

**OFFICE OF ADMINISTRATIVE LAW**

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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

FEB 8 2012

2:47pm  
AS

**DEBRA BOWEN**  
Secretary of State

Date: February 8, 2012

To: John Dawson

From: Chapter Two Compliance Unit

Subject: **2012 OAL DETERMINATION NO. 2(S)**  
**(CTU2012-0112-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Operations Procedure 108,  
at Pleasant Valley State Prison

On January 12, 2012, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether Operations Procedure 108, at Pleasant Valley State Prison constitutes an underground regulation. Operations Procedure 108 is titled "Level IV Sensitive Needs Yard" and establishes guidelines to facilitate daily operations on Pleasant Valley State Prison's Sensitive Needs Yard. Operations Procedure 108 was signed by the warden at Pleasant Valley State Prison and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

<sup>1</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...  
The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

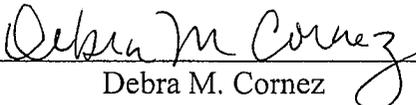
Similarly, the rule challenged by your petition was issued by Pleasant Valley State Prison and applies solely to the inmates of Pleasant Valley State Prison. Inmates housed at other institutions are governed by those other institutions' criteria for the operation of Level IV Sensitive Needs Yards. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.<sup>3</sup>

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<sup>3</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

- (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
- (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
- (A) The challenged rule has been superseded.
  - (B) The challenged rule is contained in a California statute.
  - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
  - (D) The challenged rule has expired by its own terms.
  - (E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]**

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

  
Debra M. Cornez  
Assistant Chief Counsel/  
Acting Director

  
Kathleen Eddy  
Senior Counsel

Copy: Matthew Cate  
Tim Lockwood

# Exhibit A

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PLEASANT VALLEY STATE PRISON  
COALINGA, CALIFORNIA

JUNE 2010

I. PLAN NUMBER AND TITLE:

Operations Procedure Number: 108  
Operations Procedure Title: Level IV Sensitive Needs Yard

II. PURPOSE AND OBJECTIVE:

- A. Establish guidelines to facilitate daily operations, inmate safety and Prison security on Pleasant Valley State Prison's (PVSP), Level IV Sensitive Needs Yard (SNY). Inmates endorsed for PVSP Level IV SNY are in need of a safe environment due to their inability to safely program in a General Population (GP) setting.
- B. The Facility A Level IV SNY at PVSP provides a place where inmates can work, attend educational programs, participate in physical recreation, attend religious activities, receive medical treatment, have visits, participate in leisure time activities and establish a general program while remanded to the custody of the Director of the Division of Adult Institutions.
- C. Establish guidelines for the Level IV SNY orientation of inmates at PVSP housed on Facility A.
- D. Ensure:
1. Inmates are seen by the Facility A Unit Classification Committee (UCC) within 14 days of their arrival.
  2. Establish level of custody and program participation, and review any other case factors that could affect their placement at PVSP (i.e., enemies, documented disabilities, etc.).
  3. Inmates are aware of Prison procedures pertaining to them. PVSP Operations Procedures (OP) are available in the Facility A Program Office and Facility Library for reading.
  4. All inmates are expected to have knowledge of, and adhere to, all Departmental and Prison rules, regulations, and procedures. Lack of understanding or knowledge of the rules, regulations and procedures does not excuse any violation of the same.

III. REFERENCES:

- A. California Penal Code, Section 2650.
- B. California Code of Regulations (CCR), Title 15, Sections 3335, 3340, 3341, 3341.5(a), 3375, 3375.1, 3375.2, 3376, 3376.1, 3378 and 3379.
- C. The California Department of Corrections and Rehabilitation (CDCR), Department Operations Manual (DOM), Sub-Sections 62010.4, 62010.8, 62010.9, 62010.10 and 62010.11.

IV. APPROVAL AND REVIEW:

- A. This procedure must be approved by the Warden.
- B. This procedure will be reviewed annually, in June, by the Associate Warden (AW), Housing A/B, and revisions submitted to the Warden for approval.

LAST REVISION: June 2009

V. RESPONSIBILITY:

- A. The Warden has overall responsibility for this procedure.
- B. The AW, Housing A/B, is responsible for the oversight of this procedure.
- C. The Facility A Captain is responsible for the daily operation of this procedure.
- D. The Facility A Lieutenants and Sergeants are responsible for the implementation of this procedure.

VI. METHODS:

- A. Inmates designated and endorsed for Level IV SNY normally fall into one or more of the following categories.

1. Prison Gang Dropout:

The inmates may be validated as a prison gang dropout through the Office of Correctional Safety (OCS), evidenced in the inmate's Central File (C-File), by the presence of a Gang Validation/Rejection Review (CDC 128B2), signed by OCS staff in accordance with CCR, Title 15, Section 3378(c), denoting the inmate's dropout status.

Disruptive group dropouts may also be designated SNY. The OCS disruptive group dropout documentation is not required; however, referencing documentation will be present in the inmate's C-File.

2. Victim of Assault:

The inmate has been a victim of an assault or numerous assaults usually as a result of a commitment offense, non-participation in a disruptive group/prison gang, or failure to carry out a disruptive group's/prison gang's order. Sufficient documentation should be present in the inmate's C-File.

3. Significant Enemy Concerns:

Inmates may be designated SNY due to testifying in open court against a member of a prison gang, street gang or disruptive group. A designation of SNY may have been the result of a highly publicized crime or an inmate that has been identified as an informant.

As a general rule, an inmate will request placement into a SNY prison and documentation will denote that the inmate is not a "Sleeper" or "Predator" prior to an endorsement by a Classification Staff Representative (CSR).

4. Commitment Offense:

A majority of the inmates designated as SNY may have been convicted of a sex crime or crimes against children. These inmates request SNY placement as they feel their safety may be jeopardized in a GP setting.

B. Processing and Housing:

1. All newly arriving Level IV SNY inmates at PVSP who have been endorsed by the CSR will be processed through the PVSP Receiving and Release (R&R) Unit.
2. The Level IV SNY inmates shall be segregated from the PVSP GP inmates.
3. The Level IV SNY inmates will receive an unclothed body search, be clothed in a jumpsuit, photographed, medically screened, and interviewed by a supervisor. The Level IV SNY inmate Identification (ID) Cards shall be marked "SNY" to establish uniformity with SNY inmates housed on Facility D prior to lamination.

4. Once the Level IV SNY inmates have been processed in accordance with OP, Number 4, R&R, the Facility A Lieutenant and/or Sergeant shall be contacted to have Search and Escort (S&E) Officers sent to R&R. The Level IV SNY inmates will be escorted from R&R through the Facility A Vocations gate in handcuffs or with a lead chain by the S&Es. Once all Level IV SNY inmates have passed through the Facility A Vocations gate, the escorting officers will remove the handcuffs and/or lead chain from the inmates. The Level IV SNY inmates shall then be escorted directly to their assigned cells on Facility A in Building One (AFB1) starting in A Section, Cell 101.
5. Inmates housed in Administrative Segregation (Ad-Seg) 1 or Ad-Seg 2, who meet the criteria for PVSP Level IV SNY and have been endorsed, shall be escorted directly from Ad-Seg 1 or Ad-Seg 2 to their assigned housing in AFB1.

C. SNY Orientation:

1. All newly arriving Level IV SNY inmates shall be placed on "Orientation Status" upon their arrival to PVSP. All Level IV SNY inmates on Orientation Status shall be housed in AFB1, starting in A Section, Cell 101, pending UCC. All Level IV SNY inmates shall be seen within 14 days of their arrival at PVSP by the Facility A UCC. The Facility A UCC will establish a program for the Level IV SNY inmate and release him from Orientation Status.
2. Level IV SNY Orientation inmates shall be escorted to all appointments/ducats (i.e., medical appointments, etc.). All escorts of Level IV SNY inmates in no-man's land areas of the Prison shall be conducted in restraints (handcuffs and/or lead chains) at a ratio of two officers for up to ten inmates.
3. Level IV SNY Orientation inmates shall be cell fed.
4. Level IV SNY Orientation inmates shall receive a shower on Monday, Wednesday, and Friday during Second Watch.
5. Level IV SNY Orientation inmates shall receive a copy of the Inmate Orientation Manual for PVSP.
6. Level IV SNY inmates are to be kept away from the cell doors of Level IV SNY Orientation inmates.
7. Level IV SNY inmates shall not be on the Dayroom floor when there is movement of Level IV SNY Orientation inmates.

8. Level IV SNY inmates shall not be housed in the same cell with a Level IV SNY Orientation inmate.

D. Level IV SNY Inmate Programs:

1. Level IV SNY inmates shall participate in a work/training program. Close A Custody inmates shall not be assigned to a work/training program behind the vocational workchange gate.
2. Facility A Level IV SNY maintenance assignments shall be assigned to SNY inmates who are housed on Facility A only. The maintenance staff shall not take any SNY inmate off the facility for any reason. All maintenance repairs within the facility shall be serviced by maintenance staff utilizing Facility A Level IV SNY crews.
3. Level IV SNY inmates housed on Facility A shall be allowed to celebrate religious functions with other Facility A Level IV SNY inmates only.

E. Medical Treatment at the Correctional Treatment Center:

1. Level IV SNY inmates shall be escorted to and from the Correctional Treatment Center (CTC), by the Facility Medical Escort Officers. Level IV SNY inmates shall remain segregated from GP inmates while at the CTC. Facility A Level IV SNY inmates shall be placed in one of the holding cells while at the CTC.
2. If possible, medical specialty clinics will be scheduled for SNY inmates at a time when there are no GP inmates in the CTC.

F. Feeding and Dining Room Activities:

Facility A Level IV SNY inmates shall be fed in the facility dining rooms in accordance with PVSP OP, Number 58, Feeding Procedures. Level IV SNY inmates shall be assigned to food service positions on Facility A and they shall not have contact with GP inmates from other facilities and/or Level III SNY inmates housed on Facility D.

G. Mental Health Services Delivery System:

Mental health rounds will be conducted in a manner consistent with Mental Health Services Delivery System (MHSDS) procedures for those inmates who are identified as requiring mental health services.

H. Visiting/Family Visiting:

1. Visiting for Level IV SNY inmates shall be conducted in the Facility A Visiting Room and comply with DOM, Sub-Section 54020.
2. Family Visiting for Level IV SNY inmates will be in accordance with PVSP's procedures. SNY inmates shall be processed separately and they shall not come into contact with GP inmates from other facilities and/or the Level III SNY inmates housed on Facility D.
3. Inmates on orientation status will not be allowed visits.

I. Alcoholics Anonymous/Narcotics Anonymous:

1. Level IV SNY inmates will be allowed to participate in Alcoholics Anonymous/Narcotics Anonymous (AA/NA) programs with other Facility A Level IV SNY inmates only. The Facility A Level IV SNY will have its' own stand-alone AA/NA groups. The AA/NA meetings shall be held in the Facility A Chapel under proper staff supervision.
2. Orientation inmates shall not be allowed to attend AA/NA meetings.

J. Men's Advisory Counsel:

The Facility A Level IV SNY will have its' own stand-alone Men's Advisory Counsel (MAC).

K. Counts and Inmate Movement:

All inmates shall report to their designated place for count and all movement shall cease during count time. Inmates are not to leave their designated counting place for any purpose until properly released by staff. If an inmate is not in their designated place for count or he attempts to delay or disrupt count, it shall result in disciplinary action.

L. Clothing:

All newly arriving Level IV SNY inmates will receive an initial issue of clothing. This issue will provide the inmate the minimum allotment of clothing. Inmates are provided a weekly bag for clothing and linen exchange. The bag is for State issued clothing and linen only. No personal clothing shall be forwarded to the laundry.

M. Disability Placement Program:

PVSP has been designated as a Disability Placement Program (DPP) Prison, which houses inmates with permanent disabilities warranting placement according to the DPP. PVSP Level IV SNY is not designated to house inmates with disabilities impacting placement. SNY inmates with disabilities impacting placement shall be housed on Facility D in accordance with the Armstrong Remedial Plan and OP, Number 5, Disability Placement Plan.

N. Property:

Each inmate is allowed to possess up to six cubic feet of property and no more. New arrivals will receive the allowable personal property as soon as R&R staff has processed it.

- Legal property in an inmate's cell is included in the six cubic feet limitation. In addition to the six cubic feet limitation of authorized property, inmates may possess up to one cubic foot of legal materials/documents related to their active cases in their assigned quarters/living areas. Legal property in excess of this amount must be indexed by the inmate and will be stored in a secure place in the designated property room. Upon written request of the inmate, the Housing Unit Officer will assist the inmate by exchanging items of legal property held in storage for the legal property retained within the cell.

O. Vendor Quarterly Packages and Canteen:

Level IV SNY Orientation inmates shall not receive Vendor Quarterly Packages or canteen privileges.

P. Telephone Calls:

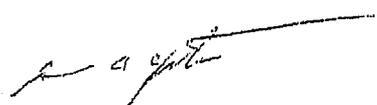
Level IV SNY Orientation inmates will receive telephone calls on an emergency basis only. The Sergeant or Lieutenant must approve telephone calls.

Q. Law Library:

Level IV SNY Orientation inmates cannot have access to the Law Library unless they have legal deadlines and only after providing proof of an imminent court date. The inmate must submit an inmate request form to the Facility Librarian and arrangements shall be made for access to materials on a case-by-case basis.

R. Handicraft Program:

Orientation inmates shall not be allowed to participate in the Handicraft Program.

  
JAMES A. YATES  
Warden

DATE 6/9/10