

MEMO
Privileges while in the RCGP

From: Eva DeLair
To: Plaintiff Monitoring Team

1. SUMMARY

A person's privileges and expectations are determined by a number of factors including their Work Group, Privilege Group, Custody Level, and any Suffixes attached to them.¹

In the DRB decisions they indicate that individuals are to be placed in WG/PG A2/B upon transfer to the RCGP. Under Title 15 WG means Work Group, and PG means Privilege Group. Work Group A2 is Involuntarily Unassigned, and it always carries with it Privilege Group B.

The security level at which a person is held, when less than maximum security, suggests that they have access to group programming, but does not address specifics of access to work or group educational or recreational programming.

2. DISCUSSION

A. Work Group A2 v. RCGP Privileges

Work Group A2 has two separate designations. It can either mean: that there is no work, and the person is placed on a waiting list, or that the person was eligible to work and is awaiting an adverse transfer.² I am assuming our clients fit within the former section.

This is a non-adverse transfer.

Title 15 defines an adverse transfer as one "resulting from any in-custody documented misbehavior or disciplinary that may or may not have resulted in an inmate's removal from current program."³ The people being transferred to the RCGP for safety and length of SHU terms are not there for disciplinary reasons. Further, the definition of a non-adverse transfer fits their situation better. Title 15 defines a non-adverse transfer as "movement of an inmate to a less restrictive institution or program where the security level is the same or lower..."⁴ It further clarifies that a prisoner in an work assignment at the sending institution shall be placed on an existing waiting list at the receiving institution⁵.

What the Settlement Agreement Says about Work

¹ §3044 (c)

² §3044 (b)(3)

³ §3043.6(c)

⁴ §3043.6(a)(1)

⁵ §3043.6(a)(3)

____ Attachment A, page 3 says that all people in the RCGP shall have access to support services job assignments.

What this means for our clients

Basically, Work Group A2 suggests that they are on the waiting list for a job. If this waiting list continues to grow and no one is transferred to Work Group A-1⁶ (full time work) or at least Work Group B⁷ (half time work) then CDCR is not meeting its responsibilities. However, while awaiting transfer and awaiting job placement. This seems like the appropriate work-group status. We should keep track of them to ensure that they receive jobs.

B. Privilege Group B

A prisoner is assigned to Privilege Group B if they are involuntarily assigned or working half-time.⁸ This designation is dictated by Title 15, and is not a particular choice of the DRB. Under Privilege-Group B, a person has the right to contact visits (similar to RCGP) and the right to Family Visits⁹, which are specifically denied to people in the RCGP. It also includes 75% canteen draw, a call each month, and 4 packages per year (these privileges are not specified in the Settlement Agreement). If a person is assigned a half-time job, he will remain in Privilege Group B.¹⁰

C. Work Group/ Privilege Group While Awaiting Transfer

Work Group D1 is assigned to those that are in SHU (and other segregated housing) for non-disciplinary reasons, presumably there is no right to work in this Work Group.. Privilege Group S5 was created in the STG regulation changes of October 2014 for those that complete the Step Down Program but are kept in SHU indefinitely. Privileges include, 1 call per month, 75% canteen, while in SHU.

Not everyone appears to be assigned D1/S5 while awaiting transfer. For instance, Ramirez was not given a specific designation, but Lopez and Villegas both were designated D1/S5 while they await transfer. I did not investigate why this was: if it was simply reaffirming their current designation, or making a change, whether positive or negative.

D. Privilege Groups for Work Group A1

While no one has been assigned this Work Groups as of yet, if a person has a full time job, they will be under Privilege Group A1.¹¹ The privileges associated with this Group are: Family visits, contact visits, full monthly canteen draw, one telephone call per week, access to yard and recreation, and 4 packages.¹²

⁶ 3044 (b)(2)

⁷ 3044(b)(4)

⁸ 3044(e)(1)(B)

⁹ These are colloquially known as conjugal visits. See §3177 generally.

¹⁰ 3044(e)(1)(A)

¹¹ 3044(d)(1)(A)

¹² 3044(d)(2)(A-G)

E. Level IV 180; Close Custody A and Close Custody B

None of the Settlement Agreement's requirements for RCGP are directly related to Close A and Close B privileges. Close A is a high security in which the prisoners must be counted an additional time, can only participate in programming from 6 am until 6 pm (without special circumstances), and cannot work past the work-change area. These particulars do not directly address the issues of access to job and educational programming directly. However, they do imply that group activities are allowed.¹³

Similarly, Close B is high security, but slightly lower than Close A. Individuals in Close B can participate in activities from 6 am until 8 pm, or work until 10 pm.¹⁴

While these restrictions suggest that group activities are allowed, they are not explicit.

F. Miscellaneous Suffixes,

S-Suffix

A few people have an S Suffix, this designates that they must be single celled. CDCR can give people this suffix for a number of reasons related to violence in their cell or against cell mates.¹⁵

R-Suffix

Indicates that a person must register on the sex offender registry.¹⁶

¹³ §3377.1(a)(2)

¹⁴ §3377.1(a)(4)

¹⁵ 3269(d)

¹⁶ 3377.1(b)

3. RELEVANT TITLE 15 SECTIONS

§ 3044(b)(3) Work Group A-2: Involuntarily unassigned.

An inmate willing but unable to perform in an assignment shall be placed in Work Group A-2. Inmates eligible to earn Penal Code section 2933 credits shall be awarded one day credit for each day assigned to this work group, in the following status:

- (A) The inmate is placed on a waiting list pending availability of an assignment.
- (B) An unassigned inmate awaiting adverse transfer to another institution.

§ 3043.6 (a)(1) Adverse Transfer

A non-adverse transfer is movement of an inmate to a less restrictive institution or program where the security level is the same or lower, movement to a secure perimeter from a non-secure camp or Level 1 (Minimum Support Facility) setting by order of the prison administration for non-adverse reasons or transfers from reception centers

§ 3043.6 (c)(1) Non-Adverse Transfer

Adverse transfers are defined as a transfer resulting from any in-custody documented misbehavior or disciplinary that may or may not have resulted in an inmate's removal from current program.

§ 3044 (e) Privilege Group B:

(1) Criteria, any of the following:

(A) Half-time assignment as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(b).

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(2) Privileges for Privilege Group B are as follows:

(A) One family visit each six months, unless limited by section 3177(b) or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045. NDS inmates in Privilege Group B are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Seventy-five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.

(D) One personal telephone access period per month under normal operating conditions.

(E) Access to yard, recreation, and entertainment activities during the inmate's non-working/training hours and limited only by institution/facility security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

§ 3044(b)(6) Work Group D-1: Lockup status. Inmates assigned to a segregated housing program, except for reasons specified within section 3043.4, shall be awarded one day credit for

each day assigned to this work group. Segregated housing shall include, but not be limited to, the following:

- (A) Administrative Segregation Unit (ASU).
- (B) Security Housing Unit (SHU).
- (C) Psychiatric Services Unit (PSU).
- (D) Non-Disciplinary Segregation (NDS)

§3044(j) Privilege Group S5:

....

(2) Privileges and non-privileges for Privilege Groups S5 are:

- (A) No Family Visits.
 - (B) Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
 - (C) Seventy Five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.
 - (D) One telephone call per month.
 - (E) Yard access in accordance with Section 3343(h).
 - (F) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Offenders may also receive special purchases, as provided in subsections 3190(j) and (k).
 - (G) One photograph upon completion of each 180-day ICC review.
 - (H) Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
- (3) The local Inter-Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the Institution's Psychiatric Services Unit operational procedure, on a case-by-case basis above that allowed by the inmate's assigned Privilege Group.

3044(d)(1)(A) Privileges for Privilege Group A1

Family visits limited only by the institution/facility resources, security policy, section 3177(b), or other law.

- (B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(e)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent with those afforded to other inmates in ASU.
- (C) Maximum monthly canteen draw as authorized by the secretary.
- (D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.
- (E) Access to yard, recreation and entertainment activities during the inmate's non-working/training hours and limited only by security needs.
- (F) Excused time off as described in section 3045.2.
- (G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

3377.1. Inmate Custody Designations.

(a) Designation of a degree of an inmate's custody shall be reasonably related to legitimate penological interests. The CDCR uses the following inmate custody designations to establish where an inmate shall be housed and assigned, and the level of staff supervision required to ensure institutional security and public safety:

§3377.1. (a)(1) Maximum Custody.

(A) Housing shall be in cells in an approved segregated program housing unit as described in CCR section 3335 and CCR subsections 3341.5(b) and 3341.5(c).

(B) Assignments and activities shall be within the confines of the approved segregated program housing unit.

(C) An inmate designated as Maximum Custody shall be under the direct supervision and control of custody staff.

§3377.1(a)(2) Close A Custody Male Inmates.

(A) Housing shall be in cells within Level III and Level IV facilities in housing units located within an established facility security perimeter.

(B) Close A Custody inmates shall be permitted to participate in program assignments and activities scheduled within the hours of 0600 hours to 1800 hours unless hours are extended by the Warden to no later than 2000 hours when it is determined that visibility is not compromised in areas located within the facility security perimeter. Bases for the extended hours include operational necessity, daylight savings time, or availability of high mast lighting. Close A Custody inmates are not permitted beyond the work change area.

(C) Custody staff supervision shall be direct and constant. In addition to regular institutional counts, Close A Custody male inmates shall be counted at noon each day.

§3377.1(a)(4) Close B Custody Male Inmates.

(A) Housing shall be in cells within designated institutions in housing units located within an established facility security perimeter.

(B) Close B Custody inmates shall be permitted to participate in program assignments and activities during the hours of 0600 hours to 2000 hours in areas located within the facility security perimeter including beyond the work change area in a designated Level II, Level III or Level IV institution. Close B Custody inmates may participate in designated work program assignments until 2200 hours when the work program is in an assigned housing unit located within the facility security perimeter. Close B Custody inmates may participate in limited evening activities after 2000 hours until the general evening lockup and count when the limited activity is in a designated housing unit located within the facility security perimeter.

(C) The work supervisor shall provide direct and constant supervision of Close B Custody inmates during the inmate's assigned work hours.