



Prisoner Advocacy Network

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TRANSFER

Applying to Transfer

Section 3379 of Title 15 of the California Code of Regulations (the “Title 15”) allows for an incarcerated person to be transferred to another facility, or another cell/yard location within a facility. There are very few circumstances in which CDCr is required to transfer someone in prison¹, but an incarcerated individual or their loved ones can advocate for a discretionary transfer to a particular prison based on a variety of reasons including a violation of rights, family hardship, medical needs, failure to protect, or a change in security level classification eligibility. Though requests are rarely granted, transfer requests characterized as “family hardship transfers” or “retaliation or rights violation transfers” may be granted by CDCr.

Requesting a Transfer

Incarcerated individuals can request a transfer by **filing a 602 Appeal**. Transfers can also be initiated by verbally requesting a transfer to an assigned counselor, the warden or a physician. Transfer can also be initiated by submitting the request to the classification committee directly at a classification committee hearing.

When applying for a transfer, you should detail the situation that is causing you harm and the steps that have been taken to try to address that harm (such as filing enemy concerns with prison officials or filing a 602). It is important to include as many concrete details as possible to explain the reasons for transfer and why it is justified. Factors to describe when relevant include:

- if an individual is currently housed near their family or support system;
- whether medical needs are being adequately treated at the current facility;
- whether an individual is currently housed in a facility aligning with their gender identity;
- whether an individual is experiencing any form of retaliation or violence from CDCr for self-advocacy using the 602 Administrative Grievance system litigation, leaving or reporting against a gang; and, or
- any other reason an individual is in danger by continuing to live in their current assigned cell or facility location.

¹ CDCr transfers can be required due to ICE holds, if someone’s disability code is changed and the institution they are at can no longer accommodate that code, or if an individual has a serious mental health concern and needs to be in an in-patient unit.



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Because it is important to create a paper trail that can support a request to transfer, individuals **should consider filing** the below forms before or in addition to the transfer request:

- A **602 form** seeking remedy for the administrative grievance related to reasons for requesting a transfer;
- A **602-HC** form to report inadequate mental health and medical care. This includes inadequate care received following a sexual/physical assault;
- A **1824** request for disability accommodations; and, or
- A **7362 request** for medical help.

TIP: When filing 602 forms, be sure to only focus on a single issue at one time. This way the prison can't deny your appeal by only partially granting your request. For instance, if you would like to be moved because of an issue with another incarcerated person, consider filing one 602 regarding your safety concerns and a separate 602 two weeks later requesting transfer.

Risks Associated with Applying for Transfer

We acknowledge that there are risks associated with requesting transfer. If you are requesting transfer because of a concern with staff, there is a risk of retaliation for speaking out against that person, either with a 602 specifically about the mistreatment and/or the transfer request because of the issue. If safety is the main concern, CDCr may transfer you to another location within the prison instead of to another facility -including the possibility of a transfer to Administrative Segregation (Ad Seg). While some people feel Ad Seg is safer for them, it can be a risk because Ad Seg is a form of isolation and can also involve separation from one's property and removal from programming, along with other potential consequences.

Outside advocacy and what can loved ones do

Family members and loved ones can write in support of your transfer request with additional information supporting the reason for transfer. Loved ones can make calls to the Warden's office at the facility to explain the transfer request, though PAN recommends that they send a letter afterwards to create a paper trail.

Loved ones should reference the 602 Appeal submitted by describing the date it was submitted and the Tracking Log Number assigned to the 602 Appeal by CDCr. PAN recommends keeping a record of these documents by copying the letter and any other documents sent to the warden.



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Letter to the warden should be sent to the “staff” mailing address for the facility. This information can be accessed on the facility’s webpage on the Internet. If the warden does not respond to this letter within 30 days, outside supporters can follow-up with the warden again in writing to request a response to the original letter or call.

The Transfer Request Review Process

Non-Emergency Transfers are recommended at a classification committee hearing and endorsed by a Classification Services Representative (CSR). Barring an emergency, transfers cannot occur within 90 days of a release date or upcoming Board of Parole Hearings hearing. Even if a transfer is endorsed by a CSR, it may not go through if there is not available space within a facility or on a CDCr bus. An emergency transfer can bypass the classification committee process with approval from CDCr Headquarters. Emergency transfers may be justified based on medical or mental health needs.

Opposing Transfers Initiated by CDCR

The Due Process clause of the Fourteenth Amendment restricts transfers when they would impose an “atypical and significant hardship” in relation to the ordinary incidents of prison life. *See Sandin v. Conner*, 515 U.S. 472, 483 (1995); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997). Transfers to a facility unequipped to treat an individual’s medical or mental health care needs might also violate the Eighth Amendment’s prohibition on cruel and unusual punishment. Section 3379 of Title 15 (**enclosed**) also lists certain circumstances when a person in prison is not eligible for involuntary transfer.

To oppose a transfer to another CDCr facility, individuals should **file a 602 Appeal**. It is generally best to clearly detail why the transfer is opposed, including any mental, medical, or safety concerns. Filing an appeal of a transfer decision will not normally cause a delay to a transfer, except in extraordinary circumstances. If a transfer is likely to seriously harm a person’s safety or health, they can ask for emergency appeal processing.²

To oppose an involuntary psychiatric transfer, individuals can appeal the transfer via a 602 Form **directly to the third level of review** using the address for the Appeals Chief on the

² See 15 C.C.R. §3084.9(a)(1); *see also* The California Prison and Parole Law Handbook § 1.31. Note: Section 3084 is operative as an emergency regulation. CDCr must transmit a Certificate of Compliance to OAL by 10-8-2021 or the language of the statute will be repealed on 10-9-2021. Given past history with CDCr emergency regulations, PAN believes that it is likely that CDCr will extend the statute and it will remain operational beyond the date of October 9, 2021.



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602 form.³ Attach a copy of the relevant Form 128-G classification chrono reflecting the Classification Staff Representative's (CSR's) transfer endorsement to the 602 Form.⁴

To appeal a transfer to a Restricted Custody General Population (RCGP) unit, individuals can submit a 602 Form **directly to the third level of review** using the address for the Appeals Chief on the 602 form.⁵

Compelling Reasons for Transfer

Family Hardship

An explicit factor in considering appropriate placement in prison is strong family ties to a particular area where other placement would cause an unusual hardship.⁶ A person in prison can request a transfer to a particular prison because a loved one or relative is elderly, in poor health, financially unstable, or otherwise unable to travel long distances to see them. When making a family hardship transfer request, it is important to describe how long a certain loved one would have to travel and what modes of transportation they would have to use in order to visit their incarcerated loved one. It can also be helpful to include a doctor's note detailing why a family member outside is unable to travel to visit their loved one.

The administrative determination factors CDCr must consider when making initial placements and transfers can be found on pages **505-507 of the 2020 Department Operations Manual (the "DOM") section 61010.11.5, which is enclosed with this handout.**

Also, extensive research shows that family connections and especially visits support rehabilitation and positive social behaviors in incarcerated people. Family hardship transfers can also be supported by describing that a person in prison has a strong relationship with their outside loved ones and communities, and that they feel that isolation from outside loved ones and support systems is emotionally damaging, and inhibits rehabilitation through CDCr's programs and positive social development in general.

Asking For A Transfer Rights Because Your Rights Are Being Violated

You can argue that you need a transfer based on a rights violation. You can show how the facts in your case relate to a specific right addressed in the following legal precedents. You can

³ See 15 CCR § 3084.8(g); 15 CCR § 3084.9(b); see also The California Prison and Parole Law Handbook § 1.31

⁴ 15 CCR § 3084.9(b)

⁵ See 15 CCR § 3378.4(b)(3)(A)(4); 3084.9(j); see also The California Prison and Parole Law Handbook § 1.31

⁶ See 2018 DOM Sec. 61010.11.5 Administrative Determinant factors (p. 517-18).



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refer to these citations as you explain how the case themes relate to the specific individual details of your circumstances:

- The Due Process clause of the Fourteenth Amendment of the United States Constitution, which restricts placements that would impose an “atypical and significant hardship” in relation to the ordinary incidents of prison life. *See Sandin v. Conner*, 515 U.S. 472, 483 (1995); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997).
- The Eighth Amendment, which grants the right not to be subjected to cruel and unusual punishment. A housing placement or transfer might be cruel and unusual punishment if it places an individual with known enemies or others who are likely to cause them serious harm or if prison officials have shown “deliberate indifference” to a substantial risk of serious harm to an incarcerated person. *See Farmer v. Brennan*, 511 U.S. 825, 828-29 (2005).
- The Eighth Amendment might also be violated if an individual is placed in a facility that is not equipped to treat serious medical, mental health or disability needs. Placement in a facility unable to adequately accommodate disabilities may also violate the *Americans with Disabilities Act* and the *Armstrong Remedial Plan*. *See Armstrong v. Brown*, 857 F. Supp. 2d 919, 933 (N.D. Cal. 2012) (“Reliance on other prisoners for access to basic services, such as food, mail, showers and toilets by prisoners with disabilities leaves them vulnerable to exploitation and is a dangerous correctional practice.”); *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1217-1222 (finding that the ADA was violated by failure to provide accessible bathrooms); *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan.
- The First Amendment, which protects people in prison from transfers or other adverse classification actions taken solely in retaliation for exercising the rights to free speech or to file grievances. *See Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995).

Other Compelling Reasons for Transfer



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- **Retaliation:** For a transfer request related directly to retaliation, the first thing someone can do from inside is to file paperwork documenting specific instances of threats or retaliation, as soon as possible, including a grievance Form 602-1. Requests to transfer can also be supported if a person in prison has reported incidents of violence by correctional officers against them and has reported that officers are encouraging violence by others against them.
- Special medical attention is needed that is not available at their current prison;
- If the prison staff are obstructing the incarcerated person's access to the law library, recreation, or programming;
- If the incarcerated person is experiencing sexual assault or harassment at their current prison; and, or
- If the incarcerated person is experiencing other threats or is in fear of his life.