of a position below the facility manager, or next in command, to approve the safe removal of restraints or taking further action.

Further, maintaining the connection of “physical” to “restraints” (now fourth paragraph) was considered an important clarification regarding the type of restraints intended as the subject of this regulation.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1058.5. Restraints and Pregnant Inmates.

The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the use of restraint devices on pregnant inmates. In accordance with Penal Code 3407 the policy shall include reference to the following:

- 1) An inmate known to be pregnant or in recovery after delivery shall not be restrained by the use of leg irons, waist chains, or handcuffs behind the body.
- 2) A pregnant inmate in labor, during delivery, or in recovery after delivery, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public.
- 3) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of restraints is medically necessary.
- 4) Upon confirmation of an inmate's pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates.

NOTE: Authority cited: Section 6030, Penal Code. Reference: Sections 3407 and 6030, Penal Code

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

Current regulations do not contain statutory language pertaining to restraints and pregnant inmates. This new regulation assures that facility operators would abide by those requirements.

4. What is the operational impact that will result from this revision; how will it change operations?

Facility operations should not be changed by this amendment, as this law (PC 3407) was enacted in 2013.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

There will be no fiscal impact.

6. How will BSCC measure compliance with this revision?

Inspectors will review policies and procedures for compliance.

7. Summary of Workgroup Discussion and Intent

The Medical/Mental Health Workgroup agreed to add a new regulation containing the statutory language from Penal Code Section 3407 pertaining to pregnant inmates.

The Classification and Discipline Workgroup concurs with the addition of this new regulation.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1059. DNA Collection, Use of Force.

(a) Pursuant to Penal Code Section 298.1, authorized law enforcement, custodial, or corrections personnel including peace officers, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions from individuals who are required to provide such samples, specimens or impressions pursuant to Penal Code Section 296 and who refuse following written or oral request.

- (1) For the purpose of this regulation, the “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this regulation.
- (2) The use of reasonable force shall be preceded by efforts to secure voluntary compliance. Efforts to secure voluntary compliance shall be documented and include an advisement of the legal obligation to provide the requisite specimen, sample or impression and the consequences of refusal.

(b) The force shall not be used without the prior written authorization of the facility watch commander on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(c) If the use of reasonable force includes a cell extraction, the extraction shall be videotaped, including audio. Video shall be directed at the cell extraction event. The videotape shall be retained by the agency for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively.

Note: Authority cited: Sections 298.1, 6024, and 6030, Penal Code. Reference: Sections 298.1 and 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

No amendments were made by the Classification and Discipline Workgroup.

4. What is the operational impact that will result from this revision; how will it change operations?

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

6. How will BSCC measure compliance with this revision?

7. Summary of Workgroup Discussion and Intent

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1080. Rules and Disciplinary Penalties.

Wherever discipline is administered, each facility administrator shall establish written rules and disciplinary penalties to guide inmate conduct. Such rules and disciplinary penalties shall be stated simply and affirmatively, and posted conspicuously in housing units and the booking area or issued to each inmate upon booking. For those inmates who are illiterate or unable to read English, and for persons with disabilities, provision shall be made for the jail staff to instruct them verbally or provide them with material in an understandable form regarding jail rules and disciplinary procedures and penalties.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

No amendments were made by the Classification and Discipline Workgroup.

4. What is the operational impact that will result from this revision; how will it change operations?

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

6. How will BSCC measure compliance with this revision?

7. Summary of Workgroup Discussion and Intent

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1081. Plan for Inmate Discipline.

~~Each facility administrator shall develop written policies and procedures for inmate discipline which shall include, but not be limited to, the following elements:~~

~~(a) Designation of one or more subordinates who will act on all formal charges of violation of facility rules by inmates, and who shall have investigative and punitive powers. Staff so designated shall not participate in disciplinary review if they are involved in the charges.~~

~~(b) Minor acts of non-conformance or minor violations of institution rules may be handled informally by any staff member by counseling or advising the inmate of expected conduct, assignment to an extra work detail, or removal from a work assignment without loss of work time credit. In addition, temporary loss of privileges such as, but not limited to, access to television, telephones, or commissary, or lockdown for less than 24 hours, may be considered minor discipline if such acts are accompanied by written documentation, and a policy of review and appeal to a supervisor.~~

~~(c) Major violations or repetitive minor acts of non-conformance or repetitive minor violations of institutional rules shall be reported in writing by the staff member observing the act and submitted to the disciplinary officer. The inmate shall be informed of the charge(s) in writing. The consequences of a major violation may include, but are not limited to, loss of good time/work time, placement in disciplinary isolation, disciplinary isolation diet, or loss of privileges mandated by regulations. In addition:~~

~~(1) Charges pending against an inmate shall be acted on no sooner than 24 hours after the report has been submitted to the disciplinary officer and the inmate has been informed of the charges in writing. A violation(s) shall be acted on no later than 72 hours after an inmate has been informed of the charge(s) in writing. The inmate may waive the 24-hour limitation. The hearing may be postponed or continued for a reasonable time through a written waiver by the inmate or for good cause.~~

~~(2) The inmate shall be permitted to appear on his/her own behalf at the time of hearing.~~

~~(3) Subsequent to final disposition of disciplinary charges by the disciplinary officer, the charges and the action taken shall be reviewed by the facility manager or designee.~~

~~(4) The inmate shall be advised of the action taken by the disciplinary officer by a copy of the record required to be kept by Penal Code Section 4019.5.~~

~~(d) Nothing in this section precludes a facility administrator from administratively segregating any inmate from the general population or program for reasons of personal, mental, or physical health, or under any circumstance in which the safety of the inmates, staff, program, or community is endangered, pending disciplinary action or a review as required by Section 1054 of these regulations.~~

Each facility administrator shall develop written policies and procedures for inmate discipline. The plan shall include, but not be limited to, the following elements:

(a) Temporary Loss of Privileges: For minor acts of non-conformance or minor violations of facility rules, staff may impose a temporary loss of privileges, such as access to television, telephones, commissary, or lockdown for less than 24 hours, provided there is written documentation and supervisory approval.

(b) Punitive Actions: Major violations of facility rules or repetitive minor acts of non-conformance or repetitive minor violations of facility rules shall be reported in writing by the staff member observing the act and submitted to the disciplinary officer. The consequences of such violations may include, but are not limited to:

1. Loss of good time/work time.
2. Placement in disciplinary isolation.
3. Disciplinary isolation diet.
4. Loss of privileges mandated by regulations.

A staff member with investigative and punitive authority shall be designated as a disciplinary officer to impose such consequences. Staff shall not participate in disciplinary review if they are involved in the charges.

Such charges pending against an inmate shall be acted on with the following provisions and within specified timeframes:

1. A copy of the report, and/or a separate written notice of the violation(s), shall be provided to the inmate.
2. Unless declined by the inmate, a hearing shall be provided no sooner than 24 hours after the report has been submitted to the disciplinary officer and the inmate has been informed of the charges in writing. The hearing may be postponed or continued for a reasonable time through a written waiver by the inmate, or for good cause.
3. The inmate shall be permitted to appear on his/her own behalf at the time of hearing and present witnesses and documentary evidence. The inmate shall have access to staff or inmate assistance when the inmate is illiterate or the issues are complex.
4. A charge(s) shall be acted on no later than 72 hours after an inmate has been informed of the charge(s) in writing.
5. Subsequent to final disposition of disciplinary charges by the disciplinary officer, the charges and the action taken shall be reviewed by the facility manager or designee.
6. The inmate shall be advised in a written statement by the fact-finders about the evidence relied on and the reasons for the disciplinary action. A copy of the record shall be kept pursuant to Penal Code Section 4019.5.

7. There shall be a policy of review and appeal to a supervisor on all disciplinary action.

(c) Nothing in this section precludes a facility administrator from administratively segregating any inmate from the general population or program for reasons of personal, mental, or physical health, or under any circumstance in which the safety of the inmates, staff, program, or community is endangered, pending disciplinary action or a review as required by Section 1053 of these regulations.

(d) Nothing in this section precludes the imposition of conditions or restrictions that reasonably relate to a legitimate, non-punitive administrative purpose.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Sections 4019.5 and 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

The ESC requests that BSCC staff develop a proposed revision to clarify the intent of the regulation and present to the workgroup for consideration.

Rec A

Add in section: For inmates with disabilities, the plan will include a policy for review by the inmate's treatment team to determine if the violation was related to the inmate's disability. If the violation was related to a disability, the team will determine if there is a reasonable accommodation that could have prevented the violation. If there is, discipline will not be administered until there is a violation with the accommodation. **CDWG opted not to make this change.**

Rec B

At a minimum, this section should be revised to include the following:

1. It should make clear that all inmates charged with major violations or repetitive minor violations of institutional rules shall be provided with a hearing before final disposition of the disciplinary charges. **CDWG accepted; clarity has been provided.**

2. Inmates with pending charges that are complex shall be provided with counsel-substitute to assist them with the hearing. **CDWG opted not to make this change.**

3. Inmates with mental illness, developmental disabilities, or who are illiterate shall be provided with counsel-substitute in all hearings. **CDWG opted not to make this change.**

4. Inmates shall have the opportunity to present witnesses and documentary evidence during their hearings. **CDWG accepted this change.**

5. Inmates with disabilities shall be provided with notice of their charges in accessible formats, and receive auxiliary aids and assistive devices as needed during their hearings. **CDWG opted not to make this change.**

Reference: *Inmates of Sybil Brand Inst. for Women v. Cnty. of Los Angeles*, 130 Cal. App. 3d 89, 108 (Ct. App. 1982); 28 CFR §§ 35.130, 35.149, 35.152

Rec C

The direction for the disciplinary hearing process may need to be reviewed. 1081 discusses the inmate's ability to appear on their own behalf during the hearing. However, *Wolff v. McDonnell* 418 U.S. 539 (1974) allows for the inmate to be able to call witnesses and present evidence. **CDWG accepted this change.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

The regulation was reordered to provide clarity and thereby address prior confusion.

Changes to (b) 3 regarding the hearing, (b) 6 regarding a written statement, and (d) regarding the imposition of conditions or restrictions, reflect greater consistency with case law.

Reference to Section 1054 in (c) has been changed due to this incorrect reference. It has been corrected to Section 1053.

4. What is the operational impact that will result from this revision; how will it change operations?

The regulation reads more clearly and is therefore easier to interpret.

The regulation is now more consistent with case law and will aid in operations accordingly.

There are further requirements in the hearing process due to changes – allowing inmate's witnesses and documentary evidence at a hearing, and allowing the inmate to have assistance at a hearing.

Correctly referencing Section 1053 clarifies any confusion that may exist by the previously incorrect reference to Section 1054.

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

No fiscal impact.

6. How will BSCC measure compliance with this revision?

Inspectors will review policy and procedures, as well as discipline documentation.

7. Summary of Workgroup Discussion and Intent

At the request of the Executive Steering Committee, BSCC staff drafted an initial edit to Section 1081 to clarify the intent of this regulation. The Classification and Discipline Workgroup reviewed

the draft rewrite and further edited where they determined supervisory involvement was needed, and also where they drew consistencies with case law in the hearing process – Wolff v. McDonnell (1974). Subsequently BSCC staff provided further edits for consideration which drew increased consistencies with additional case law – Bell v. Wolfish (1979); the workgroup reviewed and accepted these additional edits.

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1082. Forms of Discipline.

The degree of punitive actions taken by the disciplinary officer shall be directly related to the severity of the rule infraction. Acceptable forms of discipline shall consist of, but not be limited to, the following:

- (a) Loss of privileges.
- (b) Extra work detail.
- (c) Short term lockdown for less than 24 hours.
- (d) Removal from work details.
- (e) Forfeiture of “good time” credits earned under Penal Code Section 4019.
- (f) Forfeiture of “work time” credits earned under Penal Code Section 4019.
- (g) Disciplinary isolation.
- (h) Disciplinary isolation diet.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

No amendments were made by the Classification and Discipline Workgroup.

4. What is the operational impact that will result from this revision; how will it change operations?

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

6. How will BSCC measure compliance with this revision?

7. Summary of Workgroup Discussion and Intent

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1083. Limitations on Disciplinary Actions.

The Penal Code and the State Constitution expressly prohibit all cruel and unusual punishment. Additionally, there shall be the following limitations:

- (a) If an inmate is on disciplinary isolation status for 30 consecutive days there shall be a review by the facility manager before the disciplinary isolation status is continued. This review shall include a consultation with health care staff. Such reviews shall continue at least every fifteen days thereafter until the disciplinary status has ended. This review shall be documented.
- (b) The disciplinary isolation cells or cell shall have the minimum furnishings and space specified in Title 24, Part 2, 1231.2.6 and 2.7. Occupants shall be issued clothing and bedding as specified in Articles 13 and 14 of these regulations and shall not be deprived of them through any portion of the day except that those inmates who engage in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive inmates of such articles of clothing and bedding shall be reviewed by the facility manager or designee during each 24 hour period.
- (c) Penal Code Section 4019.5 expressly prohibits the delegation of authority to any inmate or group of inmates to exercise the right of punishment over any other inmate or group of inmates.
- (d) In no case shall a safety cell, as specified in Title 24, Part 2, 1231.2.5, or any restraint device be used for disciplinary purposes.
- (e) No inmate may be deprived of the implements necessary to maintain an acceptable level of personal hygiene as specified in Section 1265 of these regulations.
- (f) Food shall not be withheld as a disciplinary measure.
- (g) The disciplinary isolation diet described in section 1247 of these regulations shall only be utilized for major violations of institutional rules.
 - (1) In addition to the provisions of Section 1247, the facility manager shall approve the initial placement on the disciplinary isolation diet and ensure that medical staff is notified.
 - (2) In consultation with medical care staff, the facility manager shall approve any continuation on that diet every 72 hours after the initial placement.
- (h) Correspondence privileges shall not be withheld except in cases where the inmate has violated correspondence regulations, in which case correspondence may be suspended for no longer than 72 hours, without the review and approval of the facility manager.
- (i) In no case shall access to courts and legal counsel be suspended as a disciplinary measure.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

The ESC requested the **Classification and Discipline Workgroup** consider the input.

Rec A

At a minimum, this section should be revised to include the following:

1. Inmates with serious mental illness or developmental disabilities charged with violations of institutional rules shall only receive consequences with the consultation of qualified licensed mental health staff to determine the effectiveness of the consequence in correcting the inmate's behavior and to ensure such consequences do not create a substantial risk of worsening the inmate's mental status. **CDWG opted not to make this change.**

2. Inmates with serious mental illness or developmental disabilities shall not be placed on disciplinary isolation. **CDWG opted not to make this change.**

3. Inmates with serious mental illness or developmental disabilities shall be housed in the *least restrictive* setting available. **CDWG opted not to make this change.**

4. The number of days before a review by the facility manager to continue the status of disciplinary isolation should be significantly reduced. **CDWG opted not to make this change.**

5. There should be a limit to the total number of days an inmate can be placed on disciplinary isolation. **CDWG opted not to make this change.**

Reference: 15 CCR §§ 3317, 3315(d)(2)(A); 28 CFR §§ 35.130, 35.149, 35.152

Rec B

Change section (f) to: Food shall only be limited in the form of a Disciplinary Diet. **CDWG opted not to make this change.**

Rec C

Revision: Such reviews shall continue at least every thirty days thereafter unless health care staff recommend more frequent reviews, then every fifteen days. A medical opinion on continued retention and assessment of the need for mental health shall be obtained every fifteen days after serving 30 consecutive days on disciplinary isolation.

Medical and mental health professionals will be performing the fifteen days evaluations in place of a facility manager. **CDWG opted not to make this change.**

Rec D

Disciplinary isolation diet should be removed from the options to discipline. **CDWG opted not to make this change.**

Rec E

People with serious mental illness or developmental disabilities charged with violations of institutional rules shall only receive consequences with the consultation of qualified licensed mental health staff to determine the effectiveness of the consequence in correcting the person's behavior and to ensure such consequences do not create a substantial risk of worsening the person's mental status. People with serious mental illness or developmental disabilities shall not be placed on disciplinary isolation. The number of days before a review by the facility manager to continue

the status of disciplinary isolation should be significantly reduced. There should be a limit to the total number of days a person can be placed on disciplinary isolation. **CDWG opted not to make this change.**

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

No amendments were made by the Classification and Discipline Workgroup.

4. What is the operational impact that will result from this revision; how will it change operations?

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

6. How will BSCC measure compliance with this revision?

7. Summary of Workgroup Discussion and Intent

8. ESC Action/Response

1. Regulation and Recommended Revision

§ 1084. Disciplinary Records.

Penal Code Section 4019.5 requires that a record is kept of all disciplinary infractions and punishment administered therefore. This requirement may be satisfied by retaining copies of rule violation reports and report of the disposition of each.

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2. ESC Notes/Recommendations

n/a

3. a.) What existing problem is being addressed by this revision? b.) How will this revision address/fix the problem? (What is the rationale?)

No amendments were made by the Classification and Discipline Workgroup.

4. What is the operational impact that will result from this revision; how will it change operations?

5. a.) What is the fiscal impact that will result from this revision? b.) How can it be justified?

6. How will BSCC measure compliance with this revision?

7. Summary of Workgroup Discussion and Intent

8. ESC Action/Response