

**EXECUTIVE STEERING COMMITTEE ACTION MATRIX
ADULT TITLES 15 & 24 REGULATION REVISION
BOARD OF STATE AND COMMUNITY CORRECTIONS**

TITLE 15 SUBSTANTIVE PROPOSED REVISIONS WITH DISCUSSION ANTICIPATED

LEGEND

Revisions:

- S** = Substantive – revision changes the meaning or requirements of a regulation
- SD** = Substantive – discussion anticipated
- N** = Nonsubstantive – revision does not change regulatory meaning or requirement
- A** = Administrative – updates to references or grammar correction

Actions:

- A** = Approve
- AC** = Approve with changes
- D** = Do not approve

TITLE 15. MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES

ARTICLE 5. CLASSIFICATION AND ~~SEGREGATION~~SEPARATION

SECTION 1052. Mentally Disordered Inmates.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	Title	Mentally Disordered Inmates.	SD		The ESC discussed terminology (mentally disordered) as being outdated.	The current title does not reflect the intent of the regulation, that there be a process by which to screen and identify people who have mental health needs. BSCC staff suggests the following to replace “Mentally Disordered Inmates”: Behavioral Crisis Identification		

2	Paragraph 1	<p>The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures to identify and evaluate all mentally disordered inmates <u>persons who may be in behavioral crisis</u>, and may include telehealth. If an evaluation from medical or mental health staff is not readily available, an inmate a person shall be considered mentally disordered in behavioral crisis for the purpose of this section if he or she <u>the person</u> appears to be a danger to himself/herself themselves or others or if he/she <u>they</u> appears gravely disabled, <u>as defined in Section 5008 of the Welfare and Institutions Code</u>. 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 <u>Separation</u> may be used if necessary to protect the safety of the inmate or others.</p>	SD	<p>The Classification and Medical/Mental Health Workgroups agreed that the term "mentally disordered inmate" is outdated and that a more current term should be used.</p> <p>The revised term (**to be chosen by the ESC) should be inclusive of more than mental health disorders and include all at risk persons.</p> <p>Other changes to this section include a reference to the definition for gravely disabled, corrects gender-specific language, and replaces the term "segregation" as is proposed in other sections of these regulations.</p>	<p>The ESC discussed terminology (mentally disordered) as being outdated and undefined in Section 1006. There were many questions around who meets the definition of a "mentally disordered inmate," how staff would identify inmates who are "mentally disordered," and the diagnosis or discovery process. Suggestions for rewording include "persons at risk". Not all persons requiring assessment or mental health care are currently exhibiting a "mental disorder."</p> <p>The ESC discussed how to capture those individuals who don't have a mental health diagnosis but are at risk. The regulation could be clarified to indicate who could notify mental health that a person may need services; policy and procedures should clarify what may signal that a person is at risk or requires assessment and that all staff may trigger a review or assessment.</p>	<p>** As discussed above, the Classification Workgroup and Medical/Mental Health Workgroup proposed two different terms to use in this section.</p>	A	
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SECTION 1053. Administrative Segregation Separation.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	Title	1053. Administrative Segregation Separation.	SD	Removing the term segregation and replacing it with "separation" addresses ESC concerns and ensures that current terms are being used. The changes also refined the reasons for separation to direct behavior, removing ambiguity and promoting reliance on fact. A requirement that there be an assessment and reassessment ensure that inmate's need for separation will be evaluated, and that the reason for administrative segregation be documented.	The ESC discussed the regulation and offered some considerations for the Classification Workgroups:	This regulation does not necessarily require that persons be administratively separated by being placed in isolation, and the ESC should ensure that the intent of the regulation is clear. By changing the term "segregation" to "separation," this distinction is clearer, but there may be more work to do.		
2	Paragraph 1	Except in Type IV facilities, each facility administrator shall develop written policies and procedures which provide for the administrative segregation separation of inmates who have demonstrated a history of 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 other inmates or facility staff; or likely to need protection from other inmates. <u>Policies and procedures must require documentation to indicate, if such that</u> administrative segregation separation is determined to be necessary in order to obtain the objective of protecting the welfare of inmates and staff. Administrative segregation separation shall <u>may</u> 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 <u>and separation must not adversely affect an individual's health. Each inmate placed in separation housing shall have an individualized assessment and ongoing reassessment of security risk and need for separation that indicates the length of the separation and a reasonable time frame in which administrative separation is reviewed for continuation.</u>	SD	There are many studies and best practice recommendations related to segregation, restrictive housing and solitary confinement that condemn the use of long-term isolation because of the detrimental effect on the health and safety of those held in isolation, particularly people with mental health challenges. NCCHC Standard J-G-02 is simple in its statement that "Any practice of segregation	<ul style="list-style-type: none"> The differences between administrative segregation, isolation, and solitary confinement are not clear in regulation. Administrative segregation is different than other forms of "isolation" in that there is no default loss of privileges. Administrative segregation can be considered a classification; should there be a reasonable amount of time that this classification is reviewed? The workgroup should review recent remediation plans to understand litigation around administrative segregation and isolation. Language (prone to: promote activity or behavior that is criminal...) should be 	The ESC should consider this regulation in conjunction with others and may consider additional regulation revisions or the development of definitions related to separation and segregation.		

				<p>should not adversely affect an inmate's health."</p>	<p>reviewed and updated for clarity.</p> <p><i>Public comment submitted by Merced County Sheriff's Office:</i> Word change for Administrative segregation regarding time allowed before notification is required. Inmate discipline time for review and investigations.</p> <p>Disability Rights California Memorandum, February 2, 2020, Page 5. Revision: Regulations should require a generalized exclusion for people with serious mental illness or developmental/intellectual disabilities. □ Rationale: Placement of people with SMI and people with cognitive disabilities has been consistently found to violate the U.S. Constitution. See, e.g., Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995); see also Indiana Protection & Advocacy Services Commission v. Commissioner, 2012 WL 6738517 (S.D. Ind., Dec. 31, 2012) (holding that the Indiana Department of Correction's practice of placing prisoners with serious</p>			
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					<p>mental illness in segregation constituted cruel and unusual treatment in violation of the Eighth Amendment). A generalized exclusion is appropriate, absent exigent circumstances (Mays Remedial Plan, p. 53). o Revision: Requirement of an individualized assessment of security risk and need for separation (Mays Remedial Plan, p. 51). Add language that segregation should not be used in place of rehabilitation and/or appropriate programming. Add limitations on direct release to community from segregation units. (Mays Remedial Plan,, p. 59). □ Rationale: Physical and psychological effects of isolation are well-documented and hinder rehabilitation and likeliness to safely reenter society. States that have limited segregation have shown reduced violence and recidivism.</p>			
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SECTION 1055. Use of Safety Cell.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	Paragraph 3	An inmate shall be placed in a safety cell only with the approval of the facility manager or designee, or responsible health care staff; continued retention shall be reviewed a minimum of every four hours. A medical assessment shall be completed <u>as soon as possible, but not more than within a maximum of 12 hours of placement in the safety cell, or at the next daily sick call, whichever is earliest.</u> The inmate shall be medically cleared for continued retention, <u>referral to advanced treatment, or removal from the safety cell a minimum of every 24 hours thereafter.</u> The facility manager, designee or responsible health care staff shall obtain a mental health opinion/consultation with responsible health care staff on placement and retention, which shall be secured <u>as soon as possible, but not more than within 12 hours of placement.</u> Direct visual observation shall be conducted at least twice every thirty minutes, <u>with no more than a 15-minute lapse between safety checks.</u> Such observation shall be documented.	SD	Revisions include clarifying that medical and mental health reviews occur as soon as possible, not just at the 12-hour mark. Revisions also make clear that at regular retention reviews, there is the recognition that the person may stay in the safety cell, be referred to advanced treatment, or that they be removed from the safety cell.	<p>The ESC discussed how Sheriff's Departments are using spaces in their facilities differently to meet the needs of their population. [...] While holding cells may not be ideal for holding at-risk inmates and does not meet the requirements of a safety cell, there are not always options for "observation" cells. The ESC discussed the need for an "observation" cell or room for persons at risk of harm or suicide that could be a step-down or alternative to safety cells. Please refer to page 54 for more detailed recommendation.</p> <p>Public Comment Submitted by Juliet A. Leftwich, Attorney and Criminal/Social Justice Advocate I would urge BSCC to limit the use of safety cells to 24 hours, given the well-established psychological damage caused to inmates who are placed in solitary confinement.</p>	<p><i>The ESC may wish to consider whether to limit the use of safety cell to 6 hours (DRC) or 24 hours (Julie Leftwich). NCCHC best practices indicate that an order for clinical seclusion not exceed twelve hours, and that it should be employed for the shortest time possible.</i></p> <p><i>The Workgroup discussed adding the following language to the regulation to account for people who are placed in an observation room/cell:</i></p> <p><u>Areas designated to hold persons at risk, that do not meet the requirements of a safety cell that could be a step-down or alternative to a safety cell, shall be required to comply with the same standards of observation as a safety cell.</u></p> <p><i>While the ESC recommended that the workgroup consider language allowing for a step-down or observation cell, it may not be</i></p>		

					<p>Disability Rights California Memorandum, February 2, 2020, Page 6. Revision: Impose 6-hour limitation on time in a safety cell (Mays Remedial plan, p. 45). Clinical staff should have authority, based on individualized clinical judgment and input from custody staff, regarding the duration of placement, conditions, property, and privileges (including use of the "safety garment") for people requiring precautions based on suicide risk. (Mays Remedial plan, p. 45-49). □ Rationale: Safety cells are not conducive to clinically appropriate treatment and monitoring, which can be accomplished in other settings. They should be used for only very short periods because the conditions are so dismal and discourage suicidal individuals from requesting assistance if they experience thoughts of self-harm or suicide again. A person should be placed in the least restrictive setting appropriate to their individual needs, with any removed property and privileges restored at the earliest possible time.</p>	<p><i>appropriate to put the language in this regulation.</i></p>		
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SECTION 1056. Use of Sobering Cell.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	Paragraph 1	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, or to hold persons at risk of harm to themselves or others and placement in a safety cell is not warranted. and pursuant to <u>The facility manager must develop and implement</u> written policies and procedures <u>for placement in a sobering cell. The reason for placement in a sobering cell for intoxication or safety must be clearly documented. developed by the facility administrator.</u>	SD	This regulation outlines the requirement for placement of intoxicated persons who are unable to care for themselves or are a danger to self or others in a sobering cell. Revisions include the shift in intent to include placement of people who may be at risk of harm to self or others but are not intoxicated. This type of shift would legitimize the current practice of using sobering cells as a “step-down”, observation, or “sheltered housing” locations.	The ESC discussed how Sheriff’s Departments are using spaces in their facilities differently to meet the needs of their population. [...] While holding cells may not be ideal for holding at-risk inmates and does not meet the requirements of a safety cell, there are not always options for “observation” cells. The ESC discussed the need for an “observation” cell or room for persons at risk of harm or suicide that could be a step-down or alternative to safety cells. Please refer to page 54 for more detailed recommendation.	<i>This type of “observation cell” placement may not be practical lumped in with the sobering cell. Should there be a separate regulation for an “observation cell?” Should observation cells be short term, and only used for holding, or should they be used for housing?</i>		
2	Paragraph 2	Such inmates <u>A person</u> shall be removed from the sobering cell as <u>soon as</u> they are able to continue in the processing <u>or are no longer a risk to themselves or others.</u>	SD	The Workgroup discussed the ESC’s comments and concerns and agreed that facilities do need to have more flexibility in how they are using spaces differently. The workgroup chose to change the regulation to allow step-down type placements and a requirement for documentation.				

SECTION 1058. Use of Restraint Devices.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	Paragraph 3	Restraint devices include any devices which immobilize an inmate's extremities and or prevent the inmate from being ambulatory. Physical restraints should be utilized only when it appears less restrictive alternatives, <u>including verbal de-escalation techniques, have been attempted and are deemed ineffective. would be ineffective in controlling the disordered behavior.</u>	SD	Language requiring de-escalation, restraint devices and documentation have been added to clearly indicate requirements and standardize accountability for documenting the use of restraint devices. Many facilities already document their restraint incidents, these changes will cause facilities to update policy and in some cases procedure. Language was added to ensure that less restrictive alternatives, including verbal de-escalation, be attempted and deemed ineffective before restraints are used. A requirement that direct visual observation be maintained before a medical opinion is obtained was also added to ensure safety of the person before medical staff is able to make an assessment about continued retention in restraints.	The ESC discussed how smaller counties will often use restraints because they have limited options and how there should be medical consideration when using restraints.	<i>Note to ESC: Members may wish to closely review the proposed revision and best practices related to restraints in local detention facilities. Did the workgroup capture all the ESC's recommendations?</i>		
2	Paragraph 4	Inmates shall be placed in restraints only with the approval of the facility manager, the facility watch commander, <u>or</u> responsible health care staff; continued retention shall be reviewed a minimum of every hour. <u>Direct visual observation shall be maintained until a medical opinion can be obtained.</u>	SD		The Workgroup should review and consider the following: <ul style="list-style-type: none"> Current Title 15 restraint regulations for Juvenile Facilities. Litigation related to restraints and restraint chairs. Other methods of restraint and whether they need to be addressed and regulated. If, and how, trauma-informed care can be addressed. Creation of a stand-alone regulation for the use of restraint chairs 			
3	Paragraph 6	<u>When restraint devices are used, the incident shall be recorded unless exigent circumstances prevent this. All events and information related to the placement in restraints shall be documented. The report shall include: the reason for placement; person authorizing placement; names of staff involved in the placement; injuries sustained; duration of placement.</u>	SD					
4	Paragraph 7	The provisions of this section do not apply to the use of handcuffs, shackles, waist and leg restraints, or other restraint devices when used to restrain inmates for security reasons. <u>Any instance in which a restraint device is used for transportation, and does not involve the use of force, is not subject to the above requirements.</u>	SD		BSCC staff recommends that the ESC review recent revisions to juvenile regulations that outlines requirements for restraints used for movement and			

					<p>transportation rather than behavioral purposes.</p> <p>BSCC staff recommends the term “and/or” (highlighted in yellow above) be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.</p> <p>Disability Rights California Memorandum, February 2, 2020, Page 3. o Revision: “physical restraints should be utilized only when all less restrictive alternatives, including verbal de-escalation techniques, have been attempted.”</p> <p>□ Rationale: Jail staff frequently do not take the time to attempt alternatives to restraint. Verbal de-escalation, which is increasingly emphasized in the community for addressing individuals in crisis, can be effective in preventing the need for restraint. De-escalation is at the core of restraint reduction.</p> <p>Revision: Create a separate regulation for restraint chair use, that includes additional requirements: Conduct a medical and mental health assessment of an individual prior to the use of a restraint chair, or at the</p>			
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					<p>inception of its use; Require direct, continuous observation of any restrained individual; Allow the use of the restraint chair only for as long as needed to secure an incarcerated individual for transport for outside medical attention, but not to exceed two hours within a 24 hour time period; Video record use of the restraint chair; Require reporting to the BSCC the use of the restraint chair as part of its monthly jail report, including the number of times it was used, the incarcerated individuals restrained, and the duration of each restraint episode. Require reporting to BSCC all restraint related deaths. □ Rationale: Restraint chairs are particularly dangerous devices and prone to abuse because they are easily transportable. Incarcerated individuals have died in restraint chairs from pulmonary embolisms in California and nationally. Other states have severely restricted the use of the restraint chair. Restraint chair manufacturers recommend a two-hour cap. Additional reporting to BSCC and data collection can highlight which jails are overly relying on restraint chair use.</p>			
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ARTICLE 6. INMATE PROGRAMS AND SERVICES

SECTION 1065. ~~Exercise and Recreation~~ Out of Cell Time.

Approve changes listed below

#	Section	Proposed Revision	Revision Type (S, N, A)	Rationale / Best Practice	ESC Recommendations & Public Comments	Response to Recommendations and Comments	BSCC Rec Action (A, AC, D)	ESC Action (A, AC, D)
1	(a)(1)-(c)	<p>(a) The facility administrator of a Type II or III facility shall develop written policies and procedures for: <u>(1) an exercise and recreation program, in an area designed for recreation exercise, which will allow a minimum of three hours of exercise distributed over a period of seven days. Such regulations as are reasonable and necessary to protect the facility's security and the inmates' welfare shall be included in such a program. In Type IV facilities, such a program can be either in-house or provided through access to the community.</u></p> <p>(1)<u>(2) a recreation program, which will allow an opportunity for seven hours of recreational, or out of cell time, distributed over a period of seven days. Such regulations policies and procedures as are reasonable and necessary to protect the facility's security and the inmates' welfare shall be included in such a program.</u></p> <p><u>Policies should include reasonable and necessary procedures to ensure safety and security.</u></p> <p>(b) The facility administrator of a Type I facility shall make table games, and/or television, <u>or both</u>, available to inmates.</p> <p><u>(c) In Type IV facilities, such a program can be either in-house or provided through access to the community.</u></p>	SD	<p>Public comment, best practices, and recent facility consent decrees indicate that there is a need for "out of cell time" to be defined and specified in regulation and that the current requirement, three hours "exercise and recreation" over a seven-day period, is inadequate.</p> <p>Revisions also include a rewording of the requirement that policies include reasonable and necessary procedures to ensure safety and security. This revision clarifies unclear language.</p> <p>The term "and/or" was deleted and replaced with more clear language so that agencies have the flexibility to provide one item or the other and have the option to provide both table games and television.</p>	<p>The ESC discussed "out of cell" time in regulation, currently set at "a minimum of three hours of exercise distributed over a period of seven days." The ESC requests that the workgroup review the amount of out of cell time that should be available to inmates, noting that some facilities may have limitations, and consider increasing the minimum time inmates should be out of their cells.</p> <p>BSCC staff recommends the term "and/or" be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.</p> <p><i>Submitted by Pamila Lew, Senior Attorney, Disability Rights California</i></p> <p><i>Revision: Implement standards that prevent conditions of solitary confinement (21-22 or more hours per day in cell) by requiring exercise and recreation time every day,</i></p>	<p>The Workgroup ultimately chose to change the title of Section 1065 to "out of cell time" and propose a required amount of time for exercise and recreation which would total ten hours of out of cell time per week for each individual.</p> <p>The ESC should consider the comments and decide whether to propose additional revisions.</p>		

					<p><i>consistent with recent court-approved settlements; require minimum outdoor time with access to sunlight.</i></p> <p><i>//Rationale: Current regulation does not provide appropriate guidance to systems regarding compliance with constitutional minimums. Compliance with Title 15 regulations should more closely approximate compliance with current legal and constitutional requirements. Hernandez v. Cnty. of Monterey, 110 F. Supp. 3d 929, 946 n.105 (N.D. Cal. 2015) (citing Spain v. Mountanos, 690 F.2d 742, 746 (9th Cir. 1982) ("Under the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite contravening state laws.")). See Sacramento County Jail's 17 hours per week, including some out-of-cell time every day. (Mays Remedial Plan, p. 51); 24 hours per week minimum in San Bernardino County Jail (Turner v. San Bernardino, Restrictive Housing Plan).</i></p> <p>Public Comment Submitted by ACLU Cal Action via email:</p>			
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					<p>(1) an exercise and recreation program, in an area designed for recreation exercise pursuant to the Title 24 definition of an "Exercise Area", which shall be offered for at least one hour per day, at a reasonable time of day. Such regulations policies and procedures as are reasonable and necessary to protect the facility's security and the inmates' welfare shall be included in such a program. In Type IV facilities, such a program can be either in-house or provided through access to the community.</p> <p>(1)(2) a recreation program, which will allow an opportunity for seven hours of recreational, or out of cell time, distributed over a period of seven days. Such regulations policies and procedures as are reasonable and necessary to protect the facility's security and the inmates' welfare shall be included in such a program.</p> <p>Policies should include reasonable and necessary procedures to ensure safety and security. Outdoor time may be cancelled when</p>			
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				<p>hazardous or other inclement weather conditions exist, such as severe heat/humidity indexes, thunderstorms, hazardous air quality, or conditions that cause hypothermia.</p> <p>The ACLU commends these changes to ensure all incarcerated individuals to exercise at least one hour outdoors every day in accordance with international human rights standards.</p> <p>Resources:</p> <p>Association for the Prevention of Torture, Outdoor Exercise.</p> <p>United Nations Office on Drugs and Crime, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)</p> <p>American Bar Association, Criminal Justice Standards: Treatment of Prisoners, Standard 23-3.6 "Recreation and out-of-cell time"</p> <p>Public Comment submitted by Renee Menart, Center on Juvenile and Criminal Justice ("CJCJ"), et al.:</p>			
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					<p><i>Recommendations for regulations revisions related to Section 1065.</i></p> <p>(1) “An exercise program, in an area designed for exercise, which will allow a minimum of three <u>seven</u> hours of exercise distributed over a period of seven days.”</p> <p>(2) “a recreation program, which will allow an opportunity for seven <u>a minimum of three</u> hours of recreational, or out of cell time, per day distributed over a period of seven days.”</p> <p>(c) “The facility administrator of a Type I facility shall make table games, <u>radio/streaming, and television,</u> or both, available to inmates.</p>			
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