

P.O. Box 942883  
Sacramento, CA 94283-0001



August 11, 2022

## CORRECTED NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

On August 5, 2022, the California Department of Corrections and Rehabilitation (CDCR or department) distributed and posted on its website a Notice of Change to Text as Originally Proposed (Renotice) regarding Employee Discipline regulations. In that Renotice, portions of the text that were intended to be amended were erroneously omitted.

To correct this error, the department is posting on its website, and mailing to those members of the public who commented on the originally proposed regulations, a revised amended text which is included in this Corrected Notice of Change to Text as Originally Proposed. Additionally, the public comment period regarding the amended text is extended to August 26, 2022.

You are receiving this notice because you provided a written comment regarding the proposed regulations.

Notice of Change to Regulations 22-02 was noticed to the public on April 15, 2022. The full text of the originally proposed amendments is shown in original single underline and ~~strikethrough~~ format. The changes provided in this Notice are indicated by **bold double underline** for additional added text, and ~~**bold double strikethrough**~~ for additional deleted text from the originally proposed text.

### **The attached text contains the following changes:**

In section 3391, the subdivision letters (b), (c), and (d) are marked in strikethrough to correct an oversight with the proposed amendments, as the text for these subsections is being deleted.

In section 3392, the definition of "Vertical Advocate" is amended to specify that an Employment and Advocacy Team (EAPT) attorney provides legal advice to the department during investigations and the employee discipline process for designated (assigned) cases. The definition is also amended to specify that the EAPT represents the department during writs as well as appellate proceedings. This change is necessary to clarify that designated cases are assigned to EAPT attorneys for legal representation and not to Employee Relations Officers. Additionally, it is necessary to include writs along with appeals to distinguish writ proceedings which are before Superior Courts from appellate proceedings that are before the Court of Appeals. The amended definition is consistent with department documents concerning this term.

Subsection 3392.3(d) is amended to remove the text "for non-sworn staff" in reference to the required Nexus between employee's behavior and their employment. This change is necessary to clarify that a Nexus between off-duty behavior and employment is required for all department employees.

Subsection 3392.9(a) is amended to replace the existing reference to subsection 3392.9 to subsection 3392.10. This change is necessary for clarity concerning employee transfers.

The comment period for these revisions will close on August 26, 2022. Please submit comments by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov); in writing to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than August 26, 2022. Only those comments relating directly to the enclosed amendments indicated by **bold double underline** or ~~**bold double underline**~~ will be considered.



YING SUN, Associate Director  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation

Attachment

## Text of Proposed Regulations -- Renote

Amendments to the proposed text originally noticed to the public are indicated by **bold double underline** for newly added text and ~~**bold double strikethrough**~~ for text deleted from the original proposed text. The single underline and single ~~strikethrough~~ formatting from the original proposed text noticed to the public is retained in this text.

### Title 15. Crime Prevention and Corrections

#### Division 3. Adult Institutions, Programs and Parole

##### Subchapter 5. Personnel

##### Article 2. Employees

##### **3391. Employee and Appointee Conduct.**

~~(a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper names, and never by derogatory or slang reference. Prison numbers shall be used only with names to summon inmates via public address systems. Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty. Irresponsible or unethical conduct or conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.~~

Employees and appointees of the California Department of Corrections and Rehabilitation (CDCR or department) shall:

~~(b) An allegation by a non-inmate of misconduct by a departmental peace officer as Defined in section 3291(b), is a citizen's complaint pursuant to Penal Code section 832.5. Citizen's complaints alleging misconduct of a departmental peace officer shall be filed within twelve months of the alleged misconduct.~~

~~(c) Persons other than an inmate, parolee or staff who allege misconduct of a departmental peace officer shall submit a written complaint to the institution head or parole administrator of the area in which the peace officer is employed.~~

~~(d) Citizens filing complaints alleging misconduct of a departmental peace officer employed by this department are required to read and sign the following statement:~~

~~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.~~

- (1) Comply with all laws, including applicable sections of the California Code of Regulations, Title 15 and Title 2, section 172, General Qualifications.
  - (2) Comply with departmental policy and applicable local operating procedures.
  - (3) Comply with their duty statements or institution post orders, as applicable.
  - (4) Adhere to the professional standards applicable to their profession.
  - (5) Report for duty at the time directed and remain in their work assignments until the completion of their workday or tour of duty, except with permission of their supervisor. If for any reason an employee is unable to report for duty, the employee shall notify their supervisor prior to the start of their scheduled workday.
  - (6) Be alert, courteous, respectful, and professional in their interactions with inmates, wards, parolees, fellow employees, visitors, their families, and members of the public.
  - (7) Not engage in any behavior or use language, which is sexually explicit, abusive, profane, discriminatory or harassing while on duty. Employees and appointees shall not engage in any conduct that discredits an employee, appointee, or the department.
  - (8) Respect others and treat them equally regardless of race, color, national origin, ancestry, gender, gender identity, gender expression, religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, political affiliation, or their membership in a protected class as defined by state or federal law.
  - (9) Report misconduct, unethical or illegal activity, and any complaints or discipline that impacts professional licensure.
  - (10) Cooperate with any inquiry or investigation conducted by, or on behalf, of the department.
  - (11) Peace officers shall comply with the Peace Officer Code of Ethics as defined in CCR, Title 11, Division 2, Article 1, section 1013. Peace officers are held to a higher standard of conduct on and off-duty than other public employees.
- (b) Failure to adhere to the above expectations, on or off-duty, may result in disciplinary action.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 148.6, 832.5, 5054 and 6250-6253, Penal Code; and *Chaker v. Crogan* (9th Cir 2005), 428 F.3d 1215. Section 19572(m), Government Code; Section 5054 and 5058.4, 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392. Punctuality Employee Discipline.**

~~Employees must report for duty promptly at the time directed and not leave work assignments before completion of their scheduled workday or tour of duty, except with Their supervisor's permission. If for any reason an employee is unable to report for duty, the employee must notify his or her supervisor at the earliest possible moment.~~

~~Comment: Former DR-5203, punctuality of employees.~~

(a) Definitions – The definitions in this section apply to Subchapter 5, Article 2, sections 3391 and 3392 through 3392.10.

(1) 5/8/40 Work Schedule – A fixed work schedule consisting of five 8-hour days during a workweek.

(2) Administrative Time Off – A form of paid leave initiated by a hiring authority when it is determined that an employee should not come to work as set forth in section 3392.8.

(3) Adverse Action - A punitive action taken by a hiring authority to discipline an employee as set forth in section 3392.3.

(4) Allegation Inquiry Unit (AIU) – The unit within the Office of Internal Affairs that conducts investigations into complaints alleging misconduct toward incarcerated persons and parolees as set forth in 3486.2, and review allegation inquiry reports completed by locally designated investigators.

(5) Appointing Power - The Secretary of the CDCR.

(6) Bargaining Unit Agreement (also known as a Memorandum of Understanding) - An agreement entered into between the State of California and an employee representative organization certified by the Public Employee Relations Board as the exclusive representative for an employee bargaining unit.

(7) Centralized Screening Team - 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) Corrective Action - A non-punitive action taken by a supervisor to assist an employee to improve work performance, or correct behavior or conduct as set forth in section 3392.2.

(9) Designated Case – An employee discipline case assigned to a vertical advocate.

(10) Employee Disciplinary Matrix - The department's Employee Disciplinary Matrix set forth in section 3392.5, utilized by all hiring authorities to identify misconduct allegations and determine the penalty to be imposed when an allegation(s) of misconduct is sustained.

(11) Employee Relations Officer – The department employee responsible for coordinating the administrative process for designated cases, and representing the department in non-designated cases during the disciplinary process and at any administrative hearings.

(12) Hiring Authority - The appointing power may act, or delegate the power to act, as the hiring authority. The hiring authority has the power to hire, initiate the investigation process by submitting a confidential request for internal affairs investigation or approval for direct adverse action, discipline, and dismiss staff. The power to act as a hiring authority may be delegated to the following classifications: Undersecretary; Assistant Secretary; General Counsel; Chief Deputy General Counsel; Executive Officer; Chief Information Officer; Director; Deputy Director; Associate Director; Assistant Deputy Director; Chief, Office of Correctional Safety; Chief, Office of Labor Relations; Warden; Superintendent; Health Care Chief Executive Officer; Regional Health Care Administrator;

Regional Parole Administrator; Parole Administrator; Superintendent of Education; Assistant Superintendent of Education; Administrator at the Richard A. McGee Correctional Training Center for Correctional Officer Cadets; or any other person authorized by the appointing power.

(13) Job Steward – A recognized union representative for a state bargaining unit.

(14) Letter of Intent – Written notification to a peace officer employee that an investigation has been completed, adverse action will be taken, and the proposed penalty.

(15) Manager – An employee in a managerial classification having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(16) Locally Designated Investor – Departmental staff trained by OIA to collect evidence and conduct Allegation Inquiries.

(17) Monitored Case – An employee discipline case monitored by the Office of the Inspector General.

(18) Non-Designated Case – An employee discipline case assigned to an employee relations officer.

(19) Notice of Adverse Action – A written notice of punitive action to an employee including the penalty, effective date of the action, causes for discipline, factual allegations of misconduct, pre-deprivation (*Skelly*) rights, and the right to appeal the action to the State Personnel Board.

(20) Office of Internal Affairs – The entity with authority to investigate allegations of employee misconduct.

(21) Official Personnel File – A file for a department employee containing records maintained by the department including records relating to the employee's performance or any grievances filed by the employee.

(22) Preponderance of Evidence - The standard of proof necessary to establish that it is more likely than not that the alleged misconduct occurred.

(23) Progressive Discipline – Written preventative, corrective, or disciplinary action, providing an employee with notice of departmental expectations, an opportunity to learn from prior mistakes, and correct and improve future work performance.

(24) Qualifying Pay Period – Eleven or more qualifying workdays of service in a monthly pay period.

(25) Qualifying Work Day – An employee's regularly scheduled workday, excluding regular-days-off, sick leave, holidays, vacation, annual leave, or other periods of approved leave.

(26) *Skelly* Hearing – A hearing, normally held prior to the effective date of an adverse action, which provides the employee with an opportunity to respond to the allegations of misconduct set forth in the notice of adverse action.

(27) *Skelly* Letter – A letter notifying the employee of the hiring authority's final decision regarding the imposition of a disciplinary penalty.

(28) Skelly Officer - An employee, normally a manager assigned to conduct a Skelly Hearing and make a recommendation to the hiring authority as set forth in section 3392.8.

(29) Skelly Package – All documents and materials relied upon by the hiring authority to impose adverse action.

(30) Vertical Advocate – An Employment Advocacy and Prosecution Team ~~departmental~~ attorney who ~~provides legal advice to~~ ~~represents~~ the department during investigations, and the employee discipline process for designated cases, and represents the department at administrative hearings, and during any subsequent writ or appellate proceedings.

(31) Work Week – Any seven consecutive days, starting with the same calendar day each week beginning at any hour on any day, so long as it is fixed and regularly occurring.

Note: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 5054, 5058.4, and 6053, Penal Code; Sections 3304(d)(1), 3513, 19570 and 19574, Government Code; Section 115, Evidence Code; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194; *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995); *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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.1. Allegation Inquiry and Investigation Findings**

(a) Upon receipt and review of an allegation inquiry report, investigation report, or approval of direct adverse action, the hiring authority shall render a determination for each allegation for each subject. The findings and their explanations are as follows:

(1) NO FINDING: The complainant failed to disclose promised information to further the investigation; the investigation revealed that another agency was involved and the complainant has been referred to that agency; the complainant wishes to withdraw the complaint; the complainant refuses to cooperate with the investigation; or the complainant is no longer available for clarification of facts/issues.

(2) NOT SUSTAINED: The investigation failed to disclose a preponderance of evidence to prove or disprove the allegation made in the complaint.

(3) UNFOUNDED: The investigation conclusively proved that the act(s) alleged did not occur, or the act(s) may have, or in fact, occurred but the individual employee(s) named in the complaint(s) was not involved.

(4) EXONERATED: The facts, which provided the basis for the complaint or allegation, did in fact occur; however, the investigation revealed that the actions were justified, lawful, and proper.

(5) SUSTAINED: The investigation disclosed a preponderance of evidence to prove the allegation(s) made in the complaint.

(b) If the hiring authority finds an allegation inquiry report insufficient to make investigation findings, the hiring authority shall refer the case to AIU for investigation.

(c) When a hiring authority sustains misconduct as a result of an allegation inquiry, only corrective action can be imposed unless a request for direct adverse action is approved by AIU.

### **3392.2. Corrective Action.**

(a) A hiring authority shall only impose corrective action when the hiring authority determines that an employee's behavior or performance is correctable by counseling or training.

(b) Failure by an employee to comply with corrective action may result in adverse action, based on repeated incidents of misconduct, or the severity of the misconduct.

Note: Authority cited: Sections 5058 and 5058.3, 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.3. Adverse Action.**

(a) Any employee or person whose name appears on any employment list may receive adverse action based on any of the causes for discipline listed in Government Code section 19572.

(b) When taking adverse action, the penalty shall be imposed consistent with the Employee Disciplinary Matrix.

(c) A hiring authority may only take adverse action after finding that the allegation(s) of misconduct are sustained by a preponderance of evidence.

(d) Adverse action ~~for non-sworn staff~~ for off-duty misconduct requires a Nexus between the employee's behavior and their employment.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 18524 and 19571, 19572, Government Code; Section 115, Evidence Code; and Sections 5054 and 5058.4, Penal Code; *Yancey v. State Personnel Board* (1985) 167 Cal.App.3d.478; *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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.4. Adverse Action Penalties.**

(a) Letter of Reprimand: A Letter of Reprimand is the lowest level of adverse action.

(b) Salary Reduction: A Salary Reduction is a reduction of a percentage of an Employee's salary within the salary range of the employee's classification for a specified number of qualifying pay periods.

(c) Suspension without Pay: Suspension Without Pay is a temporary separation from state service during which the employee does not work and pay is docked for a specified period of time. A Suspension without Pay shall be specified in qualifying workdays.

(1) While on a Suspension without Pay, an employee who is on an alternate work schedule will revert to a 5/8/40 work schedule.



(2) The Suspension without Pay shall not run concurrent with any other leave and shall be tolled for any holiday, vacation, furlough, or other leave.

(3) An employee's service credits, health benefits, and other benefits may be affected depending upon the length of Suspension without Pay.

(d) Demotion: Demotion may be to any lower class, within the promotional chain, for which the employee is otherwise qualified and eligible, at a lower than maximum salary, and at a salary not exceeding the salary the employee received in their prior position.

(1) A demotion may be permanent or temporary.

(2) If the demotion is temporary, the employee returns to their prior higher classification following the conclusion of the temporary demotion.

(e) Dismissal: Dismissal from state service is an appropriate penalty for misconduct that renders the individual unsuitable for continued employment. Dismissal may or may not be preceded by corrective action or prior adverse action.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 19570, Government Code; Sections 5054 and 5058.4, 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

**3392.5. Employee Disciplinary Matrix.**

(a) Employee Disciplinary Matrix Penalty Levels:

<u>1. Letter of Reprimand</u>	<u>4. Salary Reduction 10% for 7-12 Qualifying Pay Periods; or</u>  <u>Suspension Without Pay for 14-24 Qualifying Work Days.</u>	<u>7. Salary Reduction 10% for 31-45 Qualifying Pay Periods; or</u>  <u>Suspension Without Pay for 62-90 Qualifying Work Days.</u>
<u>2. Salary Reduction 5% for 1-2 Qualifying Pay Periods; or</u>  <u>Suspension Without Pay for 1-2 Qualifying Work Days.</u>	<u>5. Salary Reduction 5% for 25-36 Qualifying Pay Periods; or</u>  <u>Suspension Without Pay for 25-36 Qualifying Work Days.</u>	<u>8. Temporary Demotion to a lower class for 12-24 Qualifying Pay Periods; or</u>  <u>Permanent Demotion.</u>
<u>3. Salary Reduction 5% for 3-12 Qualifying Pay Periods; or</u>	<u>6. Salary Reduction 10% for 19-30 Qualifying Pay Periods; or</u>	<u>9. Dismissal.</u>

<u>Suspension Without Pay for 3-12 Qualifying Work Days.</u>	<u>Suspension Without Pay for 38-60 Qualifying Work Days.</u>	
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(b) Employee Disciplinary Matrix Misconduct Categories and Penalty Ranges:

<b><u>A. ATTENDANCE</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Excessive tardiness.</u>	<u>1</u>	<u>1 2 3</u>
<u>2) Unauthorized absence.</u>	<u>1</u>	<u>1 2 3</u>
<u>3) Excessive absenteeism.</u>	<u>1</u>	<u>1 2 3 4 5 6 7</u>
<b><u>B. CODE OF SILENCE or RETALIATION</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Intentional failure to report misconduct by another employee.</u>	<u>3</u>	<u>2 3 4 5</u>
<u>2) Intentional failure to report serious misconduct by another employee.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>3) Intimidation, threats, or coercion that could interfere with an employee's duty to report misconduct, or an act of retaliation for reporting misconduct.</u>	<u>9</u>	<u>7 8 9</u>
<u>4) Any independent act(s) that prevents or interferes with the reporting of misconduct.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>5) Any involvement in a concerted or coordinated effort with other employees to prohibit or impede the reporting of misconduct.</u>	<u>9</u>	<u>7 8 9</u>
<b><u>C. ALCOHOL, TOBACCO, AND DRUGS</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Use or possession of controlled substances on or off-duty, unless medically prescribed.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>2) Use or possession of marijuana on or off-duty in violation of State or Federal law.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>3) Sale or distribution of prescribed medications or controlled substances.</u>	<u>9</u>	<u>9</u>
<u>4) Theft of medication.</u>	<u>9</u>	<u>7 8 9</u>
<u>5) Use of over-the-counter or prescription medications while on duty Which impairs an employee's ability to discharge his or her duties.</u>	<u>4</u>	<u>3 4 5 6 7</u>
<u>6) Use of medication prescribed to another.</u>	<u>6</u>	<u>4 5 6 7 8 9</u>

<u>7) Possession of alcohol on institutional grounds, while on duty, or in the presence of inmates, wards, or parolees.</u>	<u>6</u>	<u>4 5 6 7</u>
<u>8) Use of alcohol or drunkenness on duty.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>9) Operating a private vehicle for state business, a state vehicle, or a vehicle rented for state business, under the influence of alcohol, controlled substances, or prescribed medication.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>10) Use or possession of tobacco products in unauthorized areas of department owned or controlled property.</u>	<u>1</u>	<u>1 2 3 4</u>
<b><u>D. CONDUCT OR JOB PERFORMANCE</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Discourtesy toward inmates, wards, parolees, other employees, or the public.</u>	<u>1</u>	<u>1 2 3 4 5 6</u>
<u>2) Negligently endangering self, fellow employees, inmates, wards, parolees, or the public by violation of statutes, regulations, ordinances, or departmental policy, procedures, or training.</u>	<u>2</u>	<u>1 2 3</u>
<u>3) Intentionally endangering self, fellow employees, inmates, wards, parolees, or the public by violation of statutes, regulations, ordinances, or departmental policy, procedures, or training.</u>	<u>6</u>	<u>4 5 6 7 8 9</u>
<u>4) Leaving assigned post without supervisor approval.</u>	<u>2</u>	<u>1 2 3</u>
<u>5) Less than alert, inattentive, or distracted while on duty.</u>	<u>2</u>	<u>1 2 3</u>
<u>6) Asleep while on duty.</u>	<u>3</u>	<u>1 2 3 4</u>
<u>7) Gambling on duty.</u>	<u>2</u>	<u>1 2 3</u>
<u>8) Unauthorized use of department position, uniform, or equipment.</u>	<u>2</u>	<u>1 2 3</u>
<u>9) Use of identification or department position to solicit a gratuity or privilege.</u>	<u>4</u>	<u>3 4 5 6 7 8</u>
<u>10) Engaging in a relationship in violation of the department's nepotism or fraternization policy.</u>	<u>4</u>	<u>3 4 5 6 7 8 9</u>
<u>11) Failure to report a relationship in violation of the department's nepotism or fraternization policy.</u>	<u>3</u>	<u>2 3 4 5 6</u>
<u>12) Improperly accessing or unauthorized possession or disclosure of confidential information.</u>	<u>4</u>	<u>2 3 4 5 6 7 8 9</u>

<u>13) Improperly accessing or unauthorized possession or disclosure of confidential information with malicious intent or for personal gain.</u>	<u>5</u>	<u>3 4 5 6 7 8 9</u>
<u>14) Disruptive, offensive, or vulgar conduct which discredits the department.</u>	<u>3</u>	<u>2 3 4 5 6</u>
<u>15) Intimidation, threat, or assault without the intent to inflict serious injury toward a department employee, inmate, ward, parolee, or member of the public.</u>	<u>5</u>	<u>3 4 5 6 7 8</u>
<u>16) Intimidation, threat, or assault with the intent to inflict serious injury toward a department employee, inmate, ward, parolee, or member of the public.</u>	<u>7</u>	<u>5 6 7 8 9</u>
<u>17) Battery against a departmental employee or member of the public without the intent to inflict serious injury.</u>	<u>5</u>	<u>3 4 5 6 7 8</u>
<u>18) Battery against a department employee or member of the public with the intent to inflict serious injury.</u>	<u>7</u>	<u>5 6 7 8 9</u>
<u>19) Sexual misconduct involving staff or a member of the public.</u>	<u>6</u>	<u>5 6 7 8 9</u>
<u>20) Over-familiarity with inmate(s), ward(s), parolee(s) or inmate, ward, or parolee family member(s).</u>	<u>5</u>	<u>4 5 6 7 8 9</u>
<u>21) Sexual misconduct with an inmate, ward, or parolee.</u>	<u>9</u>	<u>9</u>
<u>22) Prostitution or solicitation of prostitution.</u>	<u>6</u>	<u>5 6 7 8 9</u>
<u>23) Bringing contraband into a secure area for personal use.</u>	<u>1</u>	<u>1 2 3 4 5 6</u>
<u>24) Bringing for or providing contraband to an inmate, ward, or parolee.</u>	<u>9</u>	<u>5 6 7 8 9</u>
<u>25) Failure to observe and perform within the professional standards, including community standards of care, applicable to a profession, or engaging in behavior that constitutes professional misconduct under professional standards.</u>	<u>3</u>	<u>3 4 5 6 7 8 9</u>
<u>26) Failure to observe and perform within the scope of training, post orders, duty statements, department policy, or operational procedures.</u>	<u>1</u>	<u>1 2 3 4 5</u>
<u>27) Failure to observe and perform within the scope of practice for medical, nursing, psychiatric, psychological, dental, or other health care employees.</u>	<u>3</u>	<u>3 4 5 6 7 8 9</u>

<u>28) Employee's failure to report discipline by a licensing agency.</u>	<u>3</u>	<u>3 4 5 6 7 8 9</u>
<u>29) Failure to intervene in or attempt to stop misconduct by another employee.</u>	<u>5</u>	<u>4 5 6 7 8 9</u>
<u>30) Failure to intervene in or attempt to stop misconduct by another employee directed at an incarcerated person.</u>	<u>7</u>	<u>5 6 7 8 9</u>
<u>31) Felony criminal conviction.</u>	<u>9</u>	<u>9</u>
<u>32) Misdemeanor conviction involving moral turpitude.</u>	<u>9</u>	<u>7 8 9</u>
<b><u>E. INTEGRITY AND DISHONESTY</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Petty theft.</u>	<u>4</u>	<u>3 4 5 6 7</u> <u>Penalty shall be relative to value and circumstances</u>
<u>2) Grand theft.</u>	<u>9</u>	<u>7 8 9</u> <u>Penalty shall be relative to value and circumstances</u>
<u>3) Making evasive statements, failing to report, or omitting material facts or information to a supervisor by non-sworn staff.</u>	<u>3</u>	<u>2 3 4 5 6 7</u>
<u>4) Making evasive statements, failing to report, or omitting material facts or information to a supervisor by sworn staff.</u>	<u>4</u>	<u>2 3 4 5 6 7</u>
<u>5) Making intentionally false or intentionally misleading statements regarding a material fact or intentionally omitting material facts to a supervisor.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>6) Making intentionally false or intentionally misleading statements regarding a material fact, or intentionally omitting material facts, during an inquiry or investigation conducted by the department's Office of Internal Affairs.</u>	<u>9</u>	<u>7 8 9</u>
<u>7) Making intentionally false or intentionally misleading statements regarding a material fact or intentionally omitting material facts to a public safety officer on or off-duty.</u>	<u>7</u>	<u>5 6 7 8 9</u>

<u>8) Making intentionally false or intentionally misleading statements regarding a material fact or intentionally omitting material facts during an investigation conducted by any local, state, or federal entity; state or federal licensing agency; or professional peer review board.</u>	<u>9</u>	<u>7 8 9</u>
<u>9) False testimony under oath.</u>	<u>9</u>	<u>9</u>
<u>10) Falsification of material facts in reports or official records.</u>	<u>9</u>	<u>7 8 9</u>
<u>11) Falsification of a time record or financial record for fraudulent purposes.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>12) False claim for Leave Entitlement.</u>	<u>5</u>	<u>4 5 6 7 8 9</u>
<u>13) Falsification by an employee of a medical note or record obtained from a dental, medical, mental health, or health care provider.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>14) Entering false or intentionally misleading statements in a dental, medical, mental health, or other health care record.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>15) Altering or destroying dental, medical, or mental health care records in violation of department policy or state or federal law.</u>	<u>9</u>	<u>5 6 7 8 9</u>
<u>16) Falsification, alteration, planting, or destruction of evidence.</u>	<u>9</u>	<u>7 8 9</u>
<u>17) Falsification, alteration, or destruction of department records, documents, or communications in violation of department policy.</u>	<u>9</u>	<u>7 8 9</u>
<u>18) Repeated unintentionally failing to start, shutting off, or disabling Audio-Visual Surveillance System or Body-Worn Cameras.</u>	<u>2</u>	<u>1 2 3</u>
<u>19) Intentionally failing to start, shutting off, or disabling Audio-Visual Surveillance System or Body-Worn Cameras.</u>	<u>9</u>	<u>7 8 9</u>
<u>20) Tampering with, altering, or destroying Audio-Visual Surveillance System or Body-Worn Camera equipment or recordings.</u>	<u>9</u>	<u>7 8 9</u>
<u>21) Cheating on a civil service examination; unauthorized possession, use, or distribution of examination materials; or participating in an examination for another person.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>22) Falsification or intentional omission of information on applications or other documents submitted for employment or promotion.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>

<u>23) Participating in hiring practices that violate the law or department policy.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<b><u>F. FAILURE TO COMPLY</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Failure to obtain approval from or provide updated information to a hiring authority regarding secondary employment outside the department.</u>	<u>1</u>	<u>1 2 3</u>
<u>2) Accepting employment outside the department or engaging in activities inconsistent or incompatible with departmental employment as set forth in section 3413.</u>	<u>4</u>	<u>3 4 5 6</u>
<u>3) Failure to attend required training.</u>	<u>1</u>	<u>1 2 3</u>
<u>4) Failure to comply with an admonishment or other lawful instruction by the Office of Internal Affairs during an investigation.</u>	<u>6</u>	<u>5 6 7 8 9</u>
<u>5) Failure to follow lawful instructions as directed by a supervisor or higher-ranking official.</u>	<u>3</u>	<u>2 3 4 5 6 7</u>
<u>6) Failure to report a change in qualifications, licensure, or certification required for continued employment in a job classification.</u>	<u>4</u>	<u>3 4 5 6 7 8 9</u>
<u>7) Refusal to submit to or take any oath or affirmation required by law.</u>	<u>9</u>	<u>9</u>
<u>8) Refusal to take a medical or psychological examination or submit to drug or alcohol testing, as required by law, civil service rules, department policy, Memoranda of Understanding, or lawful order.</u>	<u>9</u>	<u>9</u>
<b><u>G. EQUAL EMPLOYMENT OPPORTUNITY</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Unsolicited, unwelcome, or offensive verbal or written comments that are derogatory, sexual in nature, or discriminatory based on protected status.</u>	<u>3</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>2) Unsolicited, unwelcome, or offensive physical conduct that is derogatory, sexual in nature, or discriminatory based on protected status.</u>	<u>4</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>3) Unsolicited, unwelcome, or offensive visual conduct that is derogatory, sexual in nature, or discriminatory based on protected status.</u>	<u>3</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>

<u>4) Displaying objects, cartoons, pictures, or posters that are derogatory, sexual in nature, or discriminatory based on protected status.</u>	<u>3</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>5) Making employment decisions or changing the terms, conditions, or privileges of employment based on an individual's protected characteristics.</u>	<u>3</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>6) Changing the terms, conditions, or privileges of employment in retaliation for engaging in activity protected by state or federal law, filing a discrimination, harassment or retaliation complaint; opposing unlawful discrimination, harassment or retaliation; or participating in the discrimination complaint process.</u>	<u>6</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>

<b><u>H. WORKPLACE VIOLENCE</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Conduct that is disruptive because it disturbs, intimidates, interferes with, or prevents normal work functions or workplace activities.</u>	<u>3</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>2) Threatened acts of violence with the intent to harass, intimidate, commit an injury to self or others, or damage or destroy property.</u>	<u>4</u>	<u>1 2 3 4</u> <u>5 6 7 8 9</u>
<u>3) Stalking which consists of willful, malicious, and repeated following or harassing of another person, by any means direct or indirect, that causes a reasonable person to fear for their safety or the safety of their immediate family.</u>	<u>6</u>	<u>3 4 5 6 7 8 9</u>

<b><u>I. MISUSE OF STATE RESOURCES</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Unauthorized use of state equipment or services for personal use.</u>	<u>3</u>	<u>1 2 3 4 5 6 7</u>
<u>2) Failure to carry required equipment.</u>	<u>1</u>	<u>1 2 3 4 5</u>
<u>3) Misuse or non-use of issued equipment.</u>	<u>1</u>	<u>1 2 3 4 5</u>
<u>4) Misappropriation of state equipment, property, supplies or funds.</u>	<u>1-9</u>	<u>1-9</u> <u>Penalty shall be relative to value of property and circumstances.</u>

<b><u>J. OFF-DUTY INCIDENTS</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Failure to report off-duty arrest to the hiring authority.</u>	<u>2</u>	<u>1 2 3</u>
<u>2) Drunk or disorderly conduct in public.</u>	<u>2</u>	<u>1 2 3</u>



<u>3) Off-duty driving under the influence of alcohol or a drug without collision.</u>	<u>2</u>	<u>1 2 3 4 5</u>
<u>4) Off-duty driving under the influence of alcohol or a drug with collision.</u>	<u>5</u>	<u>4 5 6</u>
<u>5) Off-duty driving under the influence of alcohol or a drug resulting in injury.</u>	<u>7</u>	<u>7 8 9</u>
<u>6) Carrying a concealed firearm off-duty without a carry concealed weapon permit or department authorization.</u>	<u>5</u>	<u>3 4 5 6 7 8 9</u>
<u>7) Possessing a department authorized off-duty firearm while impaired by alcohol or a drug.</u>	<u>6</u>	<u>4 5 6 7 8 9</u>
<u>8) Misuse of firearm while off-duty.</u>	<u>3</u>	<u>1 2 3 4 5</u>
<u>9) Illegal display or brandishing of firearm while off-duty.</u>	<u>5</u>	<u>3 4 5 6 7</u>
<u>10) Negligent handling of firearm without injury while off-duty.</u>	<u>2</u>	<u>1 2 3 4 5</u>
<u>11) Negligent handling of firearm with injury while off-duty.</u>	<u>6</u>	<u>3 4 5 6 7 8 9</u>
<u>12) Gross negligence in handling of firearm without injury while off-duty.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>13) Gross negligence in handling of firearm with injury while off- duty.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>14) Domestic violence.</u>	<u>6</u>	<u>4 5 6 7 8 9</u>
<u>15) Child abuse or endangerment.</u>	<u>6</u>	<u>4 5 6 7 8 9</u>
<u>16) Sexual misconduct involving, or sexual abuse of, a minor.</u>	<u>9</u>	<u>7 8 9</u>
<u>17) Intimidation, threat, or assault of a private citizen.</u>	<u>5</u>	<u>3 4 5 6</u>
<u>18) Battery of a private citizen without intent to commit injury.</u>	<u>4</u>	<u>1 2 3 4 5 6 7</u> <u>8</u>
<u>19) Battery of a private citizen with intent to commit injury.</u>	<u>7</u>	<u>6 7 8 9</u>
<u>20) Other off-duty criminal conduct.</u>	<u>1-9</u>	<u>1-9</u> <u>Penalty shall be relative to nature of criminal offense</u>

<b><u>K. ON-DUTY TRAFFIC-RELATED INCIDENTS</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Negligent driving while on duty.</u>	<u>2</u>	<u>1 2 3</u>
<u>2) Negligent driving while on duty with collision.</u>	<u>3</u>	<u>2 3 4</u>

<u>3) Dangerous, reckless, or wanton driving while on duty.</u>	<u>5</u>	<u>3 4 5 6</u>
<u>4) Dangerous, reckless, or wanton driving while on duty with collision.</u>	<u>7</u>	<u>4 5 6 7 8</u>
<b><u>L. USE OF FORCE</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Unnecessary use of force without injury.</u>	<u>2</u>	<u>1 2 3</u>
<u>2) Unnecessary use of force causing injury.</u>	<u>5</u>	<u>4 5 6 7 8 9</u>
<u>3) Unnecessary use of force causing great bodily injury.</u>	<u>9</u>	<u>6 7 8 9</u>
<u>4) Excessive use of force without injury.</u>	<u>3</u>	<u>1 2 3</u>
<u>5) Excessive use of force causing injury.</u>	<u>5</u>	<u>4 5 6 7 8 9</u>
<u>6) Excessive use of force causing great bodily injury.</u>	<u>9</u>	<u>6 7 8 9</u>
<u>7) Intentional unnecessary or excessive use of force.</u>	<u>9</u>	<u>7 8 9</u>
<u>8) Employee's failure to report their own use of force.</u>	<u>5</u>	<u>2 3 4 5 6</u>
<u>9) Employee's failure to report their own unnecessary or excessive use of force.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<u>10) Employee's failure to report use of force observed.</u>	<u>4</u>	<u>2 3 4 5 6</u>
<u>11) Employee's failure to report unnecessary or excessive use of force observed.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>
<b><u>M. WEAPONS – LETHAL &amp; LESS-LETHAL WHILE ON DUTY</u></b>	<b><u>BASE PENALTY</u></b>	<b><u>PENALTY RANGE</u></b>
<u>1) Misuse or non-use of available weapons while on duty.</u>	<u>2</u>	<u>1 2 3</u>
<u>2) Inappropriate display of weapon(s) while on duty.</u>	<u>2</u>	<u>1 2 3 4 5</u>
<u>3) Negligent handling of weapon(s) without injury while on duty.</u>	<u>2</u>	<u>1 2 3 4 5</u>
<u>4) Negligent handling of weapon(s) with injury while on duty.</u>	<u>6</u>	<u>3 4 5 6 7 8 9</u>
<u>5) Unintentional discharge of weapon(s) while at the range.</u>	<u>1</u>	<u>1 2 3 4</u>
<u>6) Gross negligence in handling of weapon(s) without injury while on duty.</u>	<u>7</u>	<u>4 5 6 7 8 9</u>
<u>7) Gross negligence in handling of weapon(s) with injury while on duty.</u>	<u>9</u>	<u>4 5 6 7 8 9</u>

(c) Applying the Employee Disciplinary Matrix.

(1) The Employee Disciplinary Matrix shall be used for all disciplinary actions to identify the applicable matrix misconduct allegation(s) and determine the appropriate penalty.

(2) Prior to assessing a disciplinary penalty, the hiring authority must find the investigation or direct action materials sufficient to make investigation findings, which must be documented on CDCR Form 402 (Rev. 01/22), Hiring Authority Review of Investigation, which is incorporated by reference. If the hiring authority finds the investigation or direct action materials insufficient to make investigation findings, the Hiring Authority shall document that finding on the CDCR Form 402 and refer the case to OIA for investigation.

(3) The Employee Disciplinary Matrix identifies a base penalty and penalty range for each misconduct allegation. The base penalty contained in the base penalty column shall represent the starting point for determining the penalty level of an adverse action.

(4) The Employee Disciplinary Matrix is based on the assumption that there is a single act of misconduct at issue and this is the employee's first adverse action. When multiple acts of misconduct occur, the hiring authority shall utilize the Employee Disciplinary Matrix to determine which allegation warrants the highest penalty. The hiring authority shall utilize the penalty range for the most severe charge, and other acts of misconduct shall be considered aggravating factors that may increase the penalty up to and including dismissal.

(5) The hiring authority shall impose the base penalty unless aggravating or mitigating factors, as set forth in 3392.5, subsections (c)(9) and (11), are identified. The aggravating and mitigating factors shall be considered in determining the appropriate penalty level within the penalty range.

(6) If the hiring authority sustains allegations against an employee in a supervisory or managerial position, which renders that employee unfit to continue as a supervisor or Manager in their position, the hiring authority may in addition to the identified matrix penalty, impose a permanent or temporary demotion.

(7) No leniency shall be afforded when assessing a penalty under the Employee Disciplinary Matrix because of an employee's high rank or position.

(8) Aggravating and mitigating factors may increase or decrease the penalty within the identified penalty range. Mitigating factors may be used to reduce the penalty level from the base penalty. Aggravating factors may increase a penalty from the base penalty up to and including dismissal.

(9) The following mitigating factors shall be considered when determining a penalty:

(A) The misconduct was unintentional and not willful.

(B) The misconduct was not premeditated.

(C) The employee had a secondary or minor role in the misconduct.

(D) Based upon: length of service; lack of training; inexperience; lack of written policy directives, post orders, or duty statements; or the inherent nature of the act, the employee did not understand the consequences of his or her actions.

(E) Commendations received by the employee.

(F) The employee was forthright and truthful during the investigation.

(G) The employee was forthright and truthful in documents written or signed by the employee.

(H) The employee was initially untruthful, but later came forward with an explanation.

(I) The employee accepts responsibility.

(J) The employee is remorseful.

(K) The employee reported the harm caused or independently initiated steps to mitigate the harm caused in a timely manner.

(10) For any action where the hiring authority identifies mitigating factors that would allow the penalty under the Employee Disciplinary Matrix to be mitigated to a Letter of Reprimand, the hiring authority may reduce the penalty to corrective action if the hiring authority can specifically articulate why corrective action is appropriate to address the misconduct. The justification for any penalty reduction to corrective action, including identification of mitigating factors, must be specifically articulated on CDCR Form 403 (Rev. 01/22), Justification of Penalty, which is incorporated by reference, when reducing a penalty to corrective action.

(11) The following aggravating factors shall be considered when determining a penalty:

(A) The misconduct was intentional and willful.

(B) The misconduct was premeditated.

(C) The employee had a primary or leadership role in the misconduct when committed in concert or coordinated with others.

(D) Based upon:

1. Length of service.

2. Training.

3. Experience.

4. Existence of written policy directives, post orders, or duty statements.

5. The inherent nature of the act, the employee knew or should have known that their actions were inappropriate.

(E) Managerial and supervisory employees, licensed professionals, and sworn staff shall be held to a higher standard of conduct, and misconduct engaged by these employees shall be considered an aggravating factor for the purposes of assessing disciplinary penalties.

(F) Serious consequences occurred or could have resulted from the misconduct.

(G) Conduct resulted in or, if repeated, is likely to result in harm to the public service.

(H) The misconduct was committed with malicious intent.

(I) The misconduct was committed for personal gain.

(J) The misconduct resulted in injury to a person or property.

(K) More than one act of misconduct forms the basis for the disciplinary action.

(L) The employee has committed repeated acts of misconduct resulting in prior sustained adverse action.

(M) The employee was evasive, dishonest, or intentionally misleading during an inquiry or investigation.

(N) The employee does not accept responsibility.

(O) The employee did not report the harm caused or attempted to conceal the harm through action or inaction.

(12) Suspensions without pay are a more severe penalty than a salary reduction due to the loss of pay, potential negative impact to employee benefits and seniority, and impact to department operations, and shall be considered as such for Progressive Discipline purposes.

(13) If the employee engages in repeated acts of the same misconduct that have already resulted in sustained adverse action, the hiring authority may impose a penalty above the Employee Disciplinary Matrix penalty range, if the hiring authority can specifically articulate why the higher penalty is necessary and appropriate to address repeated misconduct. Justification for aggravating any penalty above the matrix penalty range, including identification of aggravating factors, must be specifically articulated on the CDCR Form 403.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code; Section 19572, Government Code; *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995.); *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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.6 Statutes of Limitation**

(a) Notices of adverse action and letters of intent shall be served on employees prior to the expiration of the applicable statute of limitations period pursuant to Government Code sections 3304 and 19635.

(b) The statute of limitations for taking adverse action shall be assessed in accordance with all applicable laws, including Government Code section 3304(d)(1) for sworn staff, and Government Code section 19635 for both sworn and non-sworn staff.

(c) For the purpose of commencing the one-year statute of limitations for peace officers under Government Code section 3304(d)(1), only a hiring authority and the Office of Internal Affairs (OIA) Centralized Screening Team (CST) is authorized by the department to initiate the internal affairs investigation process upon the hiring authorities or CST's discovery of an allegation of misconduct.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code; Sections 3304 and 19635, Government Code; *Jackson v. City of LA* (2003) 111 Cal.App.4th 899; *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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.7. Setting the Effective Date of the Action.**

(a) The hiring authority shall determine the effective date of the adverse action.

(b) The effective date must be set out at least 5 working days from the date of service of the notice of adverse action for non-manager employees pursuant to CCR, Title 2, section 52.6, and twenty calendar days for managers pursuant to Government Code section 19590(b), to provide time for a Skelly Hearing if requested.

Note: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5058.4, Penal Code; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194; Sections 3513(e) and 19590, Government 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action, and CCR, Title 2, section 52.6.

### **3392.8. Skelly Hearing.**

(a) All department employees may request a Skelly Hearing prior to the effective date of an adverse action.

(b) Non-manager employees must request a Skelly hearing within five working days from the date of service of the notice of adverse action. Managerial employees must request a Skelly hearing within ten calendar days from the date of service of the notice of adverse action. If any provision of this section is inconsistent with a Bargaining Unit Agreement, the notice provision(s) of the agreement shall apply.

(c) Employees waive their right to a Skelly Hearing by not timely requesting a Skelly Hearing.

(d) If the employee requests a Skelly Hearing, the Skelly Hearing shall be conducted, and a Skelly Decision issued, prior to the effective date of the adverse action unless waived by the employee in writing.

(e) The Skelly Package shall be served on the employee with the notice of adverse action prior to the Skelly Hearing.

(f) Unless waived by the employee, the Skelly Officer shall be a manager at an organizational level above the employee's supervisor, who did not request a confidential internal affairs investigation or approval of direct action, sign the employee's notice of adverse action, or participate in the decision to take adverse action.

(g) If the subject employee's supervisor is the appointing power, the appointing power may act as the Skelly Officer or designate another person to act as the Skelly Officer.

(h) Employees shall be allowed representation during the Skelly Hearing. The representative cannot be involved in the incident resulting in adverse action. A rank-and-file Job Steward acting in their representational capacity cannot represent a supervisory employee. A supervisory Job Steward acting in their representational capacity cannot represent a rank-and-file employee. However, a rank-and-file or supervisory Job Steward may represent an employee in a non-union capacity, but not during state time.

(i) The employee and the employee's representative may present facts in mitigation to the Skelly Officer in writing, orally, or both. The employee or their representative may submit affidavits or written statements for the Skelly Officer's consideration. The Skelly Hearing is not an evidentiary proceeding, therefore, the employee does not have the right to call witnesses on their behalf.

(j) The Skelly Officer may ask questions related to the allegations contained in the notice of adverse action, the supporting evidence, or any information presented by the employee or the employee's representative. The Skelly Officer has the right to restrict any oral presentation that is argumentative or repetitive. The Skelly Officer is not subject to examination by either the employee or the employee's representative. With the exception of acknowledging receipt, the Skelly Officer shall not provide any response to the information submitted by the employee or the employee's representative, and shall not disclose their Skelly recommendation.

(k) After the conclusion of the Skelly Hearing, the Skelly Officer shall make one of the following independent recommendations to the hiring authority:

(1) Additional information or investigation is needed.

(2) The adverse action should proceed without modification.

(3) The factual allegation(s) supporting the adverse action should be amended or the penalty reduced.

(4) The adverse action should be withdrawn in its entirety.

Note: Authority cited: Section 5058 and 5058.3, Penal Code; Reference: Sections 5054 and 5058.4, Penal Code; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194; Section 19590, Government 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, and CCR, Title 2, Section 52.6.

### **3392.9. Use of Administrative Time Off.**

(a) When an employee is under investigation or subject to discipline, the hiring authority shall place an employee on Administrative Time Off (ATO) for one or more of the following reasons, unless the employee is transferred pursuant to section 3392.910, or unless, based on the circumstances of the misconduct, the hiring authority determines that ATO or transfer is not necessary to ensure the safety and security of the institution or the integrity of the investigation:

(1) The employee has been convicted of a felony.

(2) The employee is suspected of smuggling contraband.

(3) The employee has jeopardized or their continued presence will jeopardize, the safety and security of the workplace or the health and welfare of other employees, inmates, wards, or parolees.

(4) The employee's continued presence in the workplace during the investigation or discipline process would undermine the department's ability to conduct a fair and

thorough investigation or discipline process.

(5) The proposed discipline is likely dismissal.

Note: Authority cited: Sections 5058 and 5058.3, 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3392.10. Temporary Involuntary Transfer.**

(a) A hiring authority may temporarily involuntarily transfer an employee while the employee is under investigation or to prevent misconduct that could lead to adverse action while an investigation is pending.

(b) Transfer under this section means to transfer the employee either to another position in the same class at the same location or from one location to another consistent with Government Code section 19994.1.

(c) In evaluating the need for transfer, hiring authorities shall consider the nature of the allegation(s), and whether the staff member has previously been the subject of a staff misconduct allegation or found to have committed misconduct similar to the current allegation(s).

(d) The hiring authorities shall consider whether transfer is necessary on an ongoing basis throughout the investigation.

(e) Temporary Involuntary Transfer shall be considered by each hiring authority as an alternative to the use of Administrative Time Off.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code; Section 19994.1, Government 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., and *Madrid v. Woodford*, Order; Case No. C90-3094-T.E.H. Class Action.

### **3417. Citizen's Complaints.**

(a) An allegation by a non-inmate of misconduct by a departmental peace officer as defined in section 3291(b) is a citizen's complaint pursuant to Penal Code section 832.5. Citizen's complaints alleging misconduct of a departmental peace officer shall be filed within twelve months of the alleged misconduct.

(b) Persons other than an inmate, parolee or staff who allege misconduct of a departmental peace officer shall submit a written complaint to the institution head or parole administrator of the area in which the peace officer is employed.



(c) Citizens filing complaints alleging misconduct by a departmental peace officer are required to read and sign the following statement:

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. 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.

Note: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 148.6 and 832.5, Penal Code.