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### **Your Responsibility When Using the Information Provided Below:**

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

## **SEXUAL ABUSE IN CALIFORNIA PRISONS** **Updated October 2022**

Sexual abuse in prisons can take many forms including non-consensual sex acts or other types of touching, verbal harassment, lewd gestures, invasion of privacy, voyeurism, or leering (offensive looking or watching). It can occur in men's prisons and women's prisons. The abuser can be a prison staff member, volunteer, or contractor or another incarcerated person. Abuse can be inflicted by or experienced by people of any gender identity or sexual orientation.

This letter is addressed to people in CDCR facilities who fear they will be sexually abused, are experiencing sexual abuse, or have been sexually abused in the past. Many thanks to Just Detention International and ValorUS for feedback and assistance updating the resources list.

It can be hard to report sexual abuse. Furthermore, there is no guarantee that prison staff will respond adequately or that investigators will conclude that the sexual abuse occurred. This can trigger feelings of shame and blame. Also, abusers may be in positions of power, and you may risk that prison staff or other incarcerated people will be hostile to you or retaliate against you. However, making a report and asking for help is the only way to try to get prison officials, law enforcement officers, and the courts to punish your abuser and protect you from future harm. This letter discusses (I) the different ways sexual abuse can happen, **(II) actions you can take immediately to report sexual abuse and to protect your health and safety**, and (III) other actions you can take to if you are not satisfied with how CDCR staff to respond to your report of sexual abuse. At the end of this letter is which is a summary of the laws about your rights not to be sexually abused, which include regulations in Title 15 of the California Code of Regulations and policies in the CDCR Department Operations Manual (DOM) (Attachment A). Also attached to this letter is a list of resource providers who may be able to advocate for you, advise you, or help you recover from sexual abuse (Attachment B).

## II. What Is Sexual Abuse?

Sexual abuse can take many forms. CDCR regulations and policies divide up sexual abuse into categories based on who causes the harm and the type of harm:

- **staff sexual misconduct:** threatened, coerced, attempted, or completed sexual contact, assault, battery, or behavior. This includes offering benefits in exchange for sexual favors, making threats for refusal to engage in sexual behavior, invasion of privacy beyond what is reasonably necessary for safety and security, displaying genitals, buttocks, or breasts, voyeurism, or making disrespectful, overly familiar, or sexually threatening comments.<sup>1</sup>
- **staff sexual harassment:** repeated verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive derogatory comments about body or clothing, or obscene language or gestures.<sup>2</sup>
- **sexual violence by another incarcerated person,** of which there are two types:
  - **nonconsensual sexual acts:** non-consensual or coerced sex acts such as vaginal sex, anal sex, oral sex, fingering, or penetration with an object; and
  - **abusive sexual contact:** non-consensual or coerced touching, either directly or through the clothing, of the genitals, anus, groin, breast, inner thigh, or buttocks.<sup>3</sup>
- **sexual harassment by another incarcerated person:** repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature.<sup>4</sup>

## III. What Can I Do to Protect Myself If I Have Been Sexually Abused or Am in Danger of Sexual Abuse?

If you have been sexually abused or you are in danger of being sexually abused, you should consider taking immediate action to protect your safety and rights, including seeking medical care for potential collection of evidence and treatment of physical and emotional trauma. If you report abuse, prison officials are supposed to investigate your report and take steps to punish the person who sexually abused, threatened, or harassed you, provide you with any needed medical and mental health care, and protect you from further abuse or threats of abuse. The following subsection describes three different ways to report abuse; you can use any or all of

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<sup>1</sup> Cal. Code Regs., tit. 15, § 3401.5(a); DOM § 54040.3.

<sup>2</sup> Cal. Code Regs., tit. 15, § 3401.6(a); DOM § 54040.3.

<sup>3</sup> DOM § 54040.3.

<sup>4</sup> DOM § 54040.3.

them. The two subsections after that describe ways to seek medical or mental health care and safe housing. **Prison officials can take action to help you only if they know that you have been abused or are in danger of being abused, and delays in reporting may make it more difficult for investigators to verify the sexual abuse.**

### **SEXUAL ABUSE ADVOCATES AND RAPE CRISIS CENTERS**

At any point in time if you want confidential support or information about dealing with sexual abuse, you may contact an outside sexual abuse advocate or crisis center by phone or by mail. For every CDCR institution, there is a sexual abuse advocate or rape crisis center that you can contact confidentially and for free. These advocates work for community-based organizations; they are *not* part of the prison system. They are trained in providing confidential emotional support to people who have been affected by sexual assault or sexual harassment. Their role is to support and listen to you, and they can provide information about your rights, options, and the services available to you. You can get support from an outside advocate without having to make a report to prison staff or law enforcement officials. The resources list attached to this letter has contact information for outside advocates who help people both all over California and in specific regions of the state.

#### **A. Report Sexual Abuse to Prison Staff**

If you want prison officials to punish your abuser, provide you with safe housing, or provide you with medical care, you will have to report the abuse to someone who works at the prison as an employee, contractor or volunteer. There are several ways you can report sexual abuse. You can even try using multiple ways of reporting. No matter what method you choose, you should be prepared to provide as many details as possible, with specific times, dates, places, and descriptions of what happened and who did it. Also, if you are disabled or not literate in English, staff should provide any assistance you need to report sexual abuse, to participate in the investigation and in medical care or classification decisions, and to understand the results of the investigation.<sup>5</sup> Here are some of the ways you can report abuse:

- **Talk or write to any CDCR staff person.**<sup>6</sup> You may feel more comfortable if you make your report by talking to or writing a note to a staff person that you like and trust. Any staff who get information about sexual abuse must report it immediately to their supervisor and the Watch Commander.<sup>7</sup> You may choose to keep your identity confidential when reporting sexual abuse. This means only that your name and identity won't be in any public record about your report or any investigation of your

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<sup>5</sup> See, e.g., Cal. Code Regs., tit. 15, §§ 3335, 3481(g), 3999.201.

<sup>6</sup> Cal. Code Regs., tit. 15, § 3086.1(a)-(d); DOM § 54040.7

<sup>7</sup> Cal. Code Regs., tit. 15, §§ 3401.5(c), 3401.6(c); DOM § 54040.7.

report. Your identity will still be known to people who are involved in responding to your report.<sup>8</sup> Also, staff are not supposed to disclose information about you or your report except on a “need to know” basis for the investigation, providing medical and mental health treatment, or providing you with safe housing.<sup>9</sup>

- **Submit a CDCR 602-1 grievance:**<sup>10</sup> This is a more formal way to make your report. If you submit a CDCR 602-1 form, you will have documentation that you reported sexual abuse. Also, completing the grievance process (including submitting a 602-2 appeal and if you are not satisfied with the response to your 602-1) is necessary to protect your rights to bring a lawsuit against CDCR, your abuser, and/or supervisors who did not prevent the abuse or properly respond to your report of abuse. (See Section III of this letter). There are *no* time limits for filing a grievance alleging sexual violence by another incarcerated person or sexual misconduct by staff.<sup>11</sup> For other issues, the time limit for filing a grievance is 60 days after the problem occurred, except in unusual circumstances.<sup>12</sup> An incarcerated person can submit a sexual abuse grievance on behalf of another person.<sup>13</sup> If you are continuing to have a safety or medical issue that needs immediate attention, you should write “URGENT” on the grievance form. Within 48 hours after they receive your grievance, CDCR officials are supposed to review your grievance, and take immediate action to protect you if you are in “substantial risk of imminent” sexual violence by staff or another incarcerated person or sexual misconduct or harassment by staff. Within 5 calendar days, officials must document the risk assessment and any actions that were taken to protect you.<sup>14</sup> You should get a full response to your grievance within 60 calendar days.<sup>15</sup> If you do not get timely or satisfactory responses to your grievance, you can file an administrative appeal using a CDCR 602-2 form.<sup>16</sup> You should submit your 602-2 appeal within 60 calendar days after you receive the response to your 602-1 grievance.<sup>17</sup>
- **Ask a friend, family member, or legal advisor** to call or write the prison Warden to report that you are being abused:<sup>18</sup> This may be a good option if you are afraid to report yourself or you want prison staff to know that someone on the outside is keeping an eye on your well-being.

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<sup>8</sup> See Penal Code § 293(a); Cal. Code Regs., tit. 15, § 3401.5(d); DOM §§ 54040.7, 54040.8.1.

<sup>9</sup> DOM § 54040.8.

<sup>10</sup> Cal. Code Regs., tit. 15, § 3084; DOM § 54040.7.1.

<sup>11</sup> Cal. Code Regs., tit. 15, § 3084(c)(1), (d)(1).

<sup>12</sup> Cal. Code Regs., tit. 15, § 3482(b).

<sup>13</sup> Cal. Code Regs., tit. 15, § 3084(b).

<sup>14</sup> Cal. Code Regs., tit. 15, § 3084(a), (c), (d).

<sup>15</sup> Cal. Code Regs., tit. 15, § 3483.

<sup>16</sup> Cal. Code Regs., tit. 15, § 3084.

<sup>17</sup> Cal. Code Regs., tit. 15, § 3484(b).

<sup>18</sup> DOM § 54040.7.1.

Staff are not supposed to retaliate against you or punish you for reporting sexual abuse.<sup>19</sup> However, you can be punished with a rule violation if you knowingly give false or inaccurate information.<sup>20</sup>

Prison officials are supposed to investigate your report of sexual abuse and document the findings in writing.<sup>21</sup> For allegations of staff sexual misconduct or staff sexual harassment, CDCR has regulations about who can conduct the investigation and how the investigation should be performed.<sup>22</sup>

If you have experienced sexual violence by another incarcerated person or staff sexual misconduct, you have a right to have a victim support advocate present when you are interviewed by an investigator, unless this would cause a problem such as posing a security risk.<sup>23</sup> Prison staff should provide you with contact information for outside advocates.<sup>24</sup> The resources list attached to this letter also has contact information for advocates.

When the investigation is completed, you should be told whether the investigators believed that you were sexually abused and if some type of action has been taken against your abuser.<sup>25</sup> Unfortunately, only a small number of CDCR investigations result in a finding that the sexual abuse report is “substantiated,” meaning that CDCR officials concluded that the abuse occurred. Most reports result in CDCR officials concluding that the report is “unsubstantiated” (there is not enough evidence to determine if the abuse occurred). In other cases, the report is deemed to be “unfounded” (it was proven that no abuse occurred) or leads to an on-going investigation in which there is not yet any finding.<sup>26</sup>

If an investigation confirms that a staff person sexually abused you, CDCR must fire them.<sup>27</sup> If an investigation confirms that another incarcerated person sexually abused or harassed you, your abuser can be charged with a prison rule violation.<sup>28</sup> Prison officials also must report criminal sexual abuse by staff and can report criminal sexual abuse by other incarcerated people

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<sup>19</sup> Penal Code § 2939(b), (f); Cal. Code Regs., tit. 15, §§ 3401.5(f), 3401.6(d).

<sup>20</sup> Penal Code § 2937(c),

<sup>21</sup> Penal Code § 2639; Cal. Code Regs., tit. 15, §§ 3401.5(b), 3401.6(b).  
DOM §§ 54040.12-12.2.

<sup>22</sup> Cal. Code Regs., tit. 15, §§ 3486.1-3486.3.

<sup>23</sup> Penal Code §§ 264.2, 679.04; DOM § 54040.8.2.

<sup>24</sup> DOM § 54040.8.2.

<sup>25</sup> DOM 54040.12.5.

<sup>26</sup> CDCR, *PREA Annual Report-Calendar Year 2021*, available at [www.cdcr.ca.gov/prea/prea/reports-audits/](http://www.cdcr.ca.gov/prea/prea/reports-audits/). In 2021, there were 586 reports of sexual misconduct and sexual harassment involving staff, and only 15 of those were found to be substantiated. Similarly, in 2021, there were 501 reports of nonconsensual sex acts, abusive sexual conduct, and sexual harassment by incarcerated people, only 20 of which were found to be substantiated.

<sup>27</sup> Penal Code § 2639(e).

<sup>28</sup> DOM § 54040.15; see also Cal. Code Regs., tit. 15, § 3316, 3323(b)(5), (h)(11).

to law enforcement authorities for possible prosecution.<sup>29</sup> When such referrals are made, the county District Attorney will decide whether to go ahead with criminal charges.

## **B. Seek Medical and Mental Health Care**

When reporting sexual abuse, you can seek medical and mental health attention for treatment and/or for potential collection of any evidence to prove an assault happened. Be aware that if you have not already reported abuse before seeking medical or mental health attention, the health care provider will have to tell their supervisor or the Watch Commander that you have experienced or are experiencing sexual abuse.

If you were in contact with the skin, hair, or body fluids of your abuser, seeking *immediate* medical attention can help preserve evidence of the abuse. In such a case, you should not shower until after a medical examination because showering could wash away evidence. If possible, you should try not to use the restroom or drink liquids until after the examination. You should also keep and give the investigators any clothes or items that might have come into contact with the body fluids, skin, or hair of the person who assaulted you.

Prison medical staff should provide any emergency medical care that you need following a sexual assault.<sup>30</sup>

For some types of sexual abuse, CDCR policy requires that forensic medical exams (a “SART” exam or “rape kit”) be conducted on both you and the person who assaulted you. In other cases, SART exams may be conducted if recommended by a medical professional. Whether SART exams are required or recommended will depend on when the abuse happened (usually whether it was less than or more than 120 hours ago), whether there was physical contact, and whether there were explicit sexual acts. Any SART exam will be conducted by a doctor or nurse, either at the prison or an outside hospital. The doctor or nurse will interview you, do a physical exam, and take samples of hair, semen, and other fluids that may have been left by the person who assaulted you.<sup>31</sup> The doctor or nurse might take photos to identify you and to document injuries related to the assault, including taking close-up photos of your genitals. In most cases, the photos are only for the doctor or nurse to use as reference when writing up the report, and they should not be given to the investigators or other staff.

You have the right to have a support person, such as a friend, family member, or advocate with you at the exam unless that would cause a problem such as delay or security risk.<sup>32</sup>

Some sexual assaults can result in pregnancy. If you have been sexually assaulted in a manner that might cause pregnancy, you should ask for a pregnancy test. If you are pregnant,

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<sup>29</sup> Penal Code § 2639(e); Cal. Code Regs., tit. 15, §§ 3316, 3401.5(b), 3401.6(b); DOM § 54040.15.

<sup>30</sup> DOM § 54040.8.3.

<sup>31</sup> DOM §§ 54040.9, 54040.11, 54040.12.1-54040.12.2.

<sup>32</sup> DOM §§ 54040.8.2.

you should seek medical advice and counseling concerning whether to end the pregnancy or have the baby, and about placement or adoption of the baby after birth.<sup>33</sup>

Some sexual assaults can transmit diseases. If you have been sexually assaulted, you can ask to get tested for HIV and other sexually transmitted diseases.<sup>34</sup> If an HIV test is negative, you may want to request re-testing after six months have passed, since it may take that long for a detectable level of HIV antibodies to show up in the test. If you test positive for any sexually-transmitted diseases, the prison staff should provide appropriate medical treatment.

Sexual abuse causes emotional trauma. If you have been sexually abused and want emotional support, you can seek counseling from mental health staff, a religious advisor, or a volunteer or peer counselor. Prison mental health staff are supposed to evaluate you immediately for possible suicide risk. They are also supposed to be aware of warning signs of post-trauma mental health problems and provide you with on-going mental health treatment and counseling as appropriate. A mental health counselor is supposed to keep your conversations confidential, meaning that they cannot tell others what you say (unless you give them permission to tell someone else).<sup>35</sup> Prison staff are also supposed to provide you with contact information for outside rape crisis services and victim advocacy organizations.<sup>36</sup>

### **C. Seek Safe Housing**

When you have been sexually abused, or when you are the target of sexual assault, harassment, or pressuring, you may want to ask for a change in housing so that you can be separated from the person who is abusing, harassing, or threatening you or from anyone who is retaliating against you for reporting sexual abuse. Prison staff have a responsibility to ensure that you are housed safely.<sup>37</sup> They also have a responsibility to ensure that you are not being retaliated against after you report sexual abuse.<sup>38</sup>

You may get immediate protection by asking for placement in an Administrative Segregation Unit (ASU) on Non-Disciplinary Segregation (NDS) status. In ASU housing, you will not have the same programming and movement opportunities as in the general prison population. However, ASU placement may be necessary if you are being abused or will be abused if you remain in your current housing. NDS is a type of ASU placement for people who have immediate safety concerns that are not any fault of their own, such as being the victim of sexual abuse.<sup>39</sup> If you are on NDS status, you will stay in the same privilege group you were in

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<sup>33</sup> DOM § 54040.9; see also Penal Code § 3405 (incarcerated people have right to abortions under state law).

<sup>34</sup> Penal Code § 2638(a); DOM § 54040.9.

<sup>35</sup> Penal Code § 2638(d); DOM §§ 54040.7, 54040.10.

<sup>36</sup> DOM § 54040.18.

<sup>37</sup> Penal Code 2637(a); Cal. Code Regs., tit. 15, §§ 3401.5(g), 3401.6(e); DOM §§ 54040.6-54040.7, 54040.14-54040.14.1.

<sup>38</sup> DOM § 54040.13.

<sup>39</sup> Penal Code § 2637(b); Cal. Code Regs., tit. 15, § 3335(a); DOM §§ 54040.14-54040.14.1.

prior to being placed in the ASU,<sup>40</sup> so you may have some telephone access and more privileges, activities, property, and programs than other people who are in the ASU.<sup>41</sup> However, you will be limited to non-contact visits.<sup>42</sup>

Placement in an ASU is only a short-term solution. You may want to request a longer-term housing change to try to prevent further sexual abuse. Some changes that might be helpful include:

- Single Cell Status – Housing you in a single cell may reduce your risk of sexual abuse. CDCR regulations state that single cell housing shall be considered for people with a history of in-cell physical or sexual abuse by another incarcerated person.<sup>43</sup>
- Transfer to Another Facility – You might want to request transfer to another facility so that you are separated from your abuser. Also, you may have on-going problems at one facility but be able to live safely at a different facility.
- Transfer to a Sensitive Needs Yard (SNY) – The CDCR has “sensitive needs yards” (SNYs). SNY’s house people who have safety concerns that put them at serious risk of harm, but who otherwise can function with regular programs and privileges. You must express safety concerns and request SNY placement; have specific, documented and verified systemic safety concerns; not pose a threat to the safety or security of other people; and if you are validated as Security Threat Group I (STG-I) member you must have completed the debriefing process.<sup>44</sup>
- Transfer to the Protective Housing Unit (PHU) – The Protective Housing Unit (PHU), which exists only at CSP–Corcoran, is a male prison that houses a very small number of people who have extreme security concerns.<sup>45</sup> There are strict security procedures in the PHU, but people who are housed there may get job assignments and greater privileges than people who are in an ASU.

### **III. What Can I Do If I Report Sexual Abuse and CDCR Staff Do Not Respond Appropriately?**

There are follow-up actions that you can take if you report sexual abuse and prison officials do not respond appropriately.

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<sup>40</sup> Cal. Code Regs., tit. 15, § 3044(c)(6)(A), 3335(a)(1)(D).

<sup>41</sup> Cal. Code Regs., tit. 15, §§ 3044(c)(6)(A), 3190(c).

<sup>42</sup> Cal. Code Regs., tit. 15, § 3044 (d)(2)(B), (e)(2)(B).

<sup>43</sup> Cal. Code Regs., tit. 15, § 3269(d)-(e); DOM § 54040.6.

<sup>44</sup> As of October 2022, CDCR is working on adopting new regulations about who can be placed in an SNY. When finalized, the SNY regulations are expected to appear at Cal. Code Regs., tit. 15, §§ 3269.2-3269.3.

<sup>45</sup> Cal. Code Regs., tit. 15, § 3341.1.



**A. Write or Call the Office of the Inspector General (OIG), or Have a Friend, Family Member, or Legal Advisor Contact the OIG for You.**

You (or your friend, family member, or legal advisor) can contact the Office of the Inspector General (OIG) Office of the PREA Ombudsperson. The OIG is an independent state agency that has the authority to investigate whether the CDCR is mishandling your report of sexual abuse.<sup>46</sup> You can send confidential “Legal Mail” letters to:

OIG PREA Ombudsperson,  
10111 Old Placerville Road,  
Suite 110,  
Sacramento, CA 95827.

Your family member, friend, or legal advisor also can write or can call the OIG at: (800) 700-5952. The OIG will contact officials at your prison to determine if a report has been made, the status of the investigation, and whether the investigation and response is being conducted properly. There may be delays in OIG following up on your complaint or notifying you of any action that has been taken.

**B. Submit a Grievance and Appeal**

If prison officials do not properly investigate your report of sexual abuse, you can submit an administrative grievance and (if necessary) an appeal of the grievance. You should use CDCR 602-1 and 602-2 forms if prison staff are not properly handling your report of sexual abuse or are retaliating against you for reporting sexual abuse. You should use a CDCR 602-HC health care grievance and appeal form if health care staff did not provide an appropriate SART exam or appropriate medical or mental health care after you were sexually abused. These types of grievances will be handled as either regular grievances or staff misconduct grievances (depending on the issue), rather than under the special rules for sexual misconduct grievances.<sup>47</sup> Thus, the deadline for filing a 602-1 grievance is within 60 days after you learn about the problem and the deadline for filing a 602-HC is within 30 days after you learn about the problem, except in unusual situations.<sup>48</sup> If you are not satisfied with the response, you can file an appeal of the grievance within 60 days of learning of the response (for a 602-2) or 35 days after the date the response was mailed to you (for a 602-HC).<sup>49</sup>

If you are *also* still being sexually abused or at serious risk of being sexually abused, you can take any of the steps discussed in Section II of this letter. Any new grievance about new sexual abuse that happened after your prior report should be submitted on a separate CDCR 602-

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<sup>46</sup> Penal Code § 2641; see also DOM § 54040.16 (all CDCR sexual abuse investigation reports are sent to the OIG).

<sup>47</sup> Cal. Code Regs., tit. 15, §§ 3480-3485 (regular grievances), 3486.01-3486.3 (staff misconduct grievance).

<sup>48</sup> Cal. Code Regs., tit. 15, §§ 3482(b) (regular grievance), 3999.227(b) (health care grievance).

<sup>49</sup> Cal. Code Regs., tit. 15, §§ 3484(b) (regular grievance), 39999.229 (health care grievance).

1/602-2 grievance and appeal, which should be handled under the special rules that apply to sexual misconduct grievances (see Section II-A, above).

If you are continuing to have a safety or medical issue that needs urgent attention, you should ask for expedited (quicker) action processing by writing “URGENT” on the grievance form.

It is important to submit an administrative grievance and appeal through the highest level necessary when prison officials do not respond appropriately to your sexual abuse report. If you have documentation that you filed a grievance, that may help if you need to try to get higher level investigators involved in your case. Also, courts will usually require you to complete the grievance and appeal process (or at least make your best efforts to do so) before you can file a legal action against CDCR or against CDCR officials or staff.

Prison Law Office has a letter with more information on how to submit and pursue administrative grievances and appeals. You can request a free copy of the manual by writing to Prison Law Office, General Delivery, San Quentin, CA 94964-0001. The letter is also available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

**C. Write or Call the CDCR Office of Internal Affairs (OIA), or Have a Friend, Family Member, or Legal Advisor Contact the OIA for You.**

Anyone can request an investigation about sexual abuse of an incarcerated person by writing or calling the OIA, which is CDCR’s internal division for investigation of staff misconduct and other prison problems. You can contact the main OIA office, which will send the matter to the appropriate regional OIA office for investigation. The OIA Main Office is:

CDCR Office of Internal Affairs  
P.O. Box 3009  
Sacramento, CA 95812  
(877) 424-3577

**D. File a Legal Action in Court**

If CDCR does not protect you from sexual abuse or does not respond appropriately to your report of sexual abuse, you may consider filing a legal action asking a court to order CDCR to protect you or to take appropriate action on your report. In some cases, you may also be able to ask a court to award you for money compensation for harm you have suffered. Unfortunately, there is no organization dedicated to representing incarcerated people in legal actions about sexual abuse. You can try to look for an attorney to represent you, but you may end up having to prepare and file the legal action on your own.

Please be aware that courts will most likely dismiss any legal case you file against CDCR officials or staff if you have not “exhausted administrative remedies” by submitting and receiving responses to an administrative grievance and appeal at all levels of review (CDCR

Forms 602-1/602-2 or CDCR Form 602-HC). Also before you file a state tort lawsuit, you must file a Government Claim with the Department of General Services, Office of Risk and Insurance Management, within six months of the sexual abuse.

The type of actions that you may consider filing are:

- State Court Petition for Writ of Habeas Corpus: This is a relatively quick and simple type of legal action. You can use a habeas corpus petition to ask a court to order prison officials to do something or stop doing something (called “injunctive relief”), but *not* to ask for money damages for physical or emotional injuries. You also can ask the court to issue a preliminary injunction to make prison officials provide you with immediate action like medical care or safe housing during the time the court is considering your case. A habeas corpus petition can be based on violations of state laws and/or federal laws. There is a form for filing the petition. If you make a good showing on your petition, and the court decides to hold further formal proceedings on your case, the court must appoint an attorney to represent you if you do not have money to hire an attorney.
- Federal Civil Rights (§ 1983) Lawsuit: You can use a federal civil rights lawsuit to ask a court to order prison officials to do something or stop doing something (“injunctive relief”) and/or to ask for money damages for physical injuries. You can also ask the court to issue a preliminary injunction to make prison officials take s immediate action to protect your health and safety while the court is considering your case. A federal civil rights lawsuit must be based on a violation of federal law. lawsuit, but it can be filed in either federal or state court. There are forms for filing this type of lawsuit in federal court.
- State Tort Lawsuit: You may be able to file a state tort lawsuit asking a court to award you money damages for harm caused by intentional acts like sexual assault or sexual harassment, or for prison staff’s negligence in failing to protect you from sexual abuse. Sometimes a state tort claim can be combined with a federal civil rights lawsuit.

Filing a legal action can be complicated and there are different deadlines for various types of cases. If you want more information, write to Prison Law Office, General Delivery, San Quentin, CA 94964-0001 for free manuals on State Habeas Corpus and/or Lawsuits for Money Damages Against Prison Officials (which includes information on filing Government Claim forms). These manuals are also available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). In addition, information on legal actions for enforcing the rights of incarcerated people can be found in *The California Prison and Parole Law Handbook*. This book is in many prison law libraries, may become available on CDCR tablets, and can be viewed or printed from the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). You can get information about ordering a paper copy of the book by writing to Prison Law Office or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

## **ATTACHMENT A: Summary of Laws Concerning Sexual Abuse**

There are federal (U.S.) laws and California state laws that require prison officials to protect you from sexual abuse, investigate your reports of sexual abuse, and punish prison staff or incarcerated people who have sexually abused you. These laws are:

- The Eighth Amendment to the U.S. Constitution protects the right to be free from cruel and unusual punishment. This includes the right to not be sexually abused by prison staff.<sup>50</sup> Because of power dynamics, a court will presume that sexual conduct between prison staff and an incarcerated person was not consensual, but prison officials can try to present evidence to overcome that presumption.<sup>51</sup> To violate the constitution, the conduct must be “offensive to human dignity” and committed “maliciously and sadistically to cause harm.”<sup>52</sup> It is offensive to human dignity for prison staff, acting without legitimate penal justification, to touch you in a sexual manner or engage in sexual conduct for the staff’s own sexual gratification or for the purpose of humiliating, degrading, or demeaning you.<sup>53</sup>
- The Eighth Amendment to the U.S. Constitution requires prison staff to protect you from sexual abuse by other incarcerated people.<sup>54</sup> To violate the constitution, prison staff must be “deliberately indifferent” to a “substantial risk” of harm to your health and safety.<sup>55</sup> Deliberate indifference to an unreasonable risk of harm violates the constitution even if you have not yet been sexually assaulted.<sup>56</sup>
- The Eighth Amendment to the U.S. Constitution is violated by sexually intrusive searches or monitoring that is not justified by legitimate prison needs.<sup>57</sup> Also, the Fourth Amendment right to privacy may be violated by unrestricted viewing or

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<sup>50</sup> *Schwenk v. Hartford* (9th Cir. 2000) 204 F.3d 1187, 1196-1197; *Wood v. Beauclair* (9th Cir. 2012) 692 F.3d 1041, 1046.

<sup>51</sup> *Wood v. Beauclair* (9th Cir. 2012) 692 F.3d 1041, 1049-1049.

<sup>52</sup> *Wood v. Beauclair* (9th Cir. 2012) 692 F.3d 1041, 1054-1051; see also *Bearchild v. Cobban* (9th Cir. 2020) 947 F.3d.1130; compare with; *Austin v. Terhune* (9th Cir. 2004) 367 F.3d 1167, 1172 (no Eighth Amendment violation where officer in control booth displayed genitals and made sexual comment).

<sup>53</sup> *Bearchild v. Cobban* (9th Cir. 2020) 947 F.3d.1130.

<sup>54</sup> *Farmer v. Brennan* (1994) 511 U.S. 825, 828 [114 S.Ct. 1970; 128 L.Ed.2d 811]; *Berg v. Kincheloe* (9th Cir. 1986) 794 F.2d 457, 459.

<sup>55</sup> *Farmer v. Brennan* (1994) 511 U.S. 825, 828 [114 S.Ct. 1970; 128 L.Ed.2d 811]; *Berg v. Kincheloe* (9th Cir. 1986) 794 F.2d 457, 459.

<sup>56</sup> *Berg v. Kincheloe* (9th Cir. 1986) 794 F.2d 457, 459; see also *Helling v. McKinney* (1993) 509 U.S. 25, 33-34 [113 S.Ct. 2475; 125 L.Ed.2d 22].

<sup>57</sup> *Jordan v. Gardner* (9th Cir. 1993) 986 F.2d 1521, 1527 (policy requiring male staff to do random, non-emergency searches that included squeezing and kneading the genitals and breasts of people in women’s prisons was unconstitutional); compare with *Watison v. Carter* (9th Cir. 2012) 668 F.3d 1108, 1114 (no Eighth Amendment violation where officer searched cell while person on toilet and rubbed briefly against thigh).

frequent unnecessary unclothed searches by staff of the opposite sex.<sup>58</sup> However, the constitution is not violated by routine searches or occasional observations of nudity by officers of the opposite sex.<sup>59</sup>

- The federal Prison Rape Elimination Act (PREA) of 2003 resulted in the U.S. Department of Justice issuing national standards to eliminate sexual abuse in detention facilities. CDCR risks losing some of its federal funding if it does not comply with the standards.<sup>60</sup>
- California’s Sexual Abuse in Detention Elimination Act (SADEA) requires CDCR to have procedures to protect you from sexual abuse and to respond to reports of sexual abuse.<sup>61</sup> Furthermore, prison staff are supposed to intervene if you appear to be the target of sexual harassment or intimidation.<sup>62</sup>
- Rape, other non-consensual sex acts, or offensive sexual touching are crimes under the California Penal Code. The criminal laws apply regardless of whether the person who assaults you is a prison staff person or an incarcerated person. Moreover, you cannot lawfully consent to sex with a prison staff person, which means that staff cannot avoid criminal punishment by claiming that you consented.<sup>63</sup>
- CDCR regulations (“Title 15”) prohibit “sexual misconduct” and “sexual harassment” by staff.<sup>64</sup> Staff cannot claim that you consented to sexual activities.<sup>65</sup> The regulations also prohibit officers of the opposite sex from doing unclothed body searches on you, except in emergencies.<sup>66</sup> Routine clothed inspections of people in men’s prisons may be performed by staff of either sex, but clothed inspections of people in women’s prisons must be performed by female staff except in emergencies when there are not enough available female staff.<sup>67</sup>

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<sup>58</sup> *Bowling v. Enomoto* (N.D. Cal. 1981) 514 F.Supp. 201, 204 (people in male prisons had limited right to privacy which included right to be free from unrestricted observation of their genitals and bodily functions by staff of opposite sex ); see also *Lay v. Parker* (C.D. Cal. 2004) 371 F.Supp.2d 1159, 1164 (subjecting person to needlessly intrusive unclothed body cavity search in presence of staff of opposite sex violated right to privacy).

<sup>59</sup> *Grummett v. Rushen* (9th Cir. 1985) 779 F.2d 491, 492; *Somers v. Thurman* (9th Cir. 1997) 109 F.3d 614, 624.

<sup>60</sup> Federal Prison Rape Elimination Act (PREA) of 2003, 42 U.S.C § 15601 et seq.; National Standards To Prevent, Detect, and Respond to Prison Rape, 28 CFR 115.5 et seq., available at [www.federalregister.gov/a/2012-12427](http://www.federalregister.gov/a/2012-12427).

<sup>61</sup> Penal Code §§ 2635-2643.

<sup>62</sup> Penal Code § 2636(b).

<sup>63</sup> Penal Code § 289.6.

<sup>64</sup> Cal. Code Regs., tit. 15, §§ 3401.5, 3401.6.

<sup>65</sup> Cal. Code Regs., tit. 15, § 3401.5(a).

<sup>66</sup> Cal. Code Regs., tit. 15, § 3287(b)(1).

<sup>67</sup> Cal. Code Regs., tit. 15, § 3287 (b)(2)-(4).

- The CDCR regulations (“Title 15”) make it a rule violation for other incarcerated people to sexually assault or harass you.<sup>68</sup>
- CDCR’s Prison Rape Elimination Policy, which is in the Department Operations Manual (DOM), states that CDCR shall have a “zero tolerance for sexual violence, staff sexual misconduct, and sexual harassment.”<sup>69</sup> The policy has guidelines for preventing, responding to, and investigating sexual misconduct.<sup>70</sup> For example, the policy states that you should be allowed to shower, perform bodily functions, and change your clothing without non-medical staff of the opposite sex viewing your breasts, buttocks, or genitalia, except when incidental to routine cell checks or in urgent circumstances, and that staff of the opposite sex are supposed to announce their presence when entering your housing unit.<sup>71</sup>
- Senate Bill 132, *The Transgender Respect, Agency and Dignity Act* created Penal Code §§ 2605-2606. This law allows incarcerated transgender, non-binary and intersex people to request to be housed and searched in a manner consistent with their gender identity. Prison Law Office can provide more information about rights under this bill and about CDCR policies for transgender, non-binary and intersex people. If you are interested in this information, please request it by writing to Prison Law Office, General Delivery, San Quentin, CA 94964-0001.

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<sup>68</sup> Cal. Code Regs., tit. 15, §§ 3315, 3323(b)(5), (h)(11).

<sup>69</sup> DOM § 54040.1.

<sup>70</sup> DOM § 54040.1-54040.23.

<sup>71</sup> DOM § 54040.4.

**ATTACHMENT B:**  
**California Rape Crisis Programs and Other Support Services**  
**Prepared by Just Detention International, [www.justdetention.org](http://www.justdetention.org)**

**STATE-WIDE RESOURCES**

**Just Detention International (JDI)**

3325 Wilshire Blvd., Ste. 340, Los Angeles, CA 90010.

Address letters to Cynthia Totten, Attorney at Law (CA Attorney Registration #199266), and label as Confidential Legal Mail

Office: (213) 384-1400, x110

Email: [info@justdetention.org](mailto:info@justdetention.org)

Website: [www.justdetention.org](http://www.justdetention.org)

JDI is a health and human rights organization that seeks to end sexual abuse in all forms of detention and provides advice, support and information for incarcerated people who are facing sexual abuse or who are survivors of sexual abuse. JDI's website has resources such as state-by-state lists of counseling, government and legal resources for survivors of prison sexual abuse.

**Transgender Gender-Variant and Intersex Justice Project**

370 Turk Street

PMB 370

San Francisco, CA 94102

(415) 554-8491

TGI Justice Project is a group of transgender, gender variant and intersex people—inside and outside of prisons, jails and detention centers—creating a united family in the struggle for survival and freedom.

**Transgender Law Center**

PO Box 70976

Oakland, CA 94612-0976

Collect Line: (510) 380-8229

Line Hours: 10am to 5pm PST

Transgender Law Center (TLC) is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their futures. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

**ValorUS**

1215 K Street, Suite 1850, Sacramento, CA 95814  
Office: (916) 446-2520; TTY Office: (916) 446-8802  
Office Hours: Monday-Friday, 8am-5pm PST  
Accept Collect Calls: No

ValorUS partners with JDI to support rape crisis centers to support survivors in prisons, jail and youth detention centers and to advocate to bring the CDCR into compliance with PREA standards.

**California Coalition for Women Prisoners**

Bay Area Chapter  
4400 Market St.  
Oakland, CA 94608

Los Angeles Chapter  
P.O. Box 291585  
Los Angeles, CA 90029

info@womenprisoners.org  
415-255-7036 ext. 4

CCWP is a grassroots abolitionist organization—with members inside and outside prison—that challenges the institutional violence imposed on women, transgender people, and communities of color by the prison industrial complex (PIC). They see the struggle for racial and gender justice as central to dismantling the PIC and we prioritize the leadership of the people, families, and communities most impacted in building this movement.

**RESOURCES FOR PEOPLE IN SPECIFIC CDCR FACILITIES**

**AVENAL STATE PRISON; CALIFORNIA STATE PRISON CORCORAN, SUBSTANCE ABUSE TREATMENT FACILITY, CORCORAN**

**Kings Community Action Organization**

1130 N. 11th Ave  
Handford, CA 92320  
Office: 559-582-4386  
Office Hours: Monday-Friday, 8am-5pm PST  
24 Hour Hotline: 877-727-3225; Accept Collect Calls: No



**PLEASANT VALLEY STATE PRISON**

**Resource Center for Survivors of Sexual Assault and Family Violence (RCS Fresno)**  
259 N. Blackstone Avenue, Fresno, CA 93701  
Office: (559) 497-2900  
Office Hours: Monday-Friday, 8am-5pm PST  
24-Hour Hotline: (559) 222-7273; Accept Collect Calls: Yes

**CALIFORNIA CORRECTIONAL INSTITUTION, CALIFORNIA CITY CORRECTIONAL FACILITY**

**Women's Center-High Desert, Inc.**  
P.O. Box 309, Ridgecrest, CA. 93556  
Office Hours: Monday-Friday, 8am-5pm PST  
Office Number/24-Hour Hotline: (760) 375-0745; Accept Collect Calls: Yes

**CALIFORNIA CORRECTIONAL CENTER; HIGH DESERT STATE PRISON**

**Lassen Family Services**  
1306 Riverside Drive  
Susanville, CA 96130 (530) 257-4599  
Office: (530)-257-4599  
Office Hours: Monday-Friday 8am-5pm PST  
24-Hour Hotline: (530)-257-5004; Accept Collect Calls: Yes

**CALIFORNIA INSTITUTION FOR MEN;**

**Project Sister**  
P.O. Box 1369  
Pomona, CA 91769-1369  
Office: 909-623-1619  
Office Hours: 8:00am-5:00pm PST  
24-Hour Hotline: 909-626-4357

**CALIFORNIA INSTITUTION FOR WOMEN; CALIFORNIA REHABILITATION CENTER**

**Riverside Area Rape Crisis Center**  
1845 Chicago Ave., Suite A  
Riverside, CA 92507  
Office/24-Hour Hotline: (951) 686-7273 Accept Collect Calls: Yes

**CALIFORNIA MEDICAL FACILITY; CALIFORNIA STATE PRISON SOLANO**

**SafeQuest Solano, Inc.**

P.O. Box 368  
Fairfield, CA 94533  
Office: (707) 422-7345  
Office Hours: 8:30am-5:30pm PST  
24-Hour Hotline: (866) 487-7233 Accept Collect Calls: Yes

**CALIFORNIA MEN'S COLONY**

**Lumina Alliance**

P.O. Box 125 San Luis Obispo, CA 93401  
Office: (805) 545-8888  
Office Hours: Monday-Friday, 8:30am-5pm PST  
Toll-Free 24-Hour Hotline 805-545-8888; Accept Collect Calls: Yes

**CHUCKAWALLA VALLEY STATE PRISON; IRONWOOD STATE PRISON  
ADELANTO DETENTION CENTER; DESERT VIEW MODIFIED COMMUNITY  
CORRECTIONAL FACILITY**

**Partners Against Violence**

444 N. Arrowhead, Suite 101  
San Bernardino, CA 92401  
24-Hour Hotline 800-656-4673; Accept Collect Calls: Yes

**CALIFORNIA HEALTH CARE FACILITY**

**Women's Center of San Joaquin County, N.A. Chaderjian Youth Correctional Facility;  
O.H. Close Youth Correctional Facility**

620 North San Joaquin Street  
Stockton, CA 95202  
Office: (209) 941-2611  
Office Hours: Monday-Friday, 8:30am-5pm PST  
24-Hour Hotline: (209) 465-4997; Accept Collect Calls: Yes

**CALIFORNIA STATE PRISON, SACRAMENTO; FOLSOM STATE PRISON**

**WEAVE, Inc.**

1900 K. Street  
Sacramento, CA 95811  
24-Hour Hotline: (916) 920-2952;  
24-Hour TDD Hotline: (916) 443-3715; Accept Collect Calls: Yes

**CALIFORNIA STATE PRISON, LOS ANGELES COUNTY**

**Valley Oasis**

P.O. Box 2980  
Lancaster, CA 93539  
24-Hour Hotline: 661-723-7273; Accept Collect Calls: Yes

**CALIPATRIA STATE PRISON, CENTINELA STATE PRISON, IMPERIAL REGIONAL  
DETENTION FACILITY**

**Sure Helpline**

210 Wake Ave Suite B  
El Centro, CA 92243  
24-Hour Hotline: 760-352-7873; Accepts Collect Calls: Yes

**CORRECTIONAL TRAINING FACILITY; SALINAS VALLEY STATE PRISON**

**Monterey Rape Crisis Center**

P.O. Box 2401  
Salinas, CA 93902  
Office: (831) 373-3955  
Office Hours 8:00am-5:00pm PST  
24-Hour Hotline: 831-771-0411 Accepts Collect Calls: Yes

**KERN VALLEY STATE PRISON, NORTH KERN STATE PRISON, WASCO STATE PRISON  
MESA VERDE DETENTION CENTER**

**Alliance Against Family Violence**

1921 19th Street  
Bakersfield, CA 93301  
Office: (661) 322-0931  
Office Hours: Monday-Friday 8:30am-5:30pm  
Toll-Free Hotline: (800)273-7713; 24-Hour Hotline: 661-327-1091

**MULE CREEK STATE PRISON;PINE GROVE YOUTH CAMP**

**Operation Care**

817 Court Street Suite 12 Jackson CA 95642  
Office: (209) 223-2897  
Office Hours: Monday-Friday 8:30am-5:30pm PST  
Toll-Free Hotline: (800) 675-3392; 24-Hour Hotline: (209) 223-2600

### **PELICAN BAY STATE PRISON**

#### **North Coast Rape Crisis Team**

P.O. Box 1082, Crescent City, CA 95531  
Office: Del Norte (707) 465-6961 Humboldt (707) 443-2737  
Office Hours: Monday-Friday, 8:30am-5pm PST  
24-Hour Hotline: (707) 465-2851; Accept Collect Calls: Yes

### **RJ DONOVAN CORRECTIONAL FACILITY**

#### **Center for Community Solutions**

4508 Mission Bay Drive, San Diego, CA 92109  
Office: (858) 272-5777  
Office Hours: Monday-Friday, 8am-5pm PST  
24-Hour Hotline(888) 385-4657; Accept Collect Calls: No

### **SAN QUENTIN STATE PRISON**

#### **Community Violence Solutions and Rape Crisis Center of Marin and Contra Costa Counties**

2101 Van Ness Street, San Pablo, CA 94806  
Office: (510) 237-0113  
Office Hours: Monday-Friday, 9am-5pm PST  
Toll-Free 24-Hour Hotline: (800) 670-7273; Accept Collect Calls: Yes

### **SIERRA CONSERVATION CENTER**

#### **Center for Non-Violent Community**

19043-B Standard Road  
Sonora, CA 95370  
Office: (209) 588-9305  
Office Hours: Monday-Friday 8:30am-5:00pm  
24-Hour Hotline: 209-533-3401

### **VENTURA YOUTH CORRECTIONAL FACILITY**

#### **Coalition for Family Harmony**

1030 North Ventura Road  
Oxnard, CA 93030  
Office: (805)-983-6014  
Office Hours: Monday-Friday 8:30am-12:00pm; 1:00pm-5:00pm  
24-Hour Hotline: 805-656-1111 or 1-800-300-2181 Accept Collect Calls: Yes