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IMPORTANT INFORMATION REGARDING THE USE OF THIS INFORMATION:

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use the information below, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the law library.

STAFF MISCONDUCT INVESTIGATIONS

(Revised November 2022)

This letter provides information for people in CDCR facilities or on CDCR parole about how to request an investigation of misconduct by CDCR staff. It also discusses ways that other people can report misconduct by CDCR staff. Unfortunately, we have limited resources and are unable to provide you with direct help regarding staff misconduct issues. We hope this information is helpful to you.

Staff misconduct is behavior that violates law, regulation, policy, or an ethical or professional standard. (15 CCR §§ 3486(c)(22).) Examples of misconduct include unnecessary or excessive force, other brutality, harassment, and failure to follow rules. If an investigation determines that staff committed misconduct, the Warden or other supervisor can take action to punish the staff member, to correct problems caused by the misconduct, and to try to ensure that staff do not commit future misconduct.

There are several ways for people to ask CDCR to investigate staff misconduct. People who are incarcerated or on parole should file an administrative grievance and appeal. Other people can file a citizen's complaint form. In addition, anyone can contact the CDCR Office of Internal Affairs (OIA) or independent Office of the Inspector General (OIG) to raise concerns about CDCR staff misconduct, improper handling of a staff misconduct claim, or retaliation for a staff misconduct complaint.

NOTE: Staff misconduct includes sexual abuse by staff and staff failure to protect people from sexual abuse by other incarcerated people. The information in this letter can help you ask for an investigation of staff sexual abuse or failure to protect from sexual abuse. However, there also are special laws, regulations, and policies that apply to sexual abuse and sexual abuse complaints. You can get more information on this topic by writing to Prison Law Office to request the Sexual Abuse information letter. That letter is also available on the Resources page at www.prisonlaw.com.

1. CDCR Administrative Grievances (602-1, 602-HC) About Staff Misconduct

You should file an administrative grievance if you want CDCR to investigate staff misconduct against you. Submitting a grievance is the only way you can directly request an investigation and be sure that the request is documented. Administrative grievances asking for investigations of staff misconduct are called staff misconduct complaints, and there are some special Title 15 rules about how CDCR is supposed to handle such complaints. 15 CCR §§ 3486-3486.3. If the response to your grievance is not satisfactory, you can appeal your grievance to the highest level of review.

You should write your grievance on a 602-1 form if custody or other non-health care staff committed the misconduct; the deadline to submit a 601-1 is 60 calendar days after you know (or should reasonably have known) about the misconduct. (15 CCR § 3482(b).) If a health care provider (medical, mental health, or dental) committed the misconduct, put your grievance on a 602-HC form and submit it before the 30-day deadline that applies to 602-HCs. (15 CCR § 3999.227(b).) Note that there is no time limit for filing a grievance about staff if your complaint is about sexual abuse. (15 CCR § 3084(c)(1), (d)(1).) Also, CDCR may allow you to submit a grievance after the deadline if you have been out to court, at an outside hospital, temporarily in a medical or mental health crisis bed, or actively fighting fires. (15 CCR §§ 3482(b), 3999.228(d).)

When you fill out the grievance form, you should describe in detail what happened, including dates, times, place, names of the people who were involved, and names of any witnesses. If you don't know all of the information, do your best to describe the people and circumstances. In your grievance, say that you want a staff misconduct investigation. After you fill out the grievance form and attach any supporting documents, submit the papers to the Institutional Office of Grievances or Health Care Grievance Office at the facility where you are housed. You can put your grievance in the internal prison mail or in a locked drop box in your unit; there may also be electronic kiosks or tablets available for submitting grievances. If you are on parole, submit your grievance to the Regional Office of Grievances; parole staff are required to give you the addresses where you can mail or drop off a grievance, and let you know if there are any electronic kiosks or tablets for submitting grievances. (15 CCR §§ 3482(a)(1)-(2), 3999.227.) It is a good idea to keep copies of your completed grievance (even a handwritten copy is better than nothing) and supporting documents, and to write down the date and way that you submit your grievance. This information can be useful if staff lose your grievance papers or don't respond in a timely manner.

If you want to raise other issues or request other types of relief related to the misconduct, you should file a separate grievance regarding those matters. For example, if staff used excessive force against you, and you were also found guilty of a rule violation related to the incident, you would file a staff misconduct grievance regarding the excessive force, and a separate grievance challenging the rule violation finding. Likewise, you might want to file a separate grievance asking for a change in housing to be separated from the staff who committed the misconduct, or asking for money compensation for property damage or physical injuries caused by the misconduct.

As of November 2022, CDCR is phasing in new regulations that change the processes for handling staff misconduct claims. These new rules are 15 CCR §§ 3486-3486.3. The new rules are already in effect at some institutions for some types of grievances and issues. By August 31, 2023, the new rules should be in effect at all institutions for all types of grievances and issues. (15 CCR § 3486(d)(4)-(11).)

Both the old process and the new process involve screening each grievance to determine whether it concerns an imminent risk to personal safety or institutional security and whether it raises a staff misconduct claim. Under both the old process and new process, some staff misconduct claims are investigated by the CDCR Office of Internal Affairs (OIA) and others are investigated by investigators at the local prison or parole region. The main differences are that under the new system, all grievances are screened by a Centralized Screening Team (CST) to decide what level of investigation will be required, there are new standards for determining which grievances are investigated by OIA staff, and there is a new OIA Allegation Investigation Unit (AIU). (Compare former 15 CCR §§ 3483-3484 with new §§ 3486-3486.3.) CDCR also has adopted standards about what sorts of punishments should be imposed for different types of staff misconduct. (15 CCR §§ 3392.4-3392.5.)

The rest of this section discusses how staff misconduct investigations are handled under the new rules:

Your staff misconduct grievance will be sent to an office called the Centralized Screening Team (CST). (15 CCR §§ 3486(c)(6), (d)(2); 3486.1(a), (e).)

The CST first determines whether your grievance indicates that there is an imminent risk to personal safety or institutional security or whether your grievance is about sexual abuse or sexual misconduct; in those cases, the CST will immediately notify the appropriate “hiring authority” (meaning the official who supervises the involved staff, such as the Warden, Regional Parole Administrator or Health Care CEO) to take “appropriate action.” (15 CCR § 3486.1(f).)

The CST then makes a screening decision about how your grievance will be handled. (15 CCR § 3486(b)(21), 3486.1(e), (h).) The CST may interview you or other people before making the screening decision. (15 CCR § 3486.1(g).) The CST has three options:

- **Routine Complaint:** The CST can decide your grievance is not really a staff misconduct complaint. In that case, the CST will send your grievance back to the institution or parole region for handling as a regular grievance. (15 CCR §§ 3486(c)(20).)
- **Allegation Inquiry:** The CST can refer your grievance for an “allegation inquiry” if it finds that your staff misconduct complaint does not include complex issues requiring specialized investigative skills or resources. (15 CCR §§ 3486(b)(21), (c)(1), (d)(4).) This inquiry will be conducted by a Locally Designated Investigator (LDI), who is trained by the OIA Allegation Investigation Unit (AIU), and who must be at least one rank higher than the highest-ranking staff member named in your complaint. (15 CCR § 3486(b)(18); 15 CCR § 3486.2(c)(2).) If the LDI finds out information that should lead to a higher level of investigation, the LDI can ask the hiring authority to refer the case to the AIU for an “Investigation,” as described in the next bullet point. Otherwise, the LDI will complete the inquiry and write a confidential draft report. The draft will be reviewed by an AIU manager to ensure it is sufficient, complete and unbiased. Once the report is finalized, it will be sent to the hiring authority. (15 CCR § 3486.2(c)); OR
- **Investigation:** The CST must refer your grievance for an “investigation” if your staff misconduct complaint involves use of force or sexual abuse or includes complex issues requiring specialized investigative skills or resources. (15 CCR § 3486(d)(1)-(2), (d)(15).) The CST also has discretion to

refer other types of cases for an investigation rather than an allegation inquiry. (15 CCR § 3486 (b), (d)(3).) This investigation will be conducted by an investigator from the OIA Allegation Investigation Unit (AIU). (15 CCR § 3486(b)(3).) The investigator will prepare a confidential draft report. An AIU manager will review the draft report to determine whether the investigation is complete, sufficient, and unbiased. In some cases, an attorney who advises CDCR (called a “Vertical Advocate” or “VA”) will also review and may comment on the draft report. When the report is finalized, it will be sent to the hiring authority who has authority over the staff person who is the subject of the complaint. (15 CCR § 3486.2 (a)-(b).)

Investigators should take reasonable steps to investigate your staff misconduct allegation, including preserving and reviewing any relevant video footage from fixed cameras or body-worn cameras. As of November 2022, fixed cameras and body worn cameras are being used at several prisons, and more prisons will start using them within the next several months.

The hiring authority will review the allegation inquiry report or investigation report, and will make one of the following determinations for each claim:

- **No finding:** You failed to provide promised information to further the investigation, or another agency was involved and you are being referred to that agency, or you refuse to cooperate with the investigation, or you are no longer available for clarification of facts/issues, or you want to withdraw your complaint.
- **Not Sustained:** There was not a preponderance of evidence to prove or disprove your allegation.
- **Unfounded:** There was proof the alleged acts did not occur, or proof that the employee named in your complaint was not involved in any acts that may have occurred.
- **Exonerated:** The acts you alleged did occur; but those acts were justified, lawful, and proper.
- **Sustained:** A preponderance of the evidence proves your misconduct claim.

(15 CCR §§ 3486.3(a), 3392.1.)

If your allegation of staff misconduct is sustained, the hiring authority must take “corrective action” (non-punitive action to improve work performance or correct behavior, such as training) or “adverse action” (punitive action to discipline the staff person) in accord with employee discipline rules and the “employee disciplinary matrix”. (15 CCR §§ 3486.3(b), 3392.2-3392.3) Possible adverse actions include a letter of reprimand, salary reduction, suspension without pay, demotion, or firing. (15 CCR §§ 3392.4-3392.5.)

You will get only limited information about how your grievance is being handled. If your grievance is found to be a staff misconduct claim, the response will state that your claim has been “identified as staff misconduct” under the rules and procedures for investigation of staff misconduct complaints; this response exhausts your administrative remedies. (15 CCR § 3483(g)(8); see also 15 CCR § 3485(g)(8).) You also should be notified that your complaint has been received by the CST within 30 business days after receipt. (15 CCR § 3486.1(l).) When the hiring makes a final determination about your claim, it must notify you in writing within 30 days of the determination. However, you will be told only what the basic finding was. You will not be informed about any details of the investigation or whether any type of adverse action will be taken against the

staff person. (15 CCR § 3486.3.)

2. Citizen Complaints

People who are not incarcerated and not on parole, but who experience, learn about, or observe CDCR staff misconduct, can submit a “Citizen’s Complaint” where the misconduct happened. The complaint should be filed within 12 months of the misconduct. (15 CCR § 3486(a)(1)(C); 3417.) People who are in prison or on parole cannot use the citizen’s complaint process.

A citizen’s complaint should be submitted in writing to the Warden or Parole Administrator for the institution or parole region. If the complaint is about misconduct by a peace officer (like a C/O, Sergeant, Lieutenant or Captain, or a parole agent), then the person must sign a statement acknowledging that it is a misdemeanor to knowingly make a false complaint against an officer. The standard statement is:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS’ [or inmates’/parolees’] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. Underline begins, IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

(15 CCR § 3417.)

The new staff misconduct investigation process described in Section 1, above, will be phased in to apply to citizens’ complaints about staff misconduct toward a person who is incarcerated or on parole. (15 CCR § 3486(b)(6), (b)(21), (d)(11).) If a citizen’s complaint is about staff misconduct toward someone other than a person who is incarcerated or on parole, the hiring authority will handle the complaint. (15 CCR §3486.1(b).)

3. CDCR Office of Internal Affairs

As discussed in Sections 1 and 2, above, people who are incarcerated or on parole should file a grievance, and other people should submit a citizen’s complaint. However, it may also be helpful for people to contact the OIA directly to provide information, or to complain about the handling of an investigation or about retaliation because of a staff misconduct complaint. The OIA can be contacted at:

CDCR Office of Internal Affairs
P.O. Box 3009

Sacramento, CA 95812

4. Office of the Inspector General

The Office of the Inspector General (OIG) is an independent agency, not part of the CDCR. The OIG does not have authority to investigate CDCR staff misconduct. However, the OIG reviews all complaints it receives regarding CDCR staff misconduct. In some of those cases, the OIG will send the complaint to CDCR, and ask CDCR to review the complaint and then tell OIG whether and what type of inquiry or investigation will be done and what sort of corrective or adverse action is being taken (if any). For this reason, we suggest that a person who experiences or observes staff misconduct write to OIG about what happened, in addition to filing a grievance or citizen's complaint. The letter to the OIG should be as specific as possible about what happened, including dates, times, place, names of people involved, and all witnesses, if any and if known. It also should state whether a grievance or citizen's complaint was submitted, the submission date, and any responses that have been received so far.

The OIG's address is:

Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

The OIG also has a toll-free phone number – (800) 700-5952 – that can be used to make a complaint, but the OIG encourages complaints to be made in writing. There is more information at the OIG's website at www.oig.ca.gov, including a page on which a complaint form can be filled out and submitted via the internet:

The OIG also monitors and issues reports on some CDCR staff misconduct investigations. These reports are available on the OIG website.