

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



February 3, 2015

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the California Code of Regulations that concern the Prison Rape Elimination Act is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this notice, are indicated by **bold double underline** for additional added text, and **~~bold double strikethrough~~** for additional deleted text to the originally proposed text. These proposed changes are being made available for public comment.

As determined by the California Department of Corrections and Rehabilitation, the attached text contains the following changes:

3084.8 Appeal Time Limits

Section 3084.8 is being amended to more clearly articulate that there is no time limit on inmate appeals which contain allegations of sexual violence or staff sexual misconduct. This change is being made as a result of feedback received through the public comment period.

3084.9. Exception to Regular Appeals Process.

Section 3084.9 is being further amended to more clearly articulate the specific timeframes and criteria for the Department to respond to allegations of staff sexual misconduct or sexual violence which are submitted through the inmate appeal process. This clarification required the section to be divided into two subsections, one for staff sexual misconduct and the other to address sexual violence by another offender.

Allegations of sexual harassment were removed from this section because the standards do not mandate that these types of claims rise to the level of requiring an exception to the regular appeals process. The exception to the appeals process takes effect when the allegations addresses substantial risk of imminent sexual violence or staff sexual misconduct and requires the Hiring Authority to take immediate actions to address the allegation. This change is being made as a result of feedback received through the public comment period.

The 15-day comment period on these changes shall close on February 29, 2016. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or by e-mail, at rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on February 29, 2016.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold double underline** or **~~bold double strikethrough~~** will be considered.

// Original signed by //

TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
Attachment

TEXT OF PROPOSED REGULATIONS – RENOTICE

In the following, bold double underline indicates text added since the original notice of change to regulations, and ~~bold double strikethrough~~ indicates deleted text. The original single underline and strikethrough formatting from the original proposed text that was noticed to the public has been retained.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 8

3084. Appeals.

3084.8. Appeal Time Limits.

Subsections 3084.8(a) remains unchanged.

(a) Time limits for reviewing appeals shall commence upon the date of receipt of the appeal form by the appeals coordinator.

Subsections 3084.8(b) is amended to read:

(b) An inmate or parolee must submit the appeal within 30 calendar days, except as described in (4) below, of:

Subsections 3084.8(b)(1) through 3084.8(b)(3) remain unchanged.

- (1) The occurrence of the event or decision being appealed, or;
- (2) Upon first having knowledge of the action or decision being appealed, or;
- (3) Upon receiving an unsatisfactory departmental response to an appeal filed.

Subsection 3084.8(b)(4) is added:

(4) There shall be no time limits for allegations of sexual violence or staff sexual misconduct.

Subsections 3084.8(c) through 3084.8(g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

3084.9. Exceptions to the Regular Appeal Process.

Subsections 3084.9(a) through 3084.9(a)(4) remain unchanged.

(a) Emergency appeals. Emergency appeals should not be used by inmates or parolees as a substitute for verbally or otherwise informing staff of an emergency situation requiring immediate response.

Subsections 3084.9(a)(5) through 3084.9(a)(5)(A)(7) are amended to read:

(5) ~~Exception to Regular Appeal Process~~ PREA Sexual Violence and Staff Sexual Misconduct Appeals.

A grievance in whole or part containing allegations of **sexual violence or staff sexual misconduct or staff sexual harassment** shall be processed as an emergency **Staff Complaint** appeal. The appeal shall be immediately reviewed by the Hiring Authority or designee and processed directly at the Second Level of Review. **When the appeal alleges or indicates that the inmate may in substantial risk of imminent sexual violence or imminent staff sexual misconduct, a risk assessment shall be undertaken.**

(A) Staff Complaints: While the department maintains the right to defend against an inmate lawsuit on the grounds of the applicable statute of limitations, a time limit shall not be imposed upon when an appellant may file such a grievance. The time limits for processing an emergency Staff Complaint is as follows:

- (1) There shall be no time limit for allegations of staff sexual misconduct or staff sexual harassment, but once received by the appeals coordinator, the appeal shall be screened in accordance with 3084.5(b)(4).**
- (2) A risk assessment determination of all PREA staff sexual misconduct related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent staff sexual violence misconduct. If the assessment results in a determination of the appellant being in substantial risk of imminent staff sexual violence misconduct, the Hiring Authority shall take immediate corrective action.**
- (3) The appeals coordinator shall provide an initial response to the appellant within 48 hours which shall include notice that whether or not the appeal is being processed as an emergency Staff Complaint.**
- (4) An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent sexual violence and the action(s) taken in response to the appeal.**
- (5) If the conditions of exceptional delay exist as described in 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not to exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.**
- (6) The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial of that level.**
- (7) The appellant is required to respond to the SLR within 30 calendar days in accordance with 3084.8(b)(3).**

Subsections 3084.9(a)(5)(B) through 3084.9(a)(5)(B)(7) are adopted to read:

(B) PREA Allegations Against Another Offender: A time limit shall not be imposed upon when an appellant may file a grievance alleging inmate on inmate sexual violence. The time limits for processing an emergency sexual violence appeal are as follows:

- 1. Once received by the appeals coordinator, the appeal shall be screened in accordance with 3084.8. When the appeal alleges or indicates that the inmate is at substantial risk of imminent sexual violence, a risk assessment shall be undertaken.**
- 2. A risk assessment determination of all sexual violence related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent sexual violence. If the assessment results in a determination of the appellant being in substantial risk of imminent sexual violence, the Hiring Authority shall take immediate corrective action.**
- 3. The appeals coordinator shall provide an initial response to the appellant within 48 hours which shall include whether or not the appeal is being processed as an emergency PREA appeal.**
- 4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent sexual violence and the action(s) taken in response to the appeal.**
- 5. If the conditions of exceptional delay exist as described in 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not to exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.**
- 6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial of that level.**
- 7. The appellant is required to respond to the SLR within 30 calendar days in accordance with 3084.8(b)(3).**

Subsections 3084.9(b) through 3084.9(i)(6) remain unchanged.

Note: Authority cited: Section 5058, Penal Code; and Section 6304.3, Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054 and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5 and 19635, Government Code; Sections 98.7 and 6304.3, Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Wolff v. McDonnell (1974) 418 U. S. 539, 558-560; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No.GIC-740832.