



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3486, 3486.1, 3486.2, 3486.3	NCR Number: 22-06	Publication Date: April 8, 2022
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed adoption of Sections 3486, 3486.1, 3486.2, and 3486.3 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Staff Misconduct Allegations.

PUBLIC COMMENT PERIOD

The public comment period will close on **May 24, 2022**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **May 24, 2022**.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Josh Jugum, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Sandra Alfaro, Office of Internal Affairs, at (916) 956-9291.

Original Signed By:

JENNIFER BARRETTO
Undersecretary, Administration
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to adopt new sections 3486, 3486.1, 3486.2 and 3486.3 of Title 15, Division 3, Chapter 1, regarding Staff Misconduct Allegations.

PUBLIC COMMENT PERIOD

The public comment period begins **April 8, 2022** and closes on **May 24, 2022**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to RPMB@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

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Program Contact

Sandra Alfaro
Office of Internal Affairs
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AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

Penal Code section 5058.4(a) requires the Secretary of the California Department of Corrections and Rehabilitation to implement a disciplinary matrix identifying misconduct categories and penalty ranges applicable to all employees, taking into account aggravating and mitigating factors for establishing a just and proper penalty, as required by the California Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

In this regulatory action, the Secretary proposes to restructure the staff misconduct process for allegations involving an incarcerated person or parolee.

The 2019 Budget Act provided funding and positions to establish the Allegation Inquiry Management Section (AIMS) within CDCR's Office of Internal Affairs (OIA). The purpose of AIMS was to support the grievance and appeals process by providing independent, objective inquiries into incarcerated individual and parolee grievances alleging staff misconduct toward the incarcerated population or parolees and provide a fact-based report to the institutional Hiring Authority for an appropriate decision.

Beginning in September 2020, CDCR was directed to comply with expanded *Armstrong* Court Orders, which included the following directives at one prison, and was later expanded to five additional adult institutions: expanding the responsibility of AIMS to incorporate allegations received outside the grievance process, including those received from a third-party (such as Plaintiff's advocacy letters); allegations of discrimination against class members based on disability; and allegations of retaliation against class members for use of the grievance process.

This emergency rulemaking action implements, in part, a remedial plan adopted by CDCR as directed by court order issued in *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020 (Order). This Order requires CDCR to implement remedial measures to achieve compliance with the *Armstrong* Remedial Plan and the Americans with Disabilities Act at the Richard J. Donovan Correctional Facility.

As part of its remedial plan to comply with the order, CDCR agreed to promulgate emergency regulations that are anticipated to be phased in beginning January 1, 2022, that will establish the organizational changes regarding the processing of staff misconduct allegations toward an incarcerated person or parolee.

CDCR is also amending its staff misconduct processes statewide, to include: eliminating time constraints for filing a complaint and conducting investigations into all allegations of excessive, unnecessary, or unreported Use of Force (UOF) and alleged staff violations of the Prison Rape Elimination Act (PREA); eliminating time constraints for all allegations of staff misconduct; and expanding the types of allegations that will be routed to OIA for investigation. These commitments will transfer the investigative responsibility of UOF and PREA allegations to OIA, as well as increase the amount of staff allegation investigations completed by OIA.

CDCR determined these steps to be necessary actions in response to several concerns expressed by the Office of Inspector General (OIG) in their February 2021 Report, by the Legislature, and by the court in the expanded *Armstrong* Orders. Overall, the concerns expressed were in regard to the existing staff complaint process, including institutional reviewer bias; inadequate training for reviewers; inadequate investigations due to investigators not following sound practices in interviewing, collecting evidence, and report writing; poor effort to identify and interview staff and inmate witnesses; fidelity of the process related to claimant notifications of delay/closure; and evidence of timely corrective or adverse action.

In addition, the OIG report and *Armstrong* Court criticized the existing process due to claims being returned to or remaining at the institution as a supervisory issue as opposed to undergoing an objective third-party review; low referral rates from institution Hiring Authorities to the OIA Central Intake Unit (CIU); termination of AIMS inquiries when reasonable belief is attained; and the inability for CDCR to effectively oversee the entire process and evaluate trends due to insufficient tracking tools and data related to allegations of staff misconduct.

In an effort to remove local bias from institutions when screening complaints for staff misconduct, CDCR proposes to establish the Centralized Screening Team (CST) as a new unit within the OIA. The CST

will act as an initial reviewer of incarcerated person, parolee, and/or third-party complaints received statewide, and determine if the complaints contain any allegations of staff misconduct.

Not only will the CST provide an unbiased review of complaints received statewide, but create a system of record for each issue reviewed, and refer all staff misconduct allegations for further action.

OIA's AIMS Unit will be bound by the determination of the CST, as AIMS will ensure all allegations referred by the CST have an investigation conducted. AIMS previously only inquired into allegations of staff misconduct which were identified by local institution staff within the existing CDCR Form 602-1 custody grievance process.

The CDCR's Office of Legal Affairs, Employee Advocacy and Prosecution Team (EAPT), which was established in 2005 to implement the Vertical Advocacy (VA) Model in compliance with the *Madrid* Court Post Powers Remedial Plan, will further support this effort. The EAPT will continue to designate and assign Staff Attorneys to provide legal support and guidance to CDCR throughout the investigation and disciplinary processes, including any litigation before the State Personnel Board and appellate courts for serious and complex cases. The *Madrid* Court Orders, along with Penal Code and Government Code sections, require CDCR to maintain public confidence in its ability to properly investigate and adjudicate complaints and allegations of staff misconduct, while maintaining the rights of employees and the public.

Policy Statement Overview

(Government Code section 11346.5(a)(3)(C))

This rulemaking action will:

- Amend CDCR's staff misconduct processes statewide, to include: eliminating time constraints and conducting investigations into all allegations of excessive, unnecessary, or unreported Use of Force (UOF) and alleged staff violations of PREA; eliminating time constraints for all allegations of staff misconduct; and expanding the types of allegations that will be routed to AIU for investigation. These commitments will transfer the investigative responsibility for UOF and PREA allegations to AIU, as well as increase the amount of staff allegation investigations completed by AIU.
- Establish the CST as a new unit within the OIA. The CST will act as an initial reviewer of incarcerated person, parolee, and third-party complaints received statewide, to determine if the complaints contain any allegations of staff misconduct.
- Establish the AIU as a new unit within the OIA. The AIU will conduct investigations into allegations of staff misconduct referred to them by the CST. Previously, AIMS only conducted allegation inquiries into all allegations of staff misconduct towards an incarcerated person or parolee received via CDCR Form 602-1 Grievance, and then only for staff misconduct allegations that were filed timely by an offender through the grievance process and referred to AIMS by a hiring authority. Under this new process, AIMS will conduct allegation inquiries until AIU is fully implemented through the phased implementation timeframes set forth in the regulation, at which time AIU will be conducting full investigations into staff misconduct allegations toward incarcerated persons or parolees set forth in the Allegation Decision Index (ADI).
- Add trained special agents to the AIU and increase staffing levels to handle the anticipated increase in workload.
- Continue to designate and assign EAPT Staff Attorneys to provide legal support and guidance to CDCR throughout the investigation and disciplinary processes for designated cases.

DOCUMENTS INCORPORATED BY REFERENCE

CDCR Form 602-1 (Rev. 01/22), Grievance
CDCR 602 HC (Rev. 10/18), Health Care Grievance
CDCR 1824 (Rev. 09/17), Reasonable Accommodation Request
Allegation Decision Index
Investigation Assignment Index (01/22)

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

These regulations will significantly improve the department's handling of staff misconduct allegations involving an incarcerated person or parolee, which in turn will improve departmental transparency, integrity, and staff accountability.

These regulations will also bring CDCR into compliance with expanded *Armstrong* Court Orders that call for reforms to the department's staff complaint, investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the *Armstrong* Remedial Plan and the Americans with Disabilities Act. Although the court order initially applied to one institution, which was then expanded to five others, class members are housed at every prison and parole region throughout the State, making the regulations apply to all incarcerated persons and parolees. To have separate staff misconduct processes would lead to disparate treatment of CDCR's diverse population and would likely result in further intervention by the Courts.

The proposed regulations will not affect worker safety or the state's environment.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations which concern staff misconduct allegations.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: \$5.4 million budgeted cost in fiscal year 21-22, \$39 million budgeted cost in fiscal year 22-23 and beyond (estimated)
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small businesses because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by allowing inmates and parolees to have their allegations of staff misconduct adjudicated in an unbiased and timely manner.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a scheduled hearing should one be scheduled.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates newly adopted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole.

Subchapter 5.1. Inmate and Parolee Programs

New Article 1.5 is adopted.

Article 1.5 Staff Misconduct Complaints

3486. Allegations of Staff Misconduct Toward an Incarcerated Person or Parolee.

(a) Right to submit complaint alleging staff misconduct:

(1) Any person can submit a complaint of staff misconduct when they believe departmental staff have engaged in behavior that resulted in a violation of law, policy, regulation, or procedure, or an ethical or professional standard.

(A) CDCR Form 602-1, Grievance, (Rev. 01/22), which is incorporated by reference, may be submitted by inmates and parolees pursuant to sections 3482(a)(1) and 3482(a)(2) respectively.

(B) CDCR Form 602-HC, Health Care Grievance, (Rev. 10/18), which is incorporated by reference, may be submitted by inmates and parolees pursuant to section 3999.226(a).

(C) CDCR Form 1824, Reasonable Accommodation Request, (Rev. 09/17), which is incorporated by reference, may be submitted by inmates and parolees pursuant to sections 3482(a)(1) and 3482(a)(2) respectively.

(D) Citizens complaints shall be submitted in writing pursuant to section 3417.

(2) Staff shall not retaliate against a complainant or witness for submitting a complaint or reporting staff misconduct.

(3) The department shall ensure all complaints of staff misconduct are properly documented, objectively reviewed, thoroughly investigated, and discipline imposed or referred for criminal prosecution, when warranted, as provided in this Article, and Article 2 of Subchapter 5.

(b) Definitions - For purposes of this article, the following definitions shall apply:

(1) “Allegation Decision Index” (ADI) refers to the index, incorporated by reference in this Article, which identifies the criteria utilized by the Centralized Screening Team to determine whether a complaint should be referred to the Allegation Investigation Unit (AIU) for investigation.

(2) “Allegation Inquiry” refers to the process of gathering relevant facts and evidence by a Local Designated Investigator (LDI) concerning a complaint that involves an allegation of staff misconduct.

(3) “Allegation Inquiry Report” refers to the confidential report prepared by an LDI following an Allegation Inquiry.

(4) “Allegation Investigation Unit” (AIU) refers to the unit within the Office of Internal Affairs (OIA) that conducts investigations into complaints alleging misconduct toward

incarcerated persons and parolees as set forth in section 3486.2, and reviews allegation inquiry reports completed by LDIs.

(5) "AIU Investigator" refers to an investigator within the AIU assigned to conduct a confidential investigation.

(6) "Armstrong class member" refers to an inmate who is a class member under the federal court decree in *Armstrong v. Newsom* (previously: *Armstrong v. Schwarzenegger*.)

(7) "Centralized Screening Team" (CST) refers to the entity that reviews documentation to determine if the documentation contains a Routine Issue, alleges misconduct toward an incarcerated person or parolee, or alleges misconduct not involving an incarcerated person or parolee.

(8) "Clarification Interview" refers to an interview conducted by CST staff when clarification is required to make a screening decision.

(9) "Complaint" refers to any documentation or verbal statements received by the Department from any source that contains a routine issue or alleges Staff Misconduct.

(10) "Complainant" refers to the person making a complaint against departmental staff.

(11) "Department" and "Departmental Staff" refer exclusively to CDCR employees, contractors, and volunteers.

(12) "Designated Case" refers to a case assigned to an Employment Advocacy and Prosecution Team (EAPT), Vertical Advocate (VA).

(13) "Disabled Inmates" as used in Article 1.5, Staff Misconduct Allegations, refers to all *Armstrong* class members, and inmates *in the* Mental Health Services Delivery System at the Enhanced Out Patient level of care or higher (i.e., Psychiatric Inpatient Program and Mental Health Crisis Bed).

(14) "Employment Advocacy and Prosecution Team" (EAPT) refers to the entity in the Office of Legal Affairs responsible for providing legal counsel and representation during the employee investigation, discipline, and appeal process.

(15) "Hiring Authority" has the same meaning in this Article as in subsection 3392(a)(11).

(16) "Investigation" refers to the gathering of facts and evidence by an AIU Investigator concerning an allegation of Staff Misconduct.

(17) "Investigation Assignment Index" (IAI) (01/22) refers to the index, incorporated by reference in this Article, which identifies the level of AIU investigator to be assigned to conduct an investigation.

(18) "Investigation Report" refers to the confidential report prepared by an AIU investigator following an investigation.

(19) "Locally Designated Investigator" refers to departmental staff trained by OIA to collect evidence and conduct Allegation Inquires.

(20) "Office of Internal Affairs" (OIA) refers to the entity with authority to investigate allegations of employee misconduct.

(21) "Routine Issue" refers to any complaint received by CST that does not contain an allegation of Staff Misconduct.

(22) "Staff Misconduct" refers to behavior that results in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard.

(23) "Third Party" refers to a person or persons not directly involved in the incident or interaction that resulted in the allegation of staff misconduct.

(24) "Vertical Advocate" (VA) refers to an EAPT attorney who represents the department in designated cases during investigations, the employee discipline process, administrative hearings, and appellate proceedings.

(c) Implementation - The provisions of this Article shall apply to staff misconduct complaints received by the department as follows:

(1) Allegations of staff misconduct toward an incarcerated person or parolee involving Use of Force and Prison Rape Elimination Act (PREA) complaints for all facilities and parole regions statewide, shall be referred to AIMS for an allegation inquiry.

(2) CDCR Form 602-1, Grievances, (Rev. 01/22) for all facilities and parole regions statewide shall be screened by CST, and allegations of staff misconduct toward an incarcerated person or parolee listed in the ADI, shall be referred to AIMS for an allegation inquiry.

(3) CDCR Form 602-1, Grievances for all facilities and parole regions statewide shall be screened by CST, and allegations of staff misconduct toward an incarcerated person or parolee not listed in the ADI, will be referred to the Hiring Authority for assignment to an LDI for an allegation inquiry, unless CST refers to AIMS for an allegation inquiry.

(4) For the following institutions, allegations of staff misconduct toward an incarcerated person or parolee contained in a CDCR Form 602-1, as set forth in subsection 3486.1(h), implemented on May 31, 2022:

(A) Richard J Donovan;

(B) California State Prison, Los Angeles County;

(C) California State Prison, Corcoran;

(D) Substance Abuse Treatment Facility;

(E) Kern Valley State Prison; and

(F) California Institution for Women.

(5) For allegations of staff misconduct toward an incarcerated person or parolee, contained in a CDCR Form 602-1 at the following institutions, assigned to an LDI for an allegation inquiry, the allegation inquiry report shall be reviewed and approved as set forth in subsection 3486.2(c)(4), implemented on May 31, 2022:

(A) Richard J Donovan;

(B) California State Prison, Los Angeles County;

(C) California State Prison, Corcoran;

(D) Substance Abuse Treatment Facility;

(E) Kern Valley State Prison; and

(F) California Institution for Women.

(6) For CDCR Form 602-HC, Health Care Grievances, (Rev. 10/18); CDCR Form 1824, Reasonable Accommodation Requests, (Rev. 09/17); and all Third Party Complaints (e.g., citizen complaints, staff, ombudsman, advocacy letters and any related interviews, etc.) that contains an allegation of staff misconduct towards an *Armstrong* Class Member at the Richard J Donovan Correctional Facility, and disabled inmates as defined in section 3486(b)(13) at the following institutions, shall be reviewed by the institution and if the complaint contains an allegation of staff misconduct toward an incarcerated person or parolee, the institution shall refer the complaint to CST for screening and disposition as set forth in subsections 3486.1(h) and 3486.2(c)(4), implemented on September 30, 2022:

(A) California State Prison, Los Angeles County;

(B) California State Prison, Corcoran;

(C) Substance Abuse Treatment Facility;

(D) Kern Valley State Prison; and

(E) California Institution for Women.

(7) For allegations of staff misconduct toward an incarcerated person or parolee, contained in a CDCR Form 602-1, assigned to an LDI for an allegation inquiry, the allegation inquiry report shall be reviewed and approved as set forth in subsection 3486.2(c)(4), implemented on September 30, 2022.

(8) Allegations of staff misconduct toward an incarcerated person or parolee from all institutions and parole regions, contained in a CDCR Form 602-1, listed in the ADI, shall be referred to AIU for investigation as set forth in subsection 3486.2(b), implemented on January 1, 2023.

(9) CDCR Form 602-HC, Health Care Grievances from all institutions and parole regions, shall be referred to CST for screening and disposition as set forth in subsections 3486.1(h) and 3486.2(c)(4), implemented on March 31, 2023.

(10) CDCR Form 1824, Reasonable Accommodation Requests from all institutions and parole regions, shall be referred to CST for screening and disposition as set forth in subsections 3486.1(h) and 3486.2(c)(4), implemented on May 31, 2023; and

(11) Third Party Complaints (e.g., citizen complaints, staff, ombudsman, advocacy letters and any related interviews, etc.) shall be referred to CST for screening and disposition as set forth in subsections 3486.1(h) and 3486.2(c)(4), implemented on June 30, 2023.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Section 5054, Penal Code. *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

3486.1 Centralized Screening

(a) If departmental staff receives a written complaint from a complainant alleging staff misconduct toward an incarcerated person or parolee, the department staff receiving the complaint shall refer the complaint to CST and notify their supervisor to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act (PREA) and the California Sexual Abuse in Detention Elimination Act.

(b) For allegations of staff misconduct not involving an incarcerated person or parolee, the hiring authority shall not refer the allegation to CST, but may initiate an Allegation Inquiry, impose corrective action, or request an investigation or approval of direct action, pursuant to the department's applicable Internal Affairs investigations policies and procedures.

(c) Complaints of misconduct not involving departmental staff.

(1) If a hiring authority receives a complaint of misconduct, that does not involve departmental staff, the hiring authority shall advise the complainant that the subject of the complaint is not employed by CDCR and is outside the department's jurisdiction.

(2) For all allegations of misconduct, excluding sexual abuse or sexual misconduct allegations as defined in PREA, the complainant shall be advised to file a complaint directly with the appropriate outside entity.

(3) For allegations of sexual abuse or sexual misconduct as defined by PREA, the hiring authority receiving the complaint shall notify the appropriate outside entity of the allegations as required by law, and inform the complainant of this referral.

(d) Verbal Complaints

(1) Department staff shall document in writing any verbal complaints received that involve an allegation that an incarcerated person or parolee was subject to unnecessary or excessive use of force, staff-on-offender sexual misconduct, or sexual harassment. The departmental staff receiving the complaint shall refer the complaint to CST, and immediately forward the complaint to their hiring authority.

(2) For all other verbal complaints, departmental staff shall provide the complainant with information on how to submit their complaint in writing.

(3) For all verbal complaints not documented in writing by the complainant, the hiring authority retains the authority to resolve these matters through the employee discipline process if warranted.

(e) The Centralized Screening Team (CST) shall review all complaints received and make a screening decision of whether it contains a routine issue, allegation(s) of staff misconduct toward an incarcerated person or parolee, or allegation(s) of staff misconduct not related to an incarcerated person or parolee.

(f) Assigned CST staff shall review each document received to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act (PREA) and the California Sexual Abuse in Detention Elimination Act. In those instances, CST shall immediately notify the hiring authority of the affected institution or program for appropriate action.

(g) CST shall conduct a clarification interview if required to make a screening decision.

(h) When an allegation of staff misconduct toward an incarcerated person or parolee is identified by CST, CST shall utilize the Allegation Decision Index (01/22), which is incorporated by reference, to determine whether the complaint will be referred to AIU for investigation or to the hiring authority for an Allegation Inquiry.

(1) If the misconduct described in the allegation is listed on the Allegation Decision Index, CST shall refer the allegation to AIU for investigation.

(2) If the misconduct described in the allegation is not listed on the Allegation Decision Index, CST will refer the allegation to the hiring authority for an Allegation Inquiry, unless after review CST determines the serious nature of the allegation or complexity of the investigation warrants assignment to AIU.

(i) CST's screening decision shall be documented in the department's Business Information System (BIS).

(j) The hiring authority shall be notified of CST's screening decision via BIS.

(k) The complainant shall be notified in writing that their complaint has been received by CST within thirty (30) business days of receipt.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Sections 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, and 5054, Penal Code. 28 CFR Part 115, Code of Federal Regulations. *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

Section 3486.2. Staff Misconduct Investigations and Allegation Inquiries Involving Misconduct toward Incarcerated Persons or Parolees

(a) AIU Investigation Processing.

(1) Upon receipt of a complaint from CST, AIU staff shall analyze the complaint, obtain initial information including records, documents, evidence, or recordings relating to the complaint, and assemble an investigation file.

(2) An AIU manager shall review the investigation file and assign the investigation using the Investigation Assignment Index, (01/22), which is incorporated by reference.

(3) An AIU manager shall make the investigation assignment decision in consultation with EAPT for designated cases.

(b) AIU Staff Misconduct Investigations.

(1) The department shall ensure that each AIU Investigation is conducted pursuant to existing laws, regulations, and CDCR policies and procedures.

(2) AIU investigators shall conduct an investigation for all allegations of staff misconduct toward incarcerated persons or parolees listed in the Allegation Decision Index and any other allegation referred to AIU by CST.

(3) Completion of Investigations.

(A) AIU investigators shall conduct thorough investigations, and ensure all relevant evidence is gathered and reviewed, and necessary interviews are conducted.

(B) At the conclusion of an investigation, the assigned AIU investigator shall prepare a confidential draft investigation report which summarizes the facts and evidence gathered during the investigation.

(4) Investigation Report Review.

(A) An AIU manager shall review the draft Investigation Report, and supporting exhibits and recordings, to determine whether the investigation is sufficient, complete, and unbiased.

(B) For designated cases, the VA shall review the draft Investigation Report and all supporting exhibits and recordings, and provide feedback to AIU.

(C) After the Investigation Report is finalized, the confidential final Investigation Report and all supporting exhibits and recordings, shall be provided to the VA for designated cases, and the hiring authority.

(D) If the hiring authority finds the investigation insufficient to determine a finding for each allegation, they shall request additional investigation in accordance with section 3392.5(c).

(E) If the hiring authority finds the investigation sufficient to determine a finding for each allegation, they shall do so in accordance with section 3392.1.

(c) Allegation Inquiry Process.

(1) When CST refers an allegation of staff misconduct to the hiring authority, the hiring authority shall have the Allegation Inquiry conducted by an LDI.

(2) The LDI shall be at least one rank higher than the highest-ranking subject allegedly involved in the misconduct.

(3) Completion of Allegation Inquiries.

(A) LDIs shall conduct thorough allegation inquiries, and ensure all relevant evidence is gathered and reviewed, and necessary interviews are conducted. The LDI shall complete the Allegation Inquiry except when one of the following situations occurs:

1. If the LDI discovers evidence of staff misconduct listed in the ADI, the LDI shall cease further inquiry, document the evidence in an Allegation Inquiry Report which summarizes the facts and evidence gathered during the inquiry, and refer the Allegation Inquiry to AIU for a complete investigation with notification to the hiring authority.

2. If the LDI finds evidence of staff misconduct not listed in the Allegation Decision Index that the LDI believes may result in adverse action, the LDI shall cease further inquiry, document the evidence in an Allegation Inquiry Report, and refer the Allegation Inquiry to the hiring authority for review. If the hiring authority agrees, the Allegation Inquiry shall be referred to AIU for investigation or request for direct adverse action. If the hiring authority does not believe adverse action may result, the matter shall be returned to the LDI for completion of the Allegation Inquiry.

(B) Upon completion of the Allegation Inquiry, the LDI shall author a confidential draft Allegation Inquiry Report with all supporting exhibits, and provide the draft report to the AIU manager for review and approval.

(4) Allegation Inquiry Report Review.

(A) An AIU manager shall review the draft Allegation Inquiry Report, and supporting exhibits, to determine whether the Allegation Inquiry is sufficient, complete, and unbiased.

(B) Once approved by an AIU manager, the Allegation Inquiry report shall be provided to the hiring authority.

(C) If the hiring authority finds the allegation inquiry insufficient to determine a finding for each allegation, they shall request additional fact gathering either by inquiry or investigation.

(D) If the hiring authority finds the allegation inquiry sufficient to determine a finding for each allegation, they shall do so in accordance with section 3392.1.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Section 5054, Penal Code. *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

3486.3. Staff Misconduct Determination Notification

(a) The hiring authority shall notify the complainant, in writing, of the finding(s) of the original complaint within thirty (30) days of the determination of the disposition of the complaint.

(1) The notification of the findings regarding the staff misconduct complaint shall be limited to whether the original complaint is sustained, not sustained, exonerated, unfounded, or no finding.

(2) Information related to any personnel action shall not be conveyed to the complainant in the matter.

(b) The Business Information System shall be updated to reflect all determinations made regarding the allegation of staff misconduct.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Section 5054, Penal Code. *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

STAFF USE ONLY Expedited? Yes No Tracking #: _____

Staff Name and Title (Print) _____ Signature _____ Date _____

If you think you have a medical, mental health or dental emergency, notify staff immediately. If additional space is needed, use Section A of the CDCR 602 HC A Health Care Grievance Attachment. Only one CDCR 602 HC A will be accepted. You must submit this health care grievance to the Health Care Grievance Office for processing. Refer to California Code of Regulations (CCR), Title 15, Chapter 2, Subchapter 2, Article 5 for further guidance with the health care grievance process.

Do not exceed more than one row of text per line. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First, MI): _____ CDCR #: _____ Unit/Cell #: _____

SECTION A: Explain the applied health care policy, decision, action, condition, or omission that has had a material adverse effect upon your health or welfare for which you seek administrative remedy:

Supporting Documents Attached. Refer to CCR 3999.227 Yes No

Grievant Signature: _____ **Date Submitted:** _____

BY PLACING MY INITIALS IN THIS BOX, I REQUEST TO RECEIVE AN INTERVIEW AT THE INSTITUTIONAL LEVEL.

SECTION B: HEALTH CARE GRIEVANCE REVIEW INSTITUTIONAL LEVEL: Staff Use Only Is a CDCR 602 HC A attached? Yes No

This grievance has been:

Rejected (See attached letter for instruction): Date: _____ Date: _____

Withdrawn (see section E)

Accepted Assigned To: _____ Title: _____ Date Assigned: _____ Date Due: _____

Interview Conducted? Yes No Date of Interview: _____ Interview Location: _____

Interviewer Name and Title (print): _____ Signature: _____ Date: _____

Reviewing Authority Name and Title (print): _____ Signature: _____ Date: _____

Disposition: See attached letter Intervention No Intervention

HCGO Use Only: Date closed and mailed/delivered to grievant: _____

1. Disability Code:
 TABE score \leq 4.0
 DPH DPV LD
 DPS DNH
 DDP
 Not Applicable

2. Accommodation:
 Additional time
 Equipment SLI
 Louder Slower
 Basic Transcribe
 Other*

3. Effective Communication:
 Patient asked questions
 Patient summed information
Please check one:
 Not reached* Reached
*See chrono/notes

4. Comments: _____

STAFF USE ONLY

Tracking #:

SECTION C: Health Care Grievance Appeal. If you are dissatisfied with the Institutional Level Grievance Response, explain the reason below (if more space is needed, use Section C of the CDCR 602 HC A), and submit the entire health care grievance package by mail for Headquarters' (HQ) Level health care grievance appeal review. Mail to: Health Care Correspondence and Appeals Branch, P.O. Box 588500, Elk Grove, CA 95758.

Grievant Signature: _____ Date Submitted: _____

SECTION D: HEALTH CARE GRIEVANCE APPEAL REVIEW HQ LEVEL: Staff Use Only	Is a CDCR 602 HC A attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
This grievance has been:	
<input type="checkbox"/> Rejected (See attached letter for instruction): Date: _____ Date: _____	
<input type="checkbox"/> Withdrawn (see section E) <input type="checkbox"/> Accepted	
<input type="checkbox"/> Amendment Date: _____	
Interview Conducted? <input type="checkbox"/> Yes <input type="checkbox"/> No Date of Interview: _____ Interview Location: _____	
Interviewer Name and Title (print): _____ Signature: _____ Date: _____	
Disposition: See attached letter <input type="checkbox"/> Intervention <input type="checkbox"/> No Intervention	
<i>This decision exhausts your administrative remedies.</i>	
HQ Use Only: Date closed and mailed/delivered to grievant: _____	

SECTION E: Grievant requests to WITHDRAW health care grievance: I request that this health care grievance be withdrawn from further review. Reason:

Grievant Signature: _____ Date Submitted: _____
Staff Name and Title (Print): _____ Signature: _____ Date: _____

STAFF USE ONLY

ALLEGATION DECISION INDEX Allegations of Staff Misconduct Toward an Incarcerated Person or Parolee Designated for OIA Referral
Use of Force
(1) Failure to report own or witnessed use of force
(2) Excessive or unnecessary use of force
(3) Improper use of restraints
(4) Misuse, non-use, or careless handling of duty weapon(s)
(5) Inappropriate display of duty weapons
Staff Sexual Misconduct
(1) Sexual misconduct with an incarcerated person or parolee
(2) Sexual violence toward an incarcerated person or parolee
(3) Sexual harassment toward an incarcerated person or parolee
Dishonesty
(1) Destruction, fabrication, falsification, alteration or planting of evidence, including failure to comply with body worn camera activation requirements
(2) Perjury, material misrepresentation, falsification, or intentionally misleading statements in official law enforcement reports or records; including rules violation reports. NOTE: Allegations of perjury, material misrepresentation, falsification, or intentionally misleading statements involving a Rules Violation Report shall be routed to OIA regardless of the status of the disciplinary process. However, the investigation will not begin until the disciplinary process is complete or 60 days after the initial copy of the rule violation report is issued to the incarcerated person, whichever occurs first.
(3) Making false or intentionally misleading statements to a supervisor
Discrimination/Harassment
(1) Making insults to an incarcerated person or parolee pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical or mental health condition, pregnancy, sexual orientation, veteran status, or political affiliation
(2) Harassing an incarcerated person or parolee based upon race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical or mental health condition, pregnancy, sexual orientation, veteran status, or political affiliation
(3) Discriminating against an incarcerated person or parolee pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical or mental health condition, pregnancy, sexual orientation, veteran status, or political affiliation
(4) Repeated misuse of specified pronouns or honorifics
Retaliation
(1) Retaliation against an incarcerated person or parolee due to reporting staff misconduct
(2) Retaliation against an incarcerated person or parolee due to use of the Administrative Remedies (Grievance and Appeal) process
(3) Retaliation against an incarcerated person or parolee due to participation in a lawsuit.
(4) Retaliation against an incarcerated person or parolee due to a request for a disability accommodation
Code of Silence
(1) Any involvement in a coordinated effort with other employees, incarcerated persons or parolees to prohibit the reporting of misconduct
(2) Any independent act(s) which prevents or interferes with the reporting of misconduct
(3) Intimidating, dissuading, or threatening witnesses
(4) Failure to report misconduct by another employee
Integrity
(1) Creating an opportunity or motive for an incarcerated person or parolee to harm an incarcerated person or parolee, staff, or self (i.e. suicide)
(2) Failure to intervene or attempt to stop misconduct by another employee.
(3) Actions or conduct causing significant risk to institutional or public safety/security
(4) Improper access, disclosure or transmittal of confidential information
Other Misconduct
(1) Dangerous or negligent or reckless driving or operating machinery on duty
(2) Endangering self, fellow employees, incarcerated persons, parolees or the public by violation of Departmental training, laws, policies, directives or ordinances
(3) Misconduct resulting in significant injury or death of an incarcerated person or parolee
(4) Threats to, intimidation of or assault of an incarcerated person or parolee
(5) Over-familiarity with an incarcerated person or parolee pursuant to section 3400
(6) Use of position to solicit gratuities or favors from an incarcerated person or parolee
(7) Bringing contraband into a security area for an incarcerated person

OFFICE OF INTERNAL AFFAIRS - ALLEGATION INVESTIGATION UNIT (AIU)
INVESTIGATION ASSIGNMENT INDEX (IAI)
(01/22)

Only allegations of staff misconduct toward an incarcerated person or parolee will be handled via the Office of Internal Affairs, Allegation Investigation Unit (AIU). All investigations involving allegations of staff misconduct not directed toward incarcerated persons or parolees shall be processed via the CDCR 989 Request for Investigation process.

AIU is comprised of Correctional Sergeants, Correctional Lieutenants, and Special Agents, all authorized to investigate allegations of staff misconduct against incarcerated persons and parolees.

Investigation Assignments are made on a case-by-case basis by an AIU Manager.

The AIU Manager shall assign an investigation to an investigator in accordance with the Investigation Assignment Index (IAI) unless other case factors exist to warrant increasing the level of the investigator or justify reducing the level of investigator. Case factors the AIU Manager shall consider include:

- Number of incarcerated persons, parolees, and/or staff involved
- Number of allegations raised in a single incident
- Criminal misconduct versus administrative misconduct
- Availability of audio and/or video evidence
- Other evidence immediately available that supports or refutes allegations
- Criminal statutes of limitations
- Disciplinary statutes of limitations
- Past allegations of same/similar misconduct against the staff member (excluding determinations of exonerated and unfounded)
- Length of time since alleged misconduct occurred
 - Allegations reported more than 1 year after the alleged misconduct occurred can be assigned to a lower level investigator than noted on the index.

A Special Agent shall be assigned to an investigation when:

- Exigent circumstances exist;
- The misconduct resulted in great bodily injury or death of an incarcerated person or parolee;
- Evidence of felony criminal conduct is present; or
- The allegation involves an appointed non-civil service staff member

The AIU Manager shall document in the AIU database their reason(s) for assigning an investigation to a lower level investigator than identified on the IAI.

The AIU Manager has the authority during the course of an investigation to reassign or co-assign any case to a higher level investigator when deemed necessary based on the case factors or complexity of the investigation.

Allegations of staff misconduct related to staff use of force, staff sexual misconduct, staff sexual harassment, and on-duty weapons related allegations shall not be assigned below the level of Correctional Lieutenant unless the allegation is reported more than 1 year after the date of the alleged incident.

OFFICE OF INTERNAL AFFAIRS - ALLEGATION INVESTIGATION UNIT (AIU)
INVESTIGATION ASSIGNMENT INDEX (IAI)
(01/22)

INVESTIGATION ASSIGNMENT INDEX	Sergeant, Lieutenant or Special Agent
Page 1 of 2	
<u>Use of Force</u>	
(1) Failure to report own or witnessed use of force	Lieutenant
(2) Excessive or unnecessary use of force	Lieutenant
(3) Improper use of restraints	Lieutenant
(4) Misuse, non-use, or careless handling of duty weapon(s)	Lieutenant
(5) Inappropriate display of duty weapons	Lieutenant
<u>Staff Sexual Misconduct</u>	
(1) Sexual misconduct with an incarcerated person or parolee	Lieutenant
(2) Sexual violence toward an incarcerated person or parolee	Special Agent
(3) Sexual harassment toward an incarcerated person or parolee	Lieutenant
<u>Dishonesty</u>	
(1) Destruction, fabrication, falsification, alteration or planting of evidence, including failure to comply with body worn camera activation requirements	Lieutenant
(2) Perjury, material misrepresentation, falsification, or intentionally misleading statements in official law enforcement reports or records; including rules violation reports once the disciplinary process is complete or 60 days after the initial copy of the rule violation report is issued to the incarcerated person, whichever occurs first.	Lieutenant
(3) Making false or intentionally misleading statements to a supervisor	Lieutenant
<u>Discrimination/Harassment</u>	
(1) Making insults to an incarcerated person or parolee pertaining to race, color, national origin, ancestry, religion, marital status, age, disability, medical or mental health condition, pregnancy, veteran status, or political affiliation	Sergeant
(2) Harassing an incarcerated person or parolee based upon race, color, national origin, ancestry, religion, marital status, age, disability, medical or mental health condition, pregnancy, veteran status, or political affiliation	Sergeant
(3) Discriminating against an incarcerated person or parolee pertaining to race, color, national origin, ancestry, religion, marital status, age, disability, medical or mental health condition, pregnancy, veteran status, or political affiliation	Sergeant
(4) Repeated misuse of specified pronouns or honorifics	Lieutenant
<u>Retaliation</u>	
(1) Retaliation against an incarcerated person or parolee due to reporting staff misconduct	Sergeant
(2) Retaliation against an incarcerated person or parolee due to use of the Administrative Remedies (Grievance and Appeal) process	Sergeant
(3) Retaliation against an incarcerated person or parolee due to participation in a lawsuit.	Sergeant
(4) Retaliation against an incarcerated person or parolee due to a request for a disability accommodation	Sergeant

OFFICE OF INTERNAL AFFAIRS - ALLEGATION INVESTIGATION UNIT (AIU)
INVESTIGATION ASSIGNMENT INDEX (IAI)
(01/22)

INVESTIGATION ASSIGNMENT INDEX	Sergeant, Lieutenant or Special Agent
Page 2 of 2	
<u>Code of Silence</u>	
(1) Any involvement in a coordinated effort with other employees, incarcerated persons or parolees to prohibit the reporting of misconduct	Lieutenant
(2) Any independent act(s) which prevents or interferes with the reporting of misconduct	Lieutenant
(3) Intimidating, dissuading, or threatening witnesses	Lieutenant
(4) Failure to report misconduct by another employee	Lieutenant
<u>Integrity</u>	
(1) Creating an opportunity or motive for an incarcerated person or parolee to harm an incarcerated person or parolee, staff, or self (i.e. suicide)	Lieutenant
(2) Failure to intervene or attempt to stop misconduct by another employee.	Sergeant
(3) Actions or conduct causing significant risk to institutional or public safety/security	Lieutenant
(4) Improper access, disclosure or transmittal of confidential information	Lieutenant
<u>Other Misconduct</u>	
(1) Dangerous or negligent or reckless driving or operating machinery on duty	Sergeant
(2) Endangering self, fellow employees, incarcerated persons, parolees or the public by violation of Departmental training, laws, policies, directives or ordinances	Sergeant
(3) Misconduct resulting in significant injury or death of an incarcerated person or parolee	Special Agent
(4) Threats to, intimidation of or assault of an incarcerated person or parolee	Sergeant
(5) Over-familiarity with an incarcerated person or parolee pursuant to section 3400	Sergeant
(6) Use of position to solicit gratuities or favors from an incarcerated person or parolee	Sergeant
(7) Bringing contraband into a security area for an incarcerated person	Lieutenant

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or department) proposes to adopt sections 3486, 3486.1, 3486.2, and 3486.3, of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Adult Institutions, Programs and Parole, regarding Staff Misconduct Allegations. The department implemented these provisions as emergency regulations, pursuant to Penal Code Section 5058.3, effective January 1, 2022. The purpose of this rulemaking action is to restructure the process for processing, investigating, and resolving allegations of staff misconduct toward incarcerated persons or parolees.

The 2019 Budget Act provided funding and positions to establish the Allegation Inquiry Management Section (AIMS) within CDCR's Office of Internal Affairs (OIA). The purpose of AIMS was to support the grievance and appeals process by conducting independent, objective inquiries into grievances filed by incarcerated persons and parolees that alleged staff misconduct toward incarcerated persons or parolees, and to provide a fact-based report to the institutional Hiring Authority for an appropriate decision of whether an investigation should be initiated or disciplinary action should be requested.

In September 2020, CDCR was ordered by the federal court to comply with expanded *Armstrong* Court Orders, which initially included one prison, and was later expanded to five additional adult institutions. The *Armstrong* Court Orders expanded the responsibility of AIMS to include allegations received outside the grievance process, such as allegations received from a third-party (such as Plaintiff's advocacy letters); allegations of discrimination against class members based on disability; and allegations of retaliation against class members for use of the grievance process.

The emergency rulemaking action implemented, in part, a remedial plan adopted by CDCR as directed by court order issued in *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020. (Order). This Order requires CDCR to implement remedial measures to achieve compliance with the *Armstrong* Remedial Plan (ARP) and the Americans with Disabilities Act (ADA) at the Richard J. Donovan Correctional Facility (RJD). As part of its remedial plan to comply with the order, CDCR agreed to promulgate emergency regulations that were phased in beginning January 1, 2022, that establish the organizational changes necessary to implement the new procedures for processing staff misconduct allegations toward an incarcerated person or parolee.

CDCR is also amending its procedures statewide for processing staff misconduct complaints, to include: eliminating time constraints for filing a complaint and conducting investigations into all allegations of excessive, unnecessary, or unreported Use of Force (UOF) and alleged staff violations of the Prison Rape Elimination Act (PREA); eliminating time constraints for all allegations of staff misconduct; and expanding the types of allegations that will be routed to the newly created Allegation Investigation Unit (AIU) within OIA for investigation. This will transfer the investigative responsibility for UOF and PREA allegations to AIU, and increase the amount of staff allegation investigations completed by AIU.

CDCR determined these steps were necessary based on several concerns expressed by the Office of Inspector General (OIG) in their February 2021 Report, by the Legislature, and by the court in the expanded *Armstrong* Orders. Overall, the concerns expressed were in regard to the existing staff complaint process, including institutional reviewer bias; inadequate training for reviewers; inadequate investigations due to local investigators not following sound practices in interviewing, collecting evidence, and report writing; poor effort to identify and interview staff and inmate witnesses; fidelity of the process related to claimant notifications of delay/closure; and the failure to timely impose corrective or adverse action.

In addition, the OIG report and *Armstrong* Court criticized the existing process due to claims being returned to, or remaining at the institution, as a supervisory issue as opposed to undergoing an objective third-party review; low referral rates from institution Hiring Authorities to the OIA Central Intake Unit (CIU); termination of AIMS inquiries when reasonable belief is attained; and the inability for CDCR to effectively oversee the entire process and evaluate trends due to insufficient tracking tools and data related to allegations of staff misconduct.

In an effort to remove local bias from institutional screening of complaints for staff misconduct, CDCR proposes to establish the Centralized Screening Team (CST) as a new unit within the OIA. The CST will provide an unbiased review of complaints received statewide, create a system of record for each issue reviewed, and refer all staff misconduct allegations for further inquiry or investigation. The CST will act as an initial reviewer of grievances and complaints received statewide from incarcerated persons and parolees, and third-party complaints, and will determine if the complaints contain any allegations of staff misconduct. If allegations of staff misconduct are identified in a grievance or complaint, CST will utilize the Allegation Decision Index to determine whether an allegation inquiry shall be conducted by a locally designated investigator, trained by OIA to conduct inquiries, or whether the allegations shall be referred to AIU for an investigation.

The CDCR's Office of Legal Affairs (OLA), Employee Advocacy and Prosecution Team (EAPT), which was established in 2006 as part of the *Madrid* Federal Remedial Orders, to implement the Vertical Advocacy (VA) Model, will continue to designate and assign Staff Attorneys to provide legal support and guidance to CDCR throughout the investigation and disciplinary processes, including any litigation before the State Personnel Board (SPB) and appellate courts for serious and complex cases. The *Madrid* Court Orders require CDCR to maintain the public confidence in its ability to properly investigate and adjudicate complaints and allegations of staff misconduct, while maintaining the rights of employees and the public.

With the implementation of this rulemaking action, the department seeks to make CDCR safer, fairer, and more efficient by effectively managing its core responsibility to objectively and thoroughly address allegations of staff misconduct with a process that is more accessible, responsive, and meaningful. The processes implemented will also ensure investigations are conducted for all staff misconduct allegations toward incarcerated persons and parolees, so that discipline can be timely and consistently imposed when warranted. Furthermore, it is the department's intent that these regulations will significantly improve the way the department identifies, investigates, and tracks allegations of staff misconduct, which in turn will improve departmental transparency, integrity, and staff accountability.

CONSIDERATION OF ALTERNATIVES

The department must determine no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code Section 11346.3 (b), the CDCR has made the following assessments regarding the proposed regulations:

Creation of New, or Expansion or Elimination of Existing Jobs within the State of California

The department has determined the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California as the proposed regulations affect the internal management of CDCR only.

Significant Adverse Economic Impact on Business

The department has made an initial determination the regulatory action will not have a significant adverse economic impact on business. The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of CDCR only.

Local Mandates

The department has determined this action imposes no mandates on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

BENEFITS OF THE REGULATIONS

These regulations will significantly improve the department's handling of staff misconduct allegations toward an incarcerated person or parolee, which in turn will improve departmental transparency, integrity, and staff accountability.

These regulations will also bring CDCR into compliance with expanded *Armstrong* Court Orders that call for reforms to the department's staff complaint, investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into allegations of staff misconduct for class members under the *Armstrong* Remedial Plan and the Americans with Disabilities Act. Although the court order initially applied to one institution, which was then expanded to five others, class members are housed at every prison and parole regions throughout the State, making the regulations apply to incarcerated persons and parolees. To have separate staff misconduct processes would lead to disparate treatment of CDCR's diverse population and would likely result in further intervention by the Courts.

The department seeks to make CDCR safer, more efficient, and fair by effectively managing its core responsibility to objectively and thoroughly address allegations of staff misconduct with a process that is more accessible, responsive, and meaningful.

Materials Relied Upon

The department, in proposing amendments to these regulations, has relied in part upon the following document, which is available for review as part of the rulemaking file:

Office of the Inspector General, February 16, 2021, Special Review of the Staff Misconduct Process.

<https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-Staff-Misconduct-Process-Report-2021.pdf>

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):

Section 3486 is adopted to establish that any person has the right to submit a complaint alleging staff misconduct toward an incarcerated person or parolee, the methods by which a complaint alleging staff misconduct may be submitted, definitions associated with the section, and the phased implementation dates for the new staff misconduct allegation process that involve an incarcerated person or parolee.

Subsection 3486(a) is adopted to establish the right and notify incarcerated persons, parolees, employees, and the public that any person can submit a complaint alleging staff misconduct when they believe departmental staff have engaged in behavior that results in a violation of law, policy, regulation, or procedure, or an ethical or professional standard. The subsection identifies the forms which are utilized to submit various types of complaints and grievances. The subsection also establishes an expectation and notifies staff of the prohibition against retaliation against a complainant or witness for submitting a complaint or reporting staff misconduct. Furthermore, this subsection requires that complaints of staff misconduct be properly documented, objectively reviewed, thoroughly investigated, and that discipline be imposed or the complaint referred for criminal prosecution when warranted. These steps are necessary to address several concerns expressed by the Courts, the Legislature, and other stakeholders in regard to the existing staff complaint process, including institutional reviewer bias; inadequate training for reviewers; inadequate investigations due to local investigators not following sound practices in interviewing, collecting evidence, and report writing; poor effort to identify and interview staff and inmate witnesses; fidelity of the process related to claimant notifications of delay/closure; and evidence of timely imposed corrective or adverse action. The intent is to provide a process that allows any person to submit a complaint of staff misconduct without threat of retaliation, that no staff shall impede the filing of a complaint, and that each complaint alleging staff misconduct be thoroughly reviewed, documented, and investigated through a process that is more accessible, responsive, and meaningful.

Subsection 3486(b) is adopted to establish the meanings of words and define the terms used in this Article within the context of staff misconduct. This provides for a common terminology so the reader can better understand their meaning, and ensures consistent meanings throughout the regulation text.

Subsection 3486(c) is adopted to establish phased implementation dates of when the regulations will take effect based on the type of grievance or complaint filed for specified correctional facilities and programs. This phased approach is necessary to ensure the department's resources are not overwhelmed during this transition, and aligns in part with the budgetary request processes set forth by the State.

Subsection 3486.1(a) is adopted to establish a process and notify departmental staff of their duty to refer written complaints alleging staff misconduct toward an incarcerated person or parolee to the Centralized Screening Team (CST). The subsection also instructs departmental staff of their duty to notify their supervisor if a complaint is received containing information constituting an imminent risk to personal safety, institutional security, or involving sexual abuse or acts of sexual misconduct defined in PREA and the California Sexual Abuse in Detention Elimination Act. This section ensures that written complaints alleging staff misconduct toward an incarcerated person or parolee are sent to CST to determine if the documentation contains a Routine Issue, alleges misconduct toward an incarcerated person or parolee, or alleges misconduct not involving an incarcerated person or parolee. Since the safety of incarcerated persons, parolees, staff, and the public is of paramount importance to the department, this subsection sets forth a process for immediately addressing any exigent circumstances constituting an imminent risk to incarcerated persons or parolees at time of discovery. Formation of the CST was partly in response to the OIG report and *Armstrong* Court criticizing the existing process due to claims that staff complaints

were returned to, or remained at the institution as a supervisory issue, as opposed to undergoing an objective third-party review.

Subsection 3486.1(b) is adopted to establish that hiring authorities shall not refer allegations of staff misconduct to CST when the allegation does not involve an incarcerated person or parolee. This subsection establishes that for staff misconduct allegations not involving an incarcerated person or parolee, hiring authorities may utilize the existing OIA investigation policies and procedures to initiate an allegation inquiry, request an investigation, impose corrective action, or request disciplinary action. This process is consistent with existing internal affairs processes imposed pursuant to the *Madrid* Federal Court Remedial order.

Subsection 3486.1(c) is adopted to establish provisions for when a complaint alleging staff misconduct is received by the department but the complaint does not involve departmental staff. Specifically, the complainant shall be advised to file a complaint directly with the appropriate outside entity that employs the subject of the complaint. This subsection also establishes the duty of the hiring authority to notify the appropriate outside entity when a complaint includes allegations of sexual abuse or sexual misconduct as defined by PREA. Since the department does not have authority to investigate non-departmental staff, this subsection establishes a process for notifying complainants to address their complaints to entities outside of CDCR's jurisdiction.

Subsection 3486.1(d) is adopted to specify when department staff shall document verbal complaints; specifically, when a verbal complaint involves an allegation that an incarcerated person or parolee was subject to unnecessary or excessive use of force, staff-on-offender sexual misconduct, or sexual harassment. This subsection also notifies department staff receiving and documenting these complaints to refer the complaint to CST and establishes a process to immediately address any exigent circumstances identified at the time of discovery by notifying their hiring authority. The subsection also establishes direction to complainants on how to submit other verbal complaints, and establishes that when a verbal allegation is not submitted in writing by the complainant, the hiring authority retains the authority to resolve these matters through the employee discipline process, if warranted. This provision is necessary to allow the department to investigate potentially serious issues brought to its attention, even if there is no written complaint.

Subsection 3486.1(e) is adopted to establish a screening process for CST to review each written document received, and make an independent screening decision of whether the documents contain a Routine Issue, allegation(s) of staff misconduct toward an incarcerated person or parolee, or allegation(s) of staff misconduct not related to an incarcerated person or parolee, to identify complaints so a determination can be made of whether the issues should be referred back to the hiring authority, or whether an allegation inquiry or investigation is necessary. This subsection places responsibility for screening written documents with CST which is an independent unit. The CDCR established the CST in an effort to remove local bias from the local institutional process for screening complaints involving staff misconduct, which was a complaint expressed by the Legislature, the OIG, and the Courts.

Subsection 3486.1(f) is adopted to direct the CST to review each written document received to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by PREA and the California Sexual Abuse in Detention Elimination Act. This subsection ensures that CST shall immediately notify the hiring authority via the Business Information System (BIS) of the affected institution or program, so immediate action can be taken to address any exigent circumstances identified at time of discovery by notifying their hiring authority. This step is in addition to the normal screening of the complaint, and is necessary to protect the safety and security of incarcerated persons and parolees, staff, and the public.

Subsection 3486.1(g) is adopted to enable the CST to conduct a clarification interview if required to make a screening decision. Not all complaints contain sufficient information to enable the CST screener to make a screening decision. In these cases, the screener will coordinate an interview with the complainant so clarifying questions can be asked, and the responses will enable the screener to make an appropriate screening decision.

Subsection 3486.1(h) is adopted to establish that the ADI must be utilized by a CST screener to make the screening decision of whether a complaint should be referred to the hiring authority for an allegation inquiry or to AIU for an investigation. The ADI lists specific types of misconduct, and when a complaint contains an allegation of staff misconduct listed in the ADI, CST is required to refer the complaint directly to AIU for investigation. Complaints containing allegations of staff misconduct not listed on the ADI will be referred to the hiring authority for an allegation inquiry, which are conducted with AIU oversight, unless CST believes an AIU investigation is required. If evidence of misconduct is discovered during an allegation inquiry, the hiring may refer the matter to AIU for an investigation. This subsection ensures that more egregious allegations contained in the ADI are referred directly to AIU for investigation, and that offenses not contained in ADI are still subject to an allegation inquiry to determine if evidence exists for the hiring authority to refer the matter to AIU for investigation, or to impose corrective action.

Subsection 3486.1(i) is adopted to establish a process for documenting CST screening decisions, to create a system to record each issue reviewed, and a system in which staff misconduct allegations decisions may be referred for further action. An electronic information system will enable the department to collect and share data to identify trends, including early warning triggers, and assess and assign workload. Both the OIG report and the *Armstrong* Court cited the lack of an effective means to evaluate trends due to insufficient tracking tools and data related to allegations of staff misconduct.

Subsection 3486.1(j) is adopted to ensure the hiring authority is informed when CST makes a screening decision concerning their staff at a particular institution or program, and the outcome of the screening decision. This is necessary for the hiring authority to complete their duties under this process, or where exigent circumstances may be included in a complaint that requires immediate action by a hiring authority.

Subsection 3486.1(k) is adopted to ensure each complainant is notified in writing that their complaint has been received by CST within thirty days of receipt. Thirty business days is consistent with existing timeframes that the department has in place to notify an offender of an outcome of a complaint or a response to a request for reasonable accommodation. The notice is also intended to provide an update to the claimant that their issue(s) are under review so as to reduce the likelihood of duplicate complaints being generated, which are an unnecessary drain on departmental resources.

Section 3486.2 is adopted to establish a process for AIU to process cases containing allegations of staff misconduct toward incarcerated persons or parolees. The subsection establishes provisions for both the AIU investigation process and the LDI allegation inquiry process.

Subsection 3486.2(a) is adopted to establish a procedure for AIU when processing an allegation of staff misconduct for investigation, including: 1) analyzing each complaint for purposes of identifying any additional information needed to be obtained that will assist with the investigation; 2) requesting and obtaining the information from departmental staff; 3) assembling the information into an investigation file; 4) reviewing the investigation file for the assignment of an AIU investigator using the Investigation Assignment Index; and 5) for EAPT to designated cases to be assigned to an EAPT attorney, called a Vertical Advocate (VA). This subsection also requires an AIU manager to utilize the Investigation Assignment Index to make an investigative decision of

whether a case should be assigned to a Correctional Sergeant, Correctional Lieutenant, or Special Agent. Each investigative assignment decision is made on a case-by-case basis in accordance with the Allegation Assignment Index, unless case factors exist that warrant increasing or decreasing the level of the investigator. The AIU manager also retains the authority during the course of an investigation to reassign or co-assign any case to a higher-level investigator when deemed necessary based on the case factors or complexity of the investigation. The process to gather allegation information and determine the appropriate level of staff to conduct an investigation is necessary to conduct thorough, complete, and non-biased investigations as required in the *Armstrong* Remedial Plan.

Subsection 3486.2(b) is adopted to ensure each AIU investigation is conducted pursuant to existing laws, regulations, and department policies and procedures; that relevant evidence is gathered and reviewed; necessary interviews are conducted; and an investigative report is drafted, reviewed by managers, department attorneys, and hiring authorities, to ensure AIU investigations are thorough, complete and non-biased. This subsection was in part enacted to address concerns made by the OIG and courts as to the fidelity of the department's process to review allegations of staff misconduct toward an incarcerated person or parolee, which in turn will improve departmental transparency, integrity, and staff accountability.

This subsection establishes that AIU shall conduct an investigation for allegations of staff misconduct toward an incarcerated person or parolee listed in the Allegation Decision Index, and for any other allegation referred by CST to AIU. The subsection directs investigators to conduct thorough investigations by ensuring relevant evidence is gathered and reviewed, and necessary interviews are conducted. Once an investigation is completed, this subsection implements a process for review of investigation reports to ensure thorough, complete and non-biased investigations as follows: (1) the AIU investigator is required to prepare a confidential report summarizing the facts and evidence gathered during the investigation; (2) An AIU manager is then required to review the confidential report for completeness; (3) the assigned VA for designated cases is then required to review the draft confidential report to determine whether the investigation is sufficient or additional investigation is needed, prior to the report being finalized; (4) additional investigation is conducted by the AIU investigator if necessary; (5) the AIU manager then finalizes the report and provides the final investigation report to the hiring authority, and VA for designated cases; (6) the hiring authority then reviews the final investigation report to determine whether additional investigation is necessary to make a disciplinary decision; (7) if the hiring authority believes additional investigation is required, they notify the AIU of the need for further investigation; and (8) if the hiring authority believes the investigation is thorough, complete, and non-biased, the hiring authority will make disciplinary findings in accordance with sections 3486.3 and 3392.

Subsection 3486.2(c) is adopted to implement a process when allegations of staff misconduct are referred by CST to the hiring authority for an Allegation Inquiry. This subsection is necessary to ensure Allegation Inquiries are thorough, relevant evidence is gathered and reviewed, necessary interviews are conducted, and a report with supporting exhibits is completed. This subsection requires that Allegation Inquiries be conducted by a Locally Designated Investigator (LDI), who shall be at least one rank higher than the highest-ranking subject allegedly involved in the misconduct. This subsection also creates a process for LDIs to conduct allegation inquiries to ensure relevant evidence is gathered and reviewed, and necessary interviews are conducted. This subsection identifies when an Allegation Inquiry should be stopped, and the allegation referred for an AIU investigation, with notification to the hiring authority. Once an Allegation inquiry is completed, this subsection implements a process for documenting the LDI's findings with AIU manager review, as follows: (1) the LDI is required to draft a confidential report which summarizes the facts and evidence gathered during the Allegation Inquiry and forward the report to an AIU manager for review; (2) an AIU manager is required to review the confidential report for

completeness prior to finalization; (3) if the AIU manager believes additional inquiry is necessary the LDI is directed to complete additional inquiry; (4) once the inquiry report is approved by the AIU manager and finalized, the report and supporting documents are referred to the hiring authority; (5) the hiring authority then reviews the Allegation Inquiry Report and if sufficient, complete and unbiased, the hiring will make a determination in accordance with section 3392.

This subsection has been adopted in response to challenges to the fidelity of the department's process to review allegations of staff misconduct toward an incarcerated person or parolee, which in turn will improve departmental transparency, integrity, and staff accountability.

Section 3486.3 is adopted to establish a timeframe for the hiring authority to notify the complainant of the findings after a determination has been made. When an allegation is sustained, the hiring authority shall also make a determination regarding corrective or adverse action in accordance with section 3392.

Subsection 3486.3(a) is adopted to require the hiring authority to notify the complainant, in writing, of the finding(s) of the original complaint within thirty (30) days of the determination of the disposition of the complaint. This is necessary to inform the complainant of the hiring authority's decision, which in turn will improve departmental transparency, integrity, and staff accountability.

Subsection 3486.3(b) is adopted to establish that the department shall update the relevant electronic information system to reflect determinations made regarding an allegation of staff misconduct. Both the OIG report and the *Armstrong* Court criticized the department for not having an effective means to evaluate trends due to insufficient tracking tools and data related to allegations of staff misconduct. The newly developed tracking system will allow the department to identify trends, including early warning triggers, assess and assign workload, and provide pertinent information related to the staff misconduct allegation, including a determination on each allegation for each subject identified in the allegation. When an allegation is sustained, the hiring authority's determination regarding any resulting corrective or adverse action shall also be documented.