

Analysis of New “SHU Assessment Chart”

Summary: CDCR is proposing many changes in the SHU Assessment Chart. They are increasing many SHU terms and adding some new SHU-able offenses. CDCR’s framework is to set a “low”, “expected” and “high” term for each rules violation, stated in numbers of months. This memo lists those terms as follows: “18/30/42” means 18 months low term, 30 months expected term, and 42 months high term. The term imposed is based on mitigating or aggravating circumstances, similar to criminal sentences.

New SHU-able offenses:

- a. Rape, sodomy or oral copulation on a non-inmate or any attempt: 18/30/42 [low/expected/high]. [Personally, I think that oral copulation or sodomy on a non-inmate should non-consensual to be SHU-able conduct, as rape and the parallel section regarding inmates does. That language is “rape, sodomy or oral copulation on an inmate *accomplished against the inmate’s will* or any attempt”.]
- b. Attempted escape from any departmental prison or institution [some exceptions]: 6/12/18
- c. Active participation in a disturbance, riot or strike (2 or more offenses within a 12 month period or 1 with direct STG nexus): 3/6/9
- d. Harrassment: 6/12/18. NOTE: this new chart has deleted the offense of “threat to kill or assault person: threat to inmate”—which currently carries 2/3/4. So the new “harassment” offense is both *broader and vaguer* and carries a *significantly greater penalty* that the prior “threaten to kill”. Under Title 15, section 3000, “harassment” is defined as “a willful course of conduct directed at a specific person, group, or entity which seriously alarms, annoys or terrorizes that person, group or entity and which serves no legitimate purpose.”
- e. Extortion or bribery of an inmate: 2/3/4
- f. Soliciting another person to commit any of the SHU-able offenses is added across the board.
- g. **Reduced penalty but expanded scope:** possession a weapon which has been manufactured or modified to have the intent or capability of inflicting traumatic injury and under the control of the inmate is currently 6/10/15; the penalty is reduced to 4/8/12, but the scope is increased to include the manufacture or manufacturing of the weapon, and adds language to include the possession of “materials altered from their original manufactured state or purpose and which can be made into a weapon”.

Increased SHU terms. It should be noted that new section 3341.9(f) proposes to increase from 25% to 50% the maximum amount of “clean conduct” credit a prisoner serving a determinate SHU term can earn to reduce that SHU term. This “clean conduct” provision ameliorates to some degree the increased terms here:

- a. Murder, attempted murder, solicitation of murder or voluntary manslaughter of an inmate: previous terms: 15/26/36 [low, expected, high] becomes 24/36/48.
- b. Threat to kill or assault person: to take or use a non-inmate as a hostage: Previous terms: 18/27/36; new terms: 18/30/42

- c. **STG-related battery on inmate:** current regs give 2/3/6 range for battery without serious injury. The new regs give a range of 2/4/6 BUT state that this can be imposed if (1) two or more incidents within a 12 month period OR (2) one incident with direct STG nexus. So this new configuration is treating an STG- related battery more seriously than a non-STG related battery – plus the prisoner would be placed in the Step Down Program.
- d. Possession of firearm or possession of an explosive device: [this is expanded to add “manufacture of explosive device”]
Previous terms: 18/27/36; new terms: 18/30/42
- e. Distribution of controlled substances:
Previous terms: 6/9/12; new terms: 6/12/18
- f. Escape with force or attempted escape with force against a person:
Previous terms: 9/16/24; new terms: 12/24/36
- g. Inciting conditions likely to threaten institution security
Previous terms: 2/4/6; new terms: 3/6/9
- h. Extortion or bribery of a non-inmate:
Previous terms: 2/6/9; new terms: 4/8/12
- i. Indecent exposure: this has been identified as a specific form of sexual misconduct for which the penalty of 3/6/9 can be imposed for one incident, instead of for two or more offenses within a 12 month period, as current regulations provide for.

New framework for assaults and batteries: [They divide certain assaults into more serious and less serious ones, and change the penalties accordingly.]

Serious violence against non-inmate: This was a broad category with terms of 9/28/48. CDCR has separated this into (1) battery with actual or potential serious injury with terms of 18/30/42 and (2) assault capable of serious injury with terms of 9/15/21.

Serious violence against inmate: Similar to above, the broad category carried terms of 6/15/24. CDCR has separated this into (1) battery with actual or potential serious injury with terms of 12/18/24, and (2) assault capable of serious injury with terms of 6/9/12.

Non-serious violence against non-inmate: current regs give 6/12/18 for assault without serious injury on non-inmate. New regs give same term range for “battery without serious injury” and a reduced range of 3/6/9 for “assault on a non-inmate.”

Elimination of a SHU-able offense: refusal to accept a housing assignment.

Carol Strickman

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