California Department of Corrections & Rehabilitation In-Cell Racial Integration Plan

INTRODUCTION

In 1987 an African American offender named Garrison Johnson was incarcerated in California Department of Corrections and Rehabilitation (CDCR). Throughout offender Johnson's incarceration he was housed with other African American offenders based on his race. In 1995, he filed a complaint with the United States District Court alleging a violation of his right to equal protection under the Fourteenth Amendment. On July 5, 2005, Johnson amended the original complaint and filed a fourth amended complaint alleging a violation of Equal Opportunity Rights. The District and Ninth Circuit courts found in the Department's favor. The Supreme Court, however, remanded the case back to the Ninth Circuit to apply the "strict scrutiny" standard. Once the case was remanded to the 9th Circuit Court, the parties agreed to mediation. The CDCR has since then entered into a mediated agreement that stipulates that CDCR will no longer use race as the sole determining factor in housing at Reception Centers (RC). This agreement has prompted the development of a CDCR Racial Integration Housing Policy and Action Plan that addresses both RC and General Population institutions. The primary goal of this plan is to ensure that the implementation of racial integration in CDCR receptions center and institutions is completed in such a way that maximizes institutional security and control. The CDCR will make every effort to ensure that the security of the institutions, officers, or offenders is not compromised with unsafe housing practices related to racial integration.

The development of this plan, including related strategies, involved the use of Subject Matter Experts from the field representing the related disciplines and classifications that would be instrumental in planning and implementation. The CDCR also sought out and included consultants who have assisted other states in obtaining successful integration of their offender populations. The CDCR executive level staff toured other states prison systems that have successfully integrated their populations and utilized these tours to garner information and documentation for best practices concerning the racial integration of offenders. This information and insight has been factored into this plan. The CDCR Racial Integration Plan represents a unanimous agreement on strategies for implementation from those who participated and represented the stakeholders.

CDCR RACIAL INTEGRATION POLICY STATEMENT

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It is the policy of the CDCR that an offender's race will not be used as the sole determining factor in housing its offender population. This policy will ensure housing practices, including racial integration, are made in such a manner as to ensure to the maximum extent possible that the safety, security, treatment, and rehabilitative needs of offenders are being met, as well as the safety and security of staff and the institution are maintained. All offender housing assignments shall be made on the basis of rational,

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objective criteria, taking into consideration each individual offender's safety, security, and rehabilitative needs. These assignments shall also include the overarching guidelines and directives as outlined in existing departmental policy mandates including those of Clark, Armstrong, Plata, and/or any other plans or policies which pertain to offender housing assignments.

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PRE-IMPLEMENTION STRATEGIES & REQUIRED INFASTRUCTURE

Effective Communication of Racial Integration Plan

Prior to the implementation of this plan, the department will distribute a Housing Policy to staff and offenders that reflects CDCR and the Court's expectations that race will not be the sole determining factor for offender housing assignments unless security and safety can only be achieved by taking into account race and racial tensions in housing offenders. The notice will also provide the CDCR policy and plan for implementation as a whole, using Effective Communication guidelines (See attachment B). This notice will be distributed to the offender population in County Jails, RCs, and General Population institutions. Management will ensure that both Men/Women's Advisory Counsel as well as Community Stakeholders, such as, the Prison Law Office, Citizens Advisory Counsels, etc., are notified regarding the policy and implementation of racial integration.

Racial Integration Training

In-depth training will be provided to Executive, Administrative, Supervisory, Classifications, Receiving and Release, and Control personnel. This training will include the following subjects.

- Education on positive aspects and importance of integration.
- Review of CDCR policy and implementation plan.
- Review and application of housing procedures.
- Review and application of classification procedures.

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- Racial Integration eligibility criteria and coding.
- Documentation requirements.
- DDPS modification & housing applications.
- Legal aspects concerning the use of race in offender housing assignments.

<u>All</u> CDCR employees who work in an institution/facility, minimum support facility or RC will be required to receive documented training on the CDCR Racial Integration Policy and their local operating procedures for racial integration.

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Networking with County Jails

Effective implementation of racial integration will require networking with county jails. This networking will include a proposed unifateral racial integration policy and/or viable methods of providing racial integration from⁴ the time of incarceration at county jail

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through both the RC process and institutional housing. The proposed policy and/or methods will also include the standardization, enhancement, and in some cases automation of transitional documentation and offender information. This component will provide better information by which to make sound correctional decisions and expedite the housing process.

Behavioral Management Units

Effective implementation of racial integration will require Behavioral Management Units (BMU) and/or other secured housing options. These housing options will provide the CDCR with the ability to effectively manage the segment of the offender population that would otherwise resist integration efforts. The BMU also provides other housing strategy options for a multitude of issues the Department currently faces such as, recalcitrant offenders, gang management, or those otherwise deemed as non-programming. Offenders housed in BMU would have limited privileges and designated work/privilege group C/C status. These offenders would also be required to participate in programs designed to increase self-control and accountability. Offender's who are not restricted from a racially integrated cell and have been housed in BMU's due to their refusal to comply with the CDCR racial integration housing policy will be given the opportunity to reconsider compliance. If compliant, the offender will subsequently be re-housed in accordance with the policy. Compliance may also result in the removal of C/C status and the subsequent return of privileges.

Information Technology and Integrated Housing Codes

The CDCR will update the Distributed Data Processing System (DDPS) fields to include coding that will be used to identify an offender's racial eligibility. The coding will include the following:

The codes below represent the application of all coding options that will be used to delegate an offender's eligibility and/or restrictions:

- **RR**—Racially Restricted (can live only with member of own race).
- RE—Racially Eligible (can live with member of any race).

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- **RW**—Restricted White (restricted from celling with white offenders for rational and objective reasons).
- **RB**—Restricted Black (restricted from celling with black offenders for rational and objective reasons).
- RH—Restricted Hispanic (restricted from celling with Hispanic offenders for rational and objective reasons).
- RO—Restricted Other (restricted from celling with Other e.g., Asian, Indian, etc., for rational and objective reasons.

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Facility & Housing Unit Boards

Using existing operational practices, RCs and Institutions will ensure that facility housing/picture unit boards and building/wing housing bed cards or picture boards are in place and updated regularly to reflect offender information. Custody staff will be required to add the additional information regarding the offender's racial integration housing eligibility code, weight, and height to the card stock currently used to track offender movement within the facilities. In keeping with current practices custody staff will use this information to facilitate inter-facility bed moves (e.g., compatibility, emergency, custody level change, etc.).

Physical Plant Modification

Some institutions will require physical plant modification and/or revision of intake process. During the 1882 process, staff will provide for a confidential area (e.g., provide sight and sound separation from other offenders) for all offenders being interviewed during the intake process at Receiving and Release. The type of modification may include the use of a cubical, office space and/or modification of an existing counter top to include barriers similar to those used by a teller at a banking facility.

RACIAL INTEGRATION PLAN AND TIMELINE

Scaled time line "for detailed time line reference refer to racial integration action plan"

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Phase I, March 2006	Phase II, March 2007	Phase III, March 2008
 DDPS Systems modifications Reception Center and Institution racial eligibility coding of incoming offender population Pilot Behavioral Management Units 	 Implementation of integrated housing in Sensitive Needs and Minimum Support Facilities DDPS housing automation feature. 	 Implement integrated housing through attrition and new arrivals at Reception Centers and Institutions.

Phase I Racial Eligibility Coding for Reception Centers

Beginning March 2006, Offenders who arrive at Reception Centers will be interviewed in accordance with the existing CDCR 1882 process. Additional questions will be asked to determine racial integration eligibility. This information will be recorded on the CDCR 1882 and entered in DDPS during the housing process (*Note: In Phase I of racial integration, offenders will continue to be housed in accordance with existing practices at RCs regardless of their racial eligibility status*). Phase I will involve incremental implementation of coding at reception centers beginning with DVI. The expectation is that all RCs will be in compliance with phase I, by March 2007.

Receiving and Release Responsibility for Racial Eligibility

Offenders arriving at RCs will be interviewed in accordance with the existing 1882 process. During this process staff will ensure that the interview is conducted in an area that provides for confidentiality. The attached 1882 has been modified to include five additional questions. Three of these questions will provide initial information that will be used to determine the offender's racial eligibility along with additional housing information. The remaining two questions will be used to determine potential risks for sexual victimization or predatory behaviors. This information will aid in making sound custodial decisions in housing, sexual assault prevention and intervention, while also providing viable data for the Prison Rape Elimination Act. Receiving and Release staff will use the information provided during the interview as well as the supporting documents received from the counties and parole authorities to determine the offender's eligibility for a racially integrated housing assignment. The initial determination of eligibility will be as follows:

Racially Restricted

During the RC Intake process, offenders who respond to questions indicating they have been the victim and/or perpetrator of a racially motivated crime will initially be considered racially restricted and coded (RR). This will be reflected on the CDCR 1882 and subsequently entered into DDPS by control room personnel during the housing process. Offenders who are deemed racially restricted for rational and objective reasons will not be precluded from integration in other aspects of institutional operation and housing, such as in an integrated cellblock, dormitory settings, and/or work assignments when integration commences (Note: Offenders who are deemed racially restricted are not precluded from a racially integrated cell the entire duration of their sentence. Offenders will be periodically re-evaluated as to the eligibility status for a racially integrated cell using the normal Annual Classification Review processes).

Racially Eligible

Those offenders who indicate that they have not been a victim or perpetrator of a racially motivated crime, in addition to being evaluated on other rational objective criteria, will be deemed racially eligible for an integrated cell assignment. Eligible offenders who simply refuse or prefer to be housed with another race(s) will be coded as racially eligible (RE).

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Partial Eligibility

Offenders may be considered fully eligible for integrated housing with any race (RE) or partially eligible for integrated housing with certain races. For example, a Black offender may be determined to be ineligible to live with Hispanic offenders, but eligible to live with White offenders or Black offenders. This offender would be coded (RH), meaning restricted from living with Hispanic offenders only.

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Coding Application

The offender's eligibility status for a racially integrated cell will **not** be used to facilitate housing in Phase I of implementation. Race eligible coding is only intended to provide the foundation for the implementation of the CDCR integration housing policy during Phase III of the plan.

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Control Room Responsibilities

In keeping with existing procedures Control Room staff will be responsible for locating housing and entering the offenders information into the appropriate DDPS fields. The control room personnel will ensure that the racial eligibility housing code noted on the CDCR 1882 is entered into the new DDPS field. Control room staff will continue to use the existing manual housing index card system and ensure that an additional notation of the offender's racial eligibility code, weight, and height are transcribed on the index card. Control will continue to use the housing index cards to assist in housing the offender in keeping with pre-existing practices.

Data Collection & Records Retention

All questionnaires and/or CDCR 1882's will be retained and stored for the provision of evidence based information, future program modification, and integration management.

Phase I Racial Eligibility Coding for Institutions

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Phase I racial eligibility coding for institutions will begin in March of 2006. Institutions will begin coding offenders housed at their location using the existing Annual Classification Review process. The Unit Classification Committee (UCC) will review pertinent case factors, and available documentation including but not limited to the 1882. UCC shall use the following criterion to determine and/or validate the offender racial eligibility:

- Current or prior institutional adjustment problems where racial beliefs and attitudes were a motivation factor, in the offender's disciplinary record (e.g., offender assault, cell partner assault, sexual assault, fighting, victim of an assault, involvement in a group disturbance between offenders of other races, sexual harassment, extortion, or other events).
- Offender has been placed in, or requested placement in, safekeeping or protective custody, or has been placed in security housing, during current or previous incarceration (e.g., disruptive group affiliation, victim of racial assault or threatened assault, sexual harassment, or extortion).

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• Current or prior offenses or convictions where racial beliefs and attitude were a motivating factor in the commission of the offense.

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 Statements made by the offender which may indicate a potential safety or security problem relative to the offender's housing assignment, including statements which reflect racist beliefs and attitudes. Such statements may only be considered insofar as they lead to the reasonable belief that the result of incell integration would be a breach of security, control, safety and rehabilitation of the offender as well as the safety and security of other offenders and staff in the institution.

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This information will be used to determine eligibility for integrated cell housing. The information will be recorded on a CDCR 128 G, using existing UCC documentation processes and subsequently coded into DDPS (*Note: Regardless of coding, offenders will continue to be housed in accordance with existing practices referenced in Phase I*). Receiving and Release, Control, Classification and Facility personnel responsibilities will remain consistent in application as described in Phase I. In the event the offender is coded racially restricted (RR), the specific reasons for such restriction must be clearly documented.

The UCC will not solicit any information from the offender regarding his/her personal preference or racial prejudices. Supporting documents and the offender's cell assignment eligibility code must be noted on the 128 G classification chrono and subsequently entered into DDPS. The codes and corresponding definitions listed in the Information Technology section of this plan will be available at the time of implementation.

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Phase II Implementation of Racial Integration of Sensitive Needs and Minimum Support Facilities

The CDCR will tentatively begin racially integrating offenders at Sensitive Needs and Minimum Support Facilities in March of 2007. During the implementation process and after offender's eligibility has been determined via the classification process, their eligibility code will be entered into DDPS: After this has occurred, institutional personnel will begin to use these codes to assist in any future housing changes (e.g., compatibility moves, new arrivals, etc).

Offenders, who are racially eligible but refuse to comply with the CDCR racial integration policy in Phase II, or become violent or disruptive in an attempt to be rehoused in a racially segregated cell, shall receive progressive discipline. If found guilty, and the offender continues to receive progressive discipline, he/she shall be placed on C/C status via the classification process and subsequently rehoused in a BMU. The exception to this rule are those offenders who through no fault of their own have been deemed racially restricted due to a history of race-based victimization (*Note: Offenders who are deemed racially restricted are not precluded from a racially integrated cell the entire duration of their sentence. Offenders will be periodically re-evaluated as to the eligibility status for a racially integrated cell using the normal Annual Classification Review processes*). Receiving and Release, Facility, Classification and Control Room personnel

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responsibilities will remain consistent in application as described in Phase I and Phase II of this plan.

Phase III Simultaneous Implementation

The CDCR will tentatively begin phase III in March 2008. Phase III will require that all CDCR offenders have a designated racial eligibility code. Institutions and RCs will simultaneously implement racial integration. Implementation will require staff to begin using the eligibility coding as a method to house offenders through attrition (e.g., new arrivals, transfers, bed compatibility moves etc.).

Institutions will continue to factor in other considerations that would impact the safety and security of the institutions, but will house racially eligible offenders on a first available and appropriate cell basis without regard to race. Offenders who refuse to comply with the CDCR racial integration policy shall receive progressive discipline and if found guilty will eventually be re-housed in a BMU be placed on C/C status via the classification process.

Housing and Discipline

Upon implementation of racially integrated housing, new arrivals and/or offenders who require movement and are deemed racially eligible will be housed in the first available and appropriate cell. If the first available cell is not appropriate, Control Room personnel will progress to the next available cell which meets the offender's housing needs. Control will use the offender's racial eligibility code, height, and weight to determine viable housing. In keeping with current practices, control and housing personnel will also factor in other available information that would present immediate risk or safety concerns such as gang affiliation and or single cell status. Control will continue to ensure that current housing policies regarding special category offenders covered under Clark, Armstrong, Coleman, and Plata remain in place when housing.

Offender movement will be initiated using existing departmental practices, inclusive of CDCR 154 offender movement forms, DDPS and housing and control room index cards. Offenders racial eligibility code will be factored and into each step of the above process.

If after the offender housing has been determined, the offender refuses to double-cell, staff shall apply the same basic principles outlined in the Departments Double-Cell Housing Policy. This includes the following:

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• The offender's refusal of a direct order to double cell is considered a serious disruption of facility operations, per California Code of Regulations (CCR), Title 15, Section 3315(a)(2)(C), and the offender's act of disobedience creates a potential for violence or mass disruptive conduct, per CCR, Title 15, Section 3315(a)(3)(H). For refusing to accept a double cell assignment, the offender will be issued a California Department of Corrections (CDC) Form 115, *Rules*

Violation Report, charging him or her with the specific act of "Refusing a Direct Order," a Division F level offense.

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 Upon adjudication of the above CDC Form 115, staff shall attempt to double-cell the offender by physically escorting the offender or prospective cellmate to the designated cell. If the offender refuses to double-cell or accept the prospective cellmate, the offender shall be issued a CDC Form 115 charging him or her with the specific act of "Willfully Delaying/Obstructing a Peace Officer in Performance of their Duties," a Division D level offense.

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- At any time, if the offender conveys to staff a threat against any prospective cellmate and the threat prevents staff from double-celling the offender, the offender shall be issued a CDC Form 115 charging him or her with the specific act of "Willfully Delaying/Obstructing a Peace Officer in Performance of Their Duties by Means of a Threat," a Division D level offense (Penal Code [PC] Section 69).
- At any time if the offender willfully threatens the prospective cellmate with death or great bodily injury and causes the prospective cellmate to reasonably be in sustained fear for his or her safety, the offender shall be issued a CDC Form 115 charging him or her with the specific act of "Threatening the Life of (another offender)" or "Threatening Serious Bodily Injury to (name of person)," a Division B level offense (PC Section 422) pursuant to CCR Section 3323 (d)(7). The offender shall also be placed in ASU and, if found guilty of the offense, shall be assessed a SHU term and referred to a Classification Staff Representative (CSR) for review of a determinate SHU term. If found guilty of multiple "Threatening the Life of (name of person)" or "Threatening Serious Bodily Injury to (another person)" offenses, the offender shall be referred to a CSR for review of an indeterminate SHU term.
- If the offender's verbal statements directed toward the perspective cellmate do not rise to the threshold of a felony level threat (the offender does not threaten the prospective cellmate with death or great bodily injury and causes the prospective cellmate to reasonably be in sustained fear for his or her safety), the offender shall be charged with the specific act of "Conduct Which May Lead to Force and Violence," a Division F level offense.

Racially restricted offenders will be housed in the first available and appropriate cell, but because of objective criteria, will be precluded from a racially integrated cell. Racially ineligible offenders will, however, be periodically reevaluated as to their eligibility for an integrated cell.

In cases where institution has multiple facilities and levels but only one BMU an offender can be moved from one facility to the next as outlined in the December 18, 2002, memorandum titled "Classification and Parole Representative Approval For

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Movement To A Higher Or Lower Facility," signed by W. A. Duncan, Deputy Director, Institutions Division (See attachment).

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Special Housing Categories

Housing assignments for offenders in special status categories and/or those who fall under court litigated agreement (Armstrong, Clark, Coleman, and Plata) shall be made in accordance with procedures outlined herein.

Special status offenders in classifications such as CCCMS, EOP, Developmentally or Physically Disabled or other treatment programs shall not be assigned to two-person cells on a random basis as outlined in this policy. These special status offenders shall be housed in accordance with the Plans and Administrative Directives governing those programs.

Temporary Suspension of Random Assignments to Racially Integrated Two-Person Cells

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- A. Random assignments to racially integrated two-person cells may be temporarily suspended at a unit (in a specific housing area, custody, or the entire unit) under the following circumstances:
 - 1. Current race relations and level of racial tension is creating a security risk in the unit such that the unit Warden believes that a continuation of assignments to racially integrated two-person cells on a random basis would constitute a violation of safety and security. This risk may be indicated, for example, by a notable increase in stockpiling of commissary, notable increase in informant activity, notable decrease in offender participation in out-of-cell activities such as chapel, dayroom, gym, library, etc.; notable increase in refusals to work, notable increase in request for housing moves to other cells or cellblocks, notable increase in rule violating behavior, etc.
 - 2. A significant increase in racially motivated incidents at a unit such that the Warden believes that a continuation of assignments to racially integrated two-person cells on a random basis would be a violation of safety and security requirements.
 - 3. Occurrence of a serious, racially motivated incident at a unit which the Warden believes would make the continuation of assignments to racially integrated two-person cells on a random basis, a violation of safety and security requirements (e.g., a racially motivated incident involving multiple offenders during which offenders were injured and state property was destroyed, etc.).
 - B. In the event that the Unit Warden determines that a temporary suspension of random assignments to racially integrated two-person cells is required, he/she will contact the appropriate Associate Director and request a temporary suspension of random assignments to racially integrated twoperson cells. The Warden will specify if the suspension is necessary for a

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specific housing area or areas, a specific custody or custodies, or the entire unit. If the Associate Director concurs with the Warden, the written request will be forwarded to the Deputy Director for a final decision. Extensions of the suspension period may be granted by the Deputy Director upon the written request of the Warden and approval of the appropriate Associate Director. The Warden will resume random assignment procedures prior to the expiration of the suspension period if conditions are conducive to random assignments to racially integrated two-person cells. Notification of such resumption should be forwarded to the appropriate Associate Director and the Deputy Director.

C. When a serious, racially motivated incident occurs in a unit and the Warden determines that offenders involved in the incident who are housed in cells with offenders of other races may be endangered as a result of the incident (e.g., in the event of a lockdown following a racial disturbance), these offenders may be reassigned to non-integrated cells on an emergency basis. The appropriate Associate Director and the Deputy Director will be notified immediately of the emergency action taken and the reasons for such action. Regular housing assignment procedures will be resumed upon resolution of the incident. If after immediate resolution of the incident (e.g., at the time the offenders are placed on lockdown status) the Warden determines that a temporary suspension of random assignments to racially integrated two-person cells is required, he/she shall follow the procedures for requesting suspension as outlined above.

Guidelines for Determining Racial Motivation

The guidelines for the definition of "racially motivated" including "racially motivated incident," are outlined below. These guidelines must be followed by all staff charged with the responsibility for implementing the Plan for In-Cell Integration. The following is a general definition of the term "racially motivated."

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<u>Racially Motivated:</u> Where racial beliefs or attitudes were either the cause or a contributing factor.

The fact that an incident involved offenders of different races is not in and of itself sufficient to make the determination that the incident was racially motivated. There must be some indicator(s) that the incident was either the result of the racial attitudes or beliefs of one or more of the offenders involved, or the fact that the incident involved offenders of different races and it was determined to be a contributing factor to the seriousness of the incident. Indicators that a particular incident may have been racially motivated include, but are not limited to the following:

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Circumstances surrounding the incident. Α.

> EXAMPLE: Incident involved a group of Black offenders fighting a group of Hispanic offenders in the cellblock dayroom. Immediately prior to the incident, Black offenders had been lined up on one side of the dayroom and the Hispanic offenders on the other side, preparing to fight.

Context in which the incident occurred. Β.

> EXAMPLE: A unit has experienced multiple one-on-one incidents of White versus Hispanic offenders at the same work site, in the same dayrooms, etc., within a short period of time and there is some reason to believe (based on statements made by the offenders involved) that these incidents were the result of racial tension in the housing area. tin in second

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- Statements made by the offender(s) either during or following the incident which C. indicate why the incident occurred, including racial slurs made by one of the offenders involved in the incident. 61
 - EXAMPLE: Following a fight between a White and Black offender in their cellblock dayroom the White offender stated that "These '----- 'have been dogging me for too long and I just couldn't take it anymore."

The fact that racial slurs were used does not necessarily indicate that the incident was racially motivated. The determination that a particular incident was racially motivated must be made on the basis of the facts surrounding that incident.

Information provided by a reliable offender informant.

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EXAMPLE: An informant gives information to the shift supervisor regarding the circumstances surrounding the incident which indicate that the incident may have been racially motivated, although the participants themselves refuse to cooperate during the investigation.

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- E. One or more of the offenders involved in the incident has a history of expressed attitudes of racial hatred, and/or has made numerous threats of violence (general or specific) against offenders of other races.
 - EXAMPLE: A Black offender was heard on different occasions (by staff and other offenders) making statements of a derogatory nature against. White offenders, indicating that if and when

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F. Recent <u>pattern</u> of involvement in incidents against offenders of other races. ("Recent pattern" is defined as three or more incidents in the past 24 months.)

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EXAMPLE: A Hispanic offender had been involved in three (3) different incidents of fighting without a weapon during the past six months where the victim in each incident has been a Black offender. Although the Hispanic offender refuses to make any statements regarding the motivation of the incidents (i.e., he will not say if any incidents were racially motivated), it appears that the offender has a pattern of assaultive behavior against Black offenders which may in fact be racially motivated.

Racial Balance

The CDCR will continue to monitor racial balance within its housing units. This will be accomplished using existing practices and procedures to include preexisting DDPS administrative report and manual systems. Institution personnel will continue to take appropriate steps in its daily operations and housing to ensure that given the totality of the residing population that its living environment are safe, secure and racially balanced.

If you have any questions or require clarification contact, Associate Warden, Gary Swarthout, at 916-322-9502 or 916-761-1169.

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