

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **California Department of Corrections:**

*Although Addressing Deficiencies in Its  
Employee Disciplinary Practices, the  
Department Can Improve Its Efforts*



October 2004  
2004-105

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# CALIFORNIA STATE AUDITOR

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October 19, 2004

2004-105

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the California Department of Corrections' (department) process of handling employee disciplinary matters.

The department has taken steps to improve its adverse action process, but it can do more. Our review revealed that the department spends an average of 285 days to serve an adverse action or close a case. We believe the department can improve its timeliness and consistency by making certain changes to its process for dealing with employment matters. For example, it can improve its disciplinary process by eliminating some of the minor differences in its disciplinary practices and by taking steps to bring more standardization of penalties. Furthermore, the department can update its disciplinary policies and procedures that are incomplete, out of date, and in need of revision. Moreover, the department uses several redundant databases to track disciplinary matters and each system is incomplete and inaccurate, thus, making it difficult for management to oversee the progress of employee disciplinary matters. Further, although the department recently began requiring job-specific training for a key position involved in its disciplinary process, it can do more to require training for other key positions. Finally, the department has yet to implement several audit recommendations related to disciplinary matters from audits conducted in 2000 and 2001.

Respectfully submitted,

ELAINE M. HOWLE  
State Auditor

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# SUMMARY

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## **Audit Highlights . . .**

*Our review of the California Department of Corrections' (department) process of handling employee disciplinary matters revealed that the department:*

- Spends an average of 285 days to serve an adverse action or close a case.*
- Can improve its disciplinary practices by simplifying its investigative process for straightforward, uncontested cases, by eliminating the headquarters review of most adverse actions, and by taking steps to bring more standardization of penalties. Further, many disciplinary case files were disorganized and had key pieces of information missing.*
- Has disciplinary policies and procedures that are incomplete, out of date, and in need of revision.*
- Uses several redundant databases to track disciplinary matters and each system is incomplete and inaccurate.*
- Recently began requiring job-specific training for a key position involved in its disciplinary process; however, it can do more to require training for other key positions.*
- Has yet to implement several audit recommendations related to disciplinary matters from audits conducted in 2000 and 2001.*

## **RESULTS IN BRIEF**

**T**he California Department of Corrections (department) appears to take employment-related matters and discipline seriously because it investigates and pursues employee indiscretions at every level—from violations of departmental policy to violations of law—both in and outside of work. It allocates numerous full- and part-time staff to pursue these indiscretions and to compel its employees to be upstanding citizens who do not engage in activities that discredit the department. However, it can be timelier in dealing with these matters, and it can improve the coordination and consistency of its processes. In addition, its employment-related computer databases, policies, training, and monitoring continue to need improvement despite previous audits that identified deficiencies. Although the department is now taking actions to improve its adverse-action process, it can further improve its efforts.<sup>1</sup>

The department employed about 45,000 full-time employees as of June 2004. Although the vast majority of these employees do not experience the disciplinary process, those who do encounter a process that is time consuming—taking an average of 285 days to serve an adverse action to an employee or close a case and ranging between an average of 172 and 739 days at the six institutions we reviewed. These findings are similar to those of the Office of the Inspector General in October 2001; however, since that time the department has shown improvement in its ability to complete cases within a year. Annually the State Personnel Board (board) revokes or modifies 62 percent of the department's adverse actions it reviews (roughly 14 percent of the total). We believe this process provides a good measure of the effectiveness of the department's disciplinary process. Improving this performance is important to ensure employee confidence in the process and in management.

Moreover, the department can improve its disciplinary practices by simplifying its investigative process for straightforward, uncontested cases, by eliminating the headquarters review of most adverse actions, and by taking steps to bring more standardization of penalties. Although we found no significant issues with regard to varying processes used by institutions and regions, we did find instances of inefficiency and seemingly

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<sup>1</sup> Adverse action refers to all forms of formal discipline from a letter of reprimand to demotion to dismissal.

disparate disciplinary actions for similar offenses. Additionally, the department's operations manual contains policies and procedures governing employment-related matters, but many of the policies are incomplete, out of date, and in need of revision. The lack of up-to-date policies may contribute to inconsistencies in the process.

To its credit, the department has taken some actions to improve the quality and consistency of its adverse actions. It is implementing a process that will provide for more frequent and earlier attorney involvement and is also working on a new discipline matrix, which provides standard guidelines for specific offenses. These changes should lead to improvements in the integrity, quality, and timeliness of investigations; improve the consistency of adverse actions for similar offenses; and reduce or eliminate the need for headquarters review. However, the department seldom uses mediation, which could help to prevent issues such as employee disputes from festering into bigger problems. Moreover, although the department designed a policy that enables headquarters to provide meaningful oversight of and guidance regarding settlements, it does not follow its policy. As a result, the department cannot ensure it is settling as effectively or as often as it could.

To monitor and oversee its employment-related matters, the department currently uses numerous electronic or manual databases at its headquarters, regional offices, and institutions. The multiple databases create much duplication of effort and redundancy. More troubling, the data contained in several of these systems is incomplete or inaccurate. None of the systems is comprehensive enough to allow management to adequately monitor or oversee the progress of employment-related actions. The department is currently implementing two new data systems that should resolve most of these problems if they are installed and used properly. Full implementation is scheduled for late 2005.

The department has also recently begun to require and provide job-specific training to its employee relations officers—a key position for ensuring the success of disciplinary actions. However, it still can do more to ensure it provides adequate training for other key positions involved in the disciplinary process and to improve its ability to prepare solid adverse-action cases. Finally, the department has been slow to address previous audit recommendations. It still has not implemented seven and has chosen not to address four recommendations from audits conducted in 2000 and 2001.

## RECOMMENDATIONS

To improve its disciplinary process, the department should do the following:

- Benchmark and monitor for improvement the adverse-action timelines for each step in the process for each program and institution.
- Benchmark its individual program and overall performance statistics for cases that go before the board and continually monitor these statistics.
- Standardize adverse-action and investigative processes.
- Update its employment-related policies and procedures.
- Implement its own or use an outside mediation program.
- Follow the existing settlement policy or design and implement a comprehensive new policy, ensure all pertinent employees are aware of the policy, and monitor compliance.
- Complete its implementation of the new computer databases and eliminate the redundant systems.
- Ensure that staff involved in maintaining the new computer databases receive proper training, enter data accurately and consistently, and appropriately update the systems in a timely manner.
- Establish job-specific mandatory training requirements for key employees involved in the disciplinary process.
- Ensure that it is proactive in tracking audit recommendations and in taking corrective actions.

## AGENCY COMMENTS

The department generally agrees with our recommendations and reports that it has initiated or partially implemented several of them already. ■

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# INTRODUCTION

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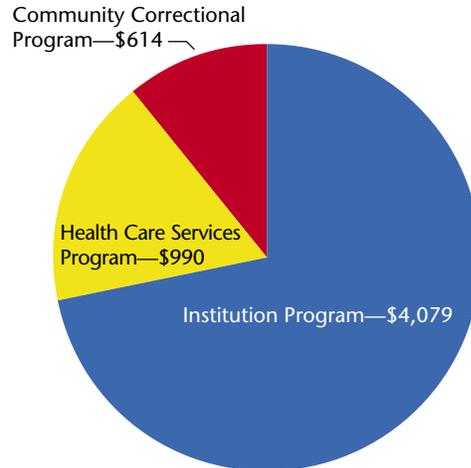
## BACKGROUND

The California Department of Corrections (department) is the agency responsible for overseeing and managing California's 32 prisons (institutions). The department's mission is the control, care, and treatment of men and women convicted of serious crimes, or admitted to the civil narcotics program, and entrusted to the department's Institution, Health Care, and Community Correctional programs. To accomplish these objectives, the governor's proposed budget for the department was nearly \$5.7 billion, pending unallocated reductions, for fiscal year 2004–05. As shown in Figure 1, the Institution Program accounts for roughly \$4.1 billion, or more than 70 percent of the department's overall budget.

**FIGURE 1**

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**Department of Corrections' Proposed Budget for  
Fiscal Year 2004–05  
(in Millions)**



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Source: 2004–05 Governor's Budget Summary.

Notes: The Department of Corrections allocates the \$136 million budget for the Central Administration Program to the other three programs. This chart does not include the effect of \$400 million in pending, unallocated reductions.

The department is organized into four programs: Institution Program, Health Care Services Program, Community Correctional Program, and Central Administration Program (headquarters). Within the Institution Program are 32 operating

correctional institutions, 11 of these having reception centers to process and classify inmates according to level of risk. The department expects an additional institution to be operational by March 2005. Included within the Institution Program budget are the Narcotic Addict Evaluation Authority, the Richard A. McGee Training Center, and the field administration organization, which directly support institution activities. The department employed roughly 45,000 full-time employees as of June 2004. Some employees are public safety officers who are directly responsible for inmate supervision and other activities that require coverage around the clock.

Recent studies criticized the department's process for handling employee disciplinary matters. For example, the Office of the Inspector General (inspector general)—an independent agency that reports directly to the governor and conducts audits, investigations, and special reviews of the State's youth and adult correctional agencies—criticized the department's handling of employee disciplinary matters in two reports dated October 2001 and March 2002. Furthermore, the department is currently involved in a number of employment-related lawsuits and appeals at the State Personnel Board (board). Concerns from the Legislature regarding the department's management and

treatment of its employees and the legal expenses it incurs from employment-related matters led to the request for the current audit.

#### **Rights Provided to Peace Officers by the Public Safety Officers Procedural Bill of Rights**

- Notice of the proposed disciplinary action within one year of the date of discovery, except in certain circumstances, such as when the investigation involves more than one employee.
- Notice of the nature of the investigation before any interrogation related to discipline.
- Access to tapes of interrogations, transcriptions, nonconfidential reports/complaints, and a complete and correct copy of personnel file.
- Notification of the department's intent to impose discipline within 30 days of its decision.
- Opportunity to review and sign any adverse comment placed in personnel file and 30 days to file a written response.
- Protections regarding use of lie detectors and photographic images, personal information disclosures, and locker searches.

#### **LAWS AFFECTING EMPLOYEE DISCIPLINE**

All state employers (agencies) must operate within various laws when dealing with employee misconduct, and agencies employing peace officers have specific rules they must follow. The Public Safety Officers Procedural Bill of Rights affords peace officers numerous rights and requires that agencies deliver notice of any formal disciplinary action against a peace officer within one year of the date of discovery—the date that a person authorized to initiate an investigation becomes aware of the misconduct. Failure to meet this one-year deadline will cause the agency to lose its ability to formally discipline the officer. For other state employees, state law requires that agencies serve any notice of disciplinary action within three years of the date of the misconduct. Again, an agency loses its ability to discipline if the deadline is not met.

Equal employment opportunity (EEO) and civil rights laws are also important for all agencies and employees. Both federal and state government laws dictate how employers and employees treat each other. These laws prohibit discrimination based on protected classes such as race, national origin, and religion. They also prohibit sexual harassment and retaliation against those who report misconduct.

#### **Types of Punitive and Corrective Actions the Department Can Take**

- Letter of reprimand
- Salary reduction, such as 5 percent for six months
- Suspension
- Demotion
- Dismissal

Before an agency can impose disciplinary action, California regulations entitle an employee to request a Skelly hearing. A Skelly hearing is a meeting between the employee and a Skelly officer—an independent representative of the hiring authority who was not involved in the disciplinary process—to discuss the disciplinary action face to face.<sup>2</sup> At this hearing the employee may present information to refute the charges, and the Skelly officer renders a decision as to whether the action should be sustained as proposed, modified to amend the charges or reduce the penalty, or revoked altogether. An employee must be given at least five working days following the service of the disciplinary notice to schedule a Skelly hearing.

### **THE DEPARTMENT’S PROCESS FOR HANDLING ALLEGATIONS OF MISCONDUCT AND EMPLOYEE DISCIPLINE**

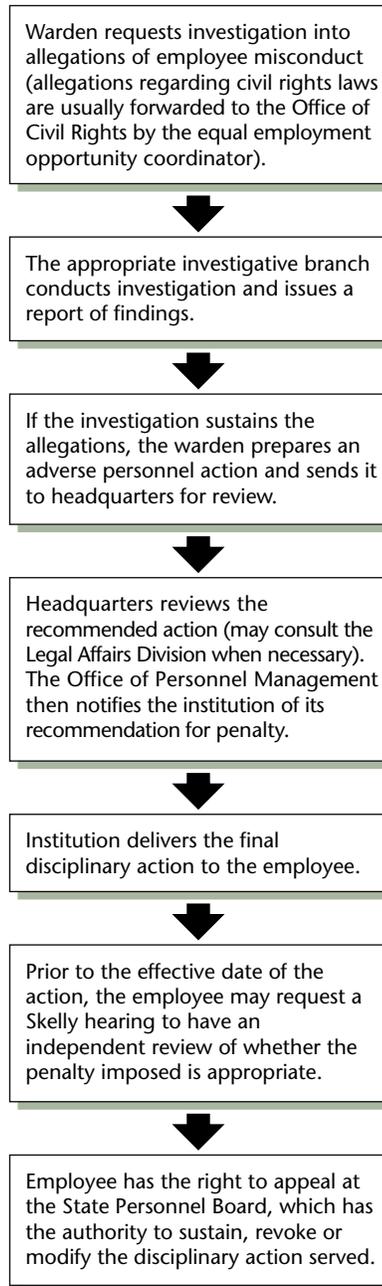
The department issued roughly 1,000 adverse actions for its 45,000 employees in 2002.<sup>3</sup> As shown in Figure 2 on the following page, the employee disciplinary process generally involves the following steps: the warden initiates an investigation by signing a request for investigation (the department’s Office of Civil Rights initiates investigations regarding civil rights laws after acceptance of a complaint); the applicable investigatory body conducts the investigation; if the investigation sustains any of the allegations, the warden submits a decision of proposed disciplinary action to headquarters for review; headquarters reviews the proposed disciplinary action and notifies the institution of its recommendation. The institution prepares and serves the employee with the notice of adverse action.

<sup>2</sup> The department’s operations manual includes the warden as a hiring authority. For the purposes of this report, when we refer to the warden we mean the warden or his or her designee.

<sup>3</sup> The department refers to punitive and corrective actions it takes against employees as adverse actions.

**FIGURE 2**

**Condensed Disciplinary Flowchart for Institutions**



Sources: Various departmental staff and resource manuals.

As shown in Table 1, the department uses three different categories and investigative bodies for different types of misconduct. Its operations manual defines category I as performance-related misconduct that falls within the normal

scope of employee/supervisor duties and does not pose a serious threat to safety or security. Category II cases include the more egregious allegations, such as those that potentially jeopardize the safety and security of an institution, along with high-profile cases or individuals and investigations that require specialized skills or equipment. EEO or civil rights cases consist of allegations of harassment, discrimination, or retaliation. For the purposes of this report, we will refer to these cases as category III. A separate investigatory body completes the resulting investigation of each of these three categories of disciplinary cases and answers to a different management entity.

**TABLE 1**

**Differences in Processing the Three Categories of Employee Misconduct Allegations**

	<b>Category I</b>	<b>Category II</b>	<b>Category III (Equal Employment Opportunity)</b>
<b>Type of Case</b>	Investigations of less serious allegations that can be reasonably handled at the local level.	Investigations of more serious misconduct issues (such as felonious activity and conduct involving moral turpitude) and high-profile cases.	Investigations of harassment, discrimination, and retaliation, based on a protected class.
<b>Who Conducts Investigation</b>	The Investigative Services Unit within each institution.	The applicable regional Office of Investigative Services.	The applicable regional Office of Civil Rights.
<b>Oversight Entity</b>	Warden	Headquarters Office of Investigative Services	Headquarters Office of Civil Rights
<b>When the Legal Affairs Division (legal affairs) Becomes Involved</b>	In most cases, not until an appeal is filed with the State Personnel Board (board).	Each regional office has at least one staff counsel who is available to provide legal advice throughout the investigative process; however, legal affairs usually gets more heavily involved in the event of an appeal to the board or if the case is criminal (these are also referred to the Office of the Attorney General).	As of October 2003, the Office of Civil Rights sends legal affairs the report of findings for the sustained and borderline cases.
<b>How the Department Tracks the Case</b>	Legal affairs maintains the employee misconduct investigation system, which tracks case timelines. Each Investigative Services Unit and Office of Investigative Services keeps its own log of cases. The Office of Personnel Management (personnel office) tracks the cases through the adverse action database if an adverse action is initiated.	Legal affairs maintains the employee misconduct investigation system, which tracks case timelines. The Office of Investigative Services at both the region and headquarters keep database records on the cases. The personnel office tracks the cases through the adverse-action database if an adverse action is initiated.	Legal affairs maintains the employee misconduct investigation system, which tracks case timelines. The Office of Civil Rights inputs case information into two databases it maintains and the board's database. The personnel office tracks the cases through the adverse-action database if an adverse action is initiated.
<b>Applicable Policies and Procedures</b>	Department of Corrections (department) operations manual.	Department operations manual and several procedural memos.	Department operations manual and several memos and draft directives.

Figure 3 shows the major players involved in the disciplinary process. The Investigative Services Unit conducts the category I investigations and submits its report to the warden for review and referral to the employee relations officer if the allegations are sustained. The employee relations officer creates and sends an adverse-action package, which includes a statement of facts, the government code reference, and recommended penalty, to the warden for all sustained allegations, regardless of type. The department sends all adverse-action packages to the Office of Personnel Management (personnel office) at headquarters for review by an analyst and by the appropriate managers. Reflecting their more serious nature, category II investigations are the responsibility of the appropriate regional Office of Investigative Services. If approved as a category II case, special agents at the regional office conduct the investigation under the supervision of senior special agents and the special agent in charge. The regional office sends rejected cases back to the warden for disposition as category I cases. Staff at various institutions refer potential category III cases to the appropriate regional Office of Civil Rights for review.<sup>4</sup> If the regional office accepts the case, it assigns one of its EEO investigators to complete the inquiry. The regional administrator sends the completed investigation of any sustained case to the warden. The regional office generally notifies the warden of cases not meeting EEO criteria for investigation but needing alternative corrective action by the institution.

## **TIMELINES THAT APPLY TO THE DISCIPLINARY PROCESS**

To provide consistency in dealing with its employees, the department extends the additional peace officer rights discussed earlier to all its employees. Thus, because the deadline for issuing disciplinary notices to peace officers is one year, the department attempts to meet this deadline for all employees. However, because the law allows three years for employees other than peace officers, the department will give the peace officer cases a higher priority and allow the others to exceed one year when necessary.

## **SCOPE AND METHODOLOGY**

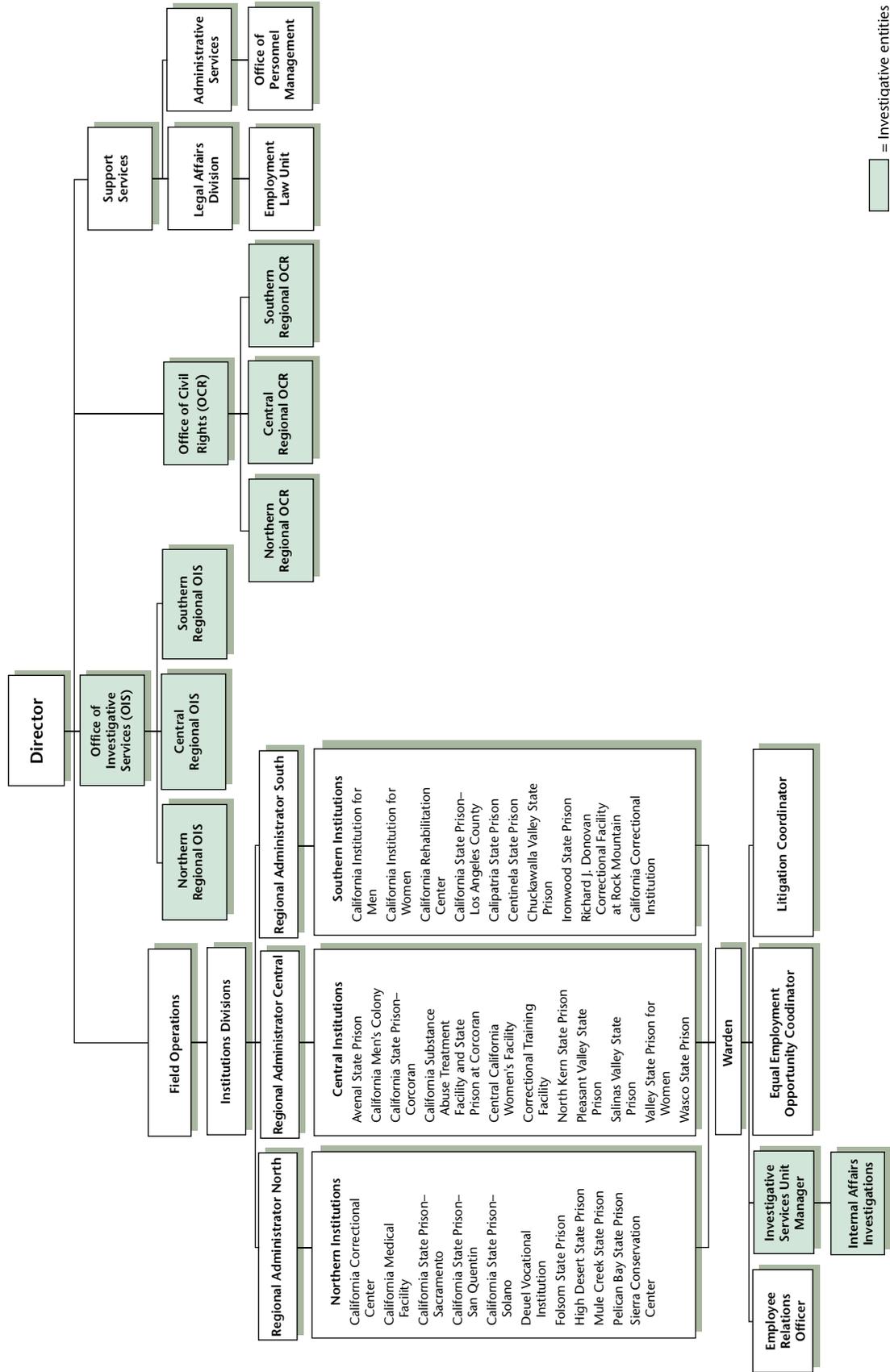
The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the department's process of handling employee disciplinary

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<sup>4</sup> EEO cases can also be filed directly through the Office of Civil Rights or via the EEO hotline.

**FIGURE 3**

**Department of Corrections' Organizational Chart Related to Its Disciplinary Process**



Source: The Department of Corrections' organizational charts.

matters. Specifically, the audit committee requested that we determine the extent to which the department has established uniform policies and procedures for the use of legal services in employment matters and whether the institutions are following those policies and procedures. We were also asked to determine whether the department has developed a centralized tracking system to monitor employment-related legal actions and to identify the department's legal costs for the past three fiscal years. Additionally, we were asked to determine whether the department has established effective policies and procedures governing the use of legal services by the correctional institutions in the settlement of employee disciplinary actions and, if so, whether the department has effective procedures for monitoring and evaluating the settlement process.

Further, the audit committee asked that we identify, to the extent possible, the institutions that have a very high or very low incidence of civil litigation and any common factors that may contribute to this. Finally, the audit committee requested the bureau to review and evaluate the extent to which the department has implemented or addressed recommendations from studies performed by the inspector general and other oversight entities related to legal services in employment matters.

To gain an understanding of the department's processes for handling employee disciplinary matters and determine if it has improved its process for dealing with them, we interviewed staff at headquarters and at six institutions. We also examined a sample of the various types of investigations at these institutions and reviewed the applicable laws, reports, policies, and procedures of the investigative bodies. We then summarized the various processes and the differences between institutions and regional offices using flowcharts. We also performed limited audit procedures verifying the accuracy of electronic data from the board that we used to compare how the department performed with its appealed cases with those of other state agencies.

To determine whether the department is complying with federal and state laws governing employee conduct, the disciplinary process, and EEO, we reviewed the relevant laws, rules, and regulations to identify the applicable deadlines and determined whether a sample of 135 cases met the statutory deadlines.

To determine whether the department has adequate policies and procedures related to its employee disciplinary process, we reviewed written policies and procedures as well as applicable procedural memos. We also gained an understanding of the department's employee disciplinary process and the change it is undergoing to determine what we should reasonably see included in the revisions of these documents.

To determine whether the department developed a centralized tracking system to monitor employment-related problems, we contacted staff at headquarters, regional offices, and institutions to obtain information on the systems they are currently using or implementing. We also obtained electronic files from several databases at headquarters for fiscal years 2001–02 through 2003–04. Testing determined that these systems were incomplete and inaccurate.

To identify the department's legal costs, we reviewed the budget plan and accounting records for the Legal Affairs Division (legal affairs) for fiscal years 2001–02 through 2003–04 and determined that the department's legal expenses have remained relatively stable and within its spending plan. The department's detailed legal information is shown in Appendix A, tables A.1 through A.3.

To identify the department's legal services costs related to employment matters, we obtained records from legal affairs and traced them to source documents. We determined that attorney fees make up more than two-thirds of the Employment Law Unit's annual expenses. Because legal affairs does not track its internal and external attorney costs by case or institution, we could not identify the costs associated with headquarters and the various individual institutions, nor could we separate the legal costs related to administrative and civil litigation. However, we were able to identify each institution's settlement and judgment costs.

To determine whether the department has established effective policies and procedures governing the use of legal services by institutions in the settlement of employee disciplinary actions and, if so, whether the department has effective procedures for monitoring and evaluating the settlement process, we obtained all settlement policies and procedures and reviewed its operations manual. We discussed settlements with the department's assistant chief counsel and employee relations officers and reviewed settlement agreements for reasonableness.

To identify the institutions that have a very high or very low incidence of civil litigation involving employment matters and to identify common factors that may contribute to this, we obtained electronic files from the department and totaled the number of cases during fiscal years 2001–02 through 2003–04 in the following categories: employee discipline, EEO complaints, and civil litigation related to employment matters. We also gathered, from various sources, demographic information such as total number of employees who worked in each institution, the average age of disciplined employees, age of each facility, warden’s length of service, level of inmates in each institution, and the occupancy rate. However, since the data systems we reviewed had missing and inaccurate data, we could not determine the total number of adverse-action cases by institution to determine if demographics were a factor for higher or lower incidence. However, based on the data we were able to review, no trends were evident.

To review and evaluate the extent to which the department has implemented or addressed recommendations from studies performed by the inspector general and other oversight entities related to legal services in employment matters, we obtained copies of these studies and a copy of the remedial plan that contains a detailed account of how the department will address federal court concerns related to its employment matters. We then obtained documentation from the department to verify the implementation of those recommendations. ■

# CHAPTER 1

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## ***The California Department of Corrections Can Improve Its Timeliness and Handling of Employee Misconduct Allegations and Discipline***

### CHAPTER SUMMARY

**T**he California Department of Corrections (department) can improve its timeliness in dealing with employee misconduct allegations and discipline issues. On average, it takes 285 days to deliver a notice of adverse action against an employee or to close a case, and the process occasionally surpasses the one-year deadline for taking action against peace officers—leaving the department unable to correct or punish the employee. The 285-day average does not include the additional time for appeals the employee may file with the department or outside entities. Lengthy time frames between the date an offense is alleged and the date action is taken can undermine the process—potentially lessening the effectiveness of any corrective action taken. Our findings are similar to those presented by the Office of the Inspector General (inspector general) in an October 2001 report, although the department has made some progress in improving its timelines for category II cases and now appears to lose fewer of these cases to the one-year statutory deadline for taking action against a peace officer. Finally, the department can improve its timeliness by simplifying its investigations of uncontested, straightforward cases and eliminating unnecessary requests for information, transcriptions of interviews, and headquarters review of most adverse actions.

Annually the State Personnel Board (board) reviews about 14 percent of the department's adverse actions and revokes or modifies 62 percent of those it reviews. The statewide average for modifications and revocations for other agencies is nearly 50 percent. We believe the results of this review provide a good measure of the effectiveness of the department's disciplinary process. However, the department does not currently analyze its individual and overall performance statistics, nor has it established any benchmarks. We believe it would be useful

to the department to continually monitor these statistics to measure any improvements and to assist it in identifying training needs.

Moreover, the department could improve its process for handling employee misconduct allegations and discipline by eliminating some of the minor differences in its disciplinary practices and by standardizing penalties at various institutions. Although we did not find significant issues with regard to varying processes used by institutions and regions, we did find instances of seemingly disparate disciplinary actions for similar offenses. Surprisingly, the three investigative units of the department—the Investigative Services Units at each institution (investigative services), the Office of Investigative Services (OIS), and the Office of Civil Rights—rarely work together and all have different processes. The department’s policies and procedures for employment-related matters are outdated and in need of revision and may contribute to inconsistencies because they do not require common practices or forms. The operations manual gives no clear guidance on how any of the processes should work.

To its credit, the department has taken some actions that should help it avoid employment-related disputes; however, it can improve its efforts to resolve disputes that do occur before ending up in litigation. On the positive side, it is implementing a process that will provide for more and earlier attorney involvement in allegation investigations and adverse actions, which should improve the integrity, quality, and timeliness of investigations. The department is also working on a new discipline matrix that should improve the consistency of adverse actions for similar offenses. However, it could implement a mediation program to help resolve disputes and prevent issues from festering into bigger problems. Finally, although the department designed a policy for headquarters to provide meaningful oversight of and guidance regarding settlements, it does not follow the policy. As a result, it cannot ensure it is settling as effectively or as often as it could.

### **THE DEPARTMENT AVERAGES 285 DAYS TO DELIVER AN ADVERSE ACTION OR CLOSE A CASE**

As discussed in the Introduction, state law generally requires that agencies deliver notice of disciplinary action against a peace officer within one year of the date of discovery and within three years of the date of misconduct for all state employees other than peace officers. The department strives to extend this

### Types of Adverse-Action Investigations (Cases)

**Category I:** Investigations of less serious allegations that can be reasonably handled at the local level.

**Category II:** Investigations of more serious misconduct issues (for example, felonious activity or conduct involving moral turpitude), and high-profile cases.

**Category III:** Investigations of discrimination, harassment, or retaliation, based upon a protected class.

peace officer right of one year to all its employees. Additionally, the department's current operations manual identifies how long the investigative step of the process should take but does not identify any timelines for the other major steps in the process. Although it is apparently not in use, we did find a memo that outlines some of the other timelines for various steps in the process. Using the guidance included in the operations manual, the memo, a directive, and other documents, the individual goals total 172 days for category I and category II cases and 203 days for category III cases (without approved extensions), which are well under the one-year requirement.

The department averaged 285 days between the discovery date—the date a person authorized to initiate the investigation becomes aware of the misconduct and the statutory clock starts ticking—and the date an adverse action was served or the case was closed for the 116 cases we reviewed at six institutions.<sup>5</sup> As shown in Table 2 on the following page, category I cases averaged between 223 and 279 days to complete at the different institutions. The more serious category II cases, as one would expect, took longer, averaging between 243 and 355 days. A comparison of our results with the March 2002 results of the inspector general shows that the department has made progress in reducing the percentage of category II cases that exceeded 365 days from 43 percent to 21 percent. However, 38 percent of the category III cases went over 365 days compared to only 3 percent for category I cases and 17 percent for all 116 cases we reviewed.

Category III cases, the equal employment opportunity (EEO) cases reviewed by the Office of Civil Rights, had the widest disparity in time frames—ranging from an average of 172 days to 739 days.<sup>6</sup> Although we were unable to perform a department-wide analysis of timelines because the department's data systems were unreliable, for the data that did exist, the department-wide average time to complete cases was generally consistent with the average times at these six institutions.

As Table 2 shows, wide disparities in the timelines exist at every step of the process from the initiation of the investigation through the institution discipline decision to the review by

<sup>5</sup> Although we reviewed 135 cases at the institutions, we could only include 116 in our calculation of this average because the department had not yet completed three cases and its files lacked critical dates needed to make this calculation for 16 cases.

<sup>6</sup> Throughout our report, we call these category III cases.

TABLE 2

### The Department of Corrections Spends the Most Time Completing the Investigation Step of Its Disciplinary Process (in Days)

Steps In the Process	Department Policies and Guidance	Institution								2002 Report of the Office of the Inspector General
		San Quentin	Mule Creek State Prison	Substance Abuse Treatment Facility	Correctional Training Facility	California Institution for Women	California Correctional Institution			
<b>Category I</b>										
Initiate investigation	21*	46	56	64	31	50	26			
Complete investigation	60-150†	111	106	144	137	167	187			
Institution discipline decision	28*	32	38	114	51	26	11			
Headquarters review	42*	34	58	26	62	32	33			
Service of notice	21*	27	9	2	6	13	2			
<b>From date of discovery to service of notice or case closed‡</b>	<b>172-262</b>	<b>242</b>	<b>223</b>	<b>279</b>	<b>250</b>	<b>263</b>	<b>258</b>			
<b>Category II</b>										
Initiate investigation	21*	26	13	45	82	6	14			
Complete investigation	60-150†	134	107	213	118	220	140			
Institution discipline decision	28*	29	32	35	22	43	30			
Headquarters review	42*	23	56	48	45	35	44			
Service of notice	21*	15	23	6	10	7	4			
<b>From date of discovery to service of notice or case closed‡</b>	<b>172-262</b>	<b>257</b>	<b>260</b>	<b>327</b>	<b>269</b>	<b>355</b>	<b>243</b>			
<b>Category III</b>										
Initiate investigation	28§	65	13	57	150	34	3			
Complete investigation	84	241	184	199	249	112	292			
Institution discipline decision	28*	NA	19	151	NA	NA	29			
Headquarters review	42*	2	33	14	NA	NA	33			
Service of notice	21*	3	9	2	NA	NA	3			
<b>From date of discovery to service of notice or case closed‡</b>	<b>203</b>	<b>397</b>	<b>189</b>	<b>739</b>	<b>442</b>	<b>172</b>	<b>342</b>			

Sources: Department of Corrections' (department) files at headquarters, the respective institutions, the regional offices of Investigative Services, and the Office of the Inspector General.

NA = we could not determine due to incomplete information.

\* Based on a departmental memo issued by two chief deputy directors in 1998.

† Based on the department's operations manual.

‡ The totals of the individual lines do not agree to these totals because the files did not always contain adequate documentation to determine the time the department took to perform each step.

§ Based on the equal employment opportunity coordinator training documents.

|| Based on a department directive dated June 14, 2004.

headquarters. The department spends the most time completing the investigation step of the process, routinely taking four months or longer. In fact, for three of 34 category III cases, the investigator took more than a year to complete the investigation. If the department had sustained the one case involving a peace officer, it would have lost the opportunity to take action against the employee. Several of the managers or supervisors of the category I and category II investigations told us that a lack of staff resources is the primary cause of the lengthy investigations. The assistant director of the Office of Civil Rights told us that delays in the category III process occur for a variety of reasons, which could be resolved with new procedures and training.

As also shown in Table 2, the department often does not meet the guidelines from its operations manual and a procedural bulletin for completing the various steps involved in the employee disciplinary process. To assist in meeting the overall deadlines, the department should include similar steps in its new procedures and then monitor the procedures to ensure that staff are following them.

Moreover, as shown in Table 3 on the following page, 71 (61 percent) of the 116 cases we reviewed took the department more than eight months to close, and 19 cases did not meet its goal of one year (10 of these cases involved peace officers and eight involved employees other than peace officers).<sup>7</sup> Because six of the 10 peace officer cases also included a criminal investigation, the department, by law, tolled (stopped the clock on) these cases during the time the criminal investigations were pending. It forfeited its opportunity to discipline an employee in only one of the other four cases, but could have also forfeited this opportunity for the other three if it had sustained the cases.

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***Seventy-one of 116 disciplinary cases we reviewed took the department more than eight months to close and 19 of the cases did not meet its goal of one year.***

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The department forfeited the opportunity to discipline an employee in one of the eight cases involving employees other than peace officers because it exceeded the three-year deadline for civil service employees. However, losing any cases to the deadlines is unacceptable as it leaves the department unable to take corrective or punitive action against the employee and undermines the credibility of its commitment to require appropriate conduct.

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<sup>7</sup> The 19<sup>th</sup> case involved allegations against several employees in the institution; thus, the department identified the institution as the employees. Therefore, we could not determine if the case involved peace officers.

**TABLE 3****The Department of Corrections Completed Most Cases Between Nine to 12 Months**

Type of Case	1-4 months	5-8 months	9-12 months	>12 months
Category I	4	15	28	1
Category II	3	13	19	9
Category III	3	7	5	9
<b>Totals</b>	<b>10</b>	<b>35</b>	<b>52</b>	<b>19</b>

**THE DEPARTMENT LACKS A FORMAL STREAMLINED PROCESS FOR STRAIGHTFORWARD CASES AND WASTES TIME ON UNNEEDED INFORMATION REQUESTS**

The department can reduce the time it spends on certain disciplinary matters by simplifying its investigation of uncontested, straightforward cases and eliminating unneeded requests for information, transcriptions of interviews, and headquarter review of most adverse actions. More efficient use of their time allows staff involved in the disciplinary process to focus their efforts on necessary work.

Department policy requires an investigation into any allegations of misconduct by its staff, but it lacks a consistent streamlined process and reporting mechanism for uncontested, straightforward cases. The rationale some staff provided for investigating these cases was that the department is trying to determine if other violations of law are present, such as resisting arrest or improper use of peace officer status. However, writing an 11-page investigation report and spending as long as six months to close an uncontested driving-while-intoxicated case, as we found in one instance, seems excessive. The department also conducted a 167-day investigation of an employee found with drugs and who admitted using them, whereas, in a second case it terminated an employee who tested positive in a drug test without an investigation. Several of the institutional staff we spoke with agreed that a streamlined process would be a benefit for certain types of cases. Quicker resolution of simple cases would allow investigators and other staff to spend their limited and valuable time focusing on cases that are more complex. In fact, the Office of Civil Rights is implementing some measures to expedite the completion of category III cases. For example, it is expediting the investigative review process and limiting its field visits to one trip per investigation.

Another area where the department can expedite the disciplinary-action process is by eliminating headquarters review of most adverse actions for its institutions. Both the regional administrator and the Office of Personnel Management (personnel office) review the penalties recommended by the institutions (in this report we refer to both reviews as headquarters review). According to the chief of the personnel operations discipline and project development section, one purpose of the review by the personnel office is to ensure the recommended penalty is consistent with other comparable cases. However, we found some instances where the warden chose not to implement the recommended penalty. For example, for one case we reviewed, the institution recommended a 30-day suspension; the personnel office reviewed the package and recommended a 5 percent salary reduction for 12 months, and the regional administrator recommended a third option of a 5 percent reduction in pay for six months. Ultimately, the warden made the final decision and chose the original 30-day suspension. The final decision rests with the warden, and the other offices serve only in an advisory capacity, adding an average of 39 days to processing an adverse action. We believe that with the implementation of its disciplinary matrix, vertical advocacy, and new case management system, the need for a review outside the institution (prior to serving an adverse action) should be limited to those cases that do not fit within the disciplinary matrix parameters.<sup>8</sup> However, we are not suggesting that monitoring is unnecessary. Instead, as we discuss later, we believe the department should centralize the monitoring of all three types of disciplinary cases under one entity. This monitoring can occur after the cases are finalized and can be used to identify training opportunities. The deputy director of the Legal Affairs Division (legal affairs) told us that the department is in the process of evaluating the roles and duties of all entities involved in the disciplinary process, including those involved with headquarters review.

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*Staff spend valuable time responding to repeated requests for the same information and unnecessarily transcribing interviews.*

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Concerning another inefficient use of time, five of the six employee relations officers (EROs) we met told us they spend valuable time responding to frequent requests to provide information for closed cases and for information already sent to headquarters. They attribute the repeated requests to upper-level staff either losing the information or relying upon inaccurate data to produce information requests. Although the EROs believe they sent needed information to headquarters to update the status of the cases, the reports they receive from legal affairs have not been updated to reflect this information. Finally, we found instances

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<sup>8</sup> As we discuss later, the vertical advocacy model will involve an attorney early in the investigative process and should provide additional legal guidance.

where investigators or EROs in two of the six institutions visited were unnecessarily transcribing witness and subject interviews. Because each of the institutions records all interviews related to an adverse action, transcribing the interviews is unnecessary and time-consuming in most cases. According to some of these institutions, the tape recording is sufficient and eliminates the need to transcribe the interviews.

### Reasons for Revocation or Modification by the Board

**Failure of Proof**—The appointing power fails to prove the charges against the employee by a “preponderance of the evidence.” Failure of proof may be the result of faulty investigation, faulty preparation, or inadequate advocacy at hearings. It may also result from witnesses not testifying as expected or failing to appear at all.

**No Legal Cause**—The appointing power meets its burden of proving the charges by a preponderance of the evidence, but what it has proven does not constitute legal cause for formal discipline. The legal causes for discipline are set forth in statute.

**Time Barred**—The government code sets forth the general rule that appointing powers have three years from the date of the misconduct to bring an adverse action against an employee. If the employee is a peace officer, however, the Public Safety Officers Procedural Bill of Rights provides only one year to bring the adverse action.

**Procedural/Legal Errors**—Case law requires that if the appointing power fails to give specific notice of the charges and legal causes for discipline, the discipline must be revoked. If the appointing power has not waited until the last minute to bring the action, it may refile. Besides notice errors, appointing powers make other errors in prosecuting cases such as failing to subpoena necessary witnesses or documents, failing to adequately prepare the case or inadequately examining or cross-examining witnesses. Often times these errors are attributable to the fact that inexperienced representatives are unprepared and untrained to prosecute a case against experienced union counsel.

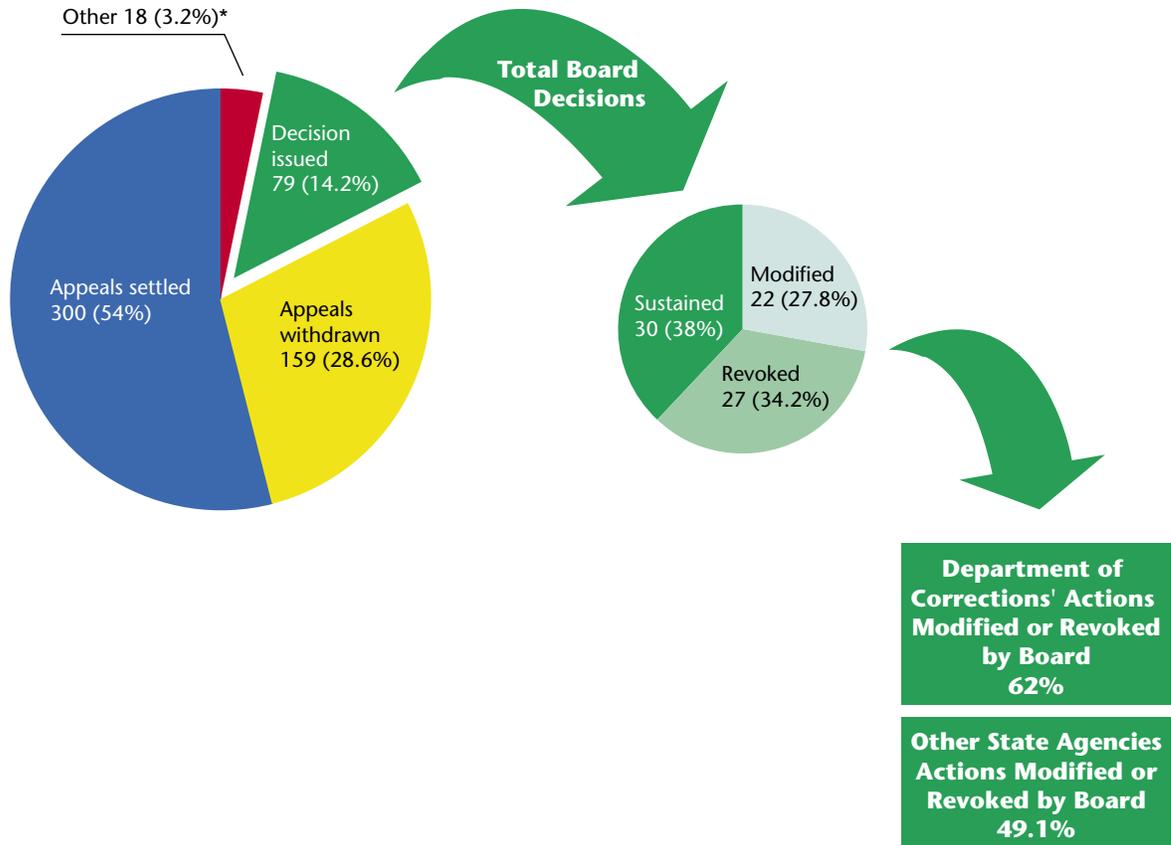
Source: State Personnel Board.

## THE BOARD OFTEN MODIFIES OR REVOKES THE DEPARTMENT’S ADVERSE ACTIONS

The independent board, which reviews about 14 percent of the department’s decisions, revokes or modifies 62 percent of those it reviews. As described more fully in the Introduction, before an agency imposes disciplinary action, state civil service employees have the right to appeal their case to the board. The board is a neutral body responsible for administering a merit system of civil service employment within state government. It hears and decides disciplinary appeals. The board can elect to sustain, modify, or revoke the adverse action taken; its modification authority allows it to reduce but not increase the penalty imposed by the department. We believe this process provides a good measure of the effectiveness of the department’s disciplinary process. Improving this performance is important for the department to ensure employee confidence in the process and in management. Information we obtained from the board for 2002 revealed that employees appealed 56 percent of the department’s adverse actions. Although the total number of adverse-action cases was not available for 2003, only 14 percent of the total appealed cases in 2003 ever reached the board because the majority of the cases were either settled or the appeal was withdrawn. As shown in Figure 4, the board revokes or modifies the adverse action for 62 percent of the department’s cases it reviews. Although board modifications vary, the rate at which the board revokes or modifies the department’s adverse actions compares unfavorably with the board’s average in revoking or modifying adverse actions for other state agencies, which is just below 50 percent.

**FIGURE 4**

**The State Personnel Board (board) Revoked or Modified the Department of Corrections' Adverse Actions at a Higher Rate Than Other Agencies**



Source: Data from the State Personnel Board—appeals closed during 2003.

\* Untimely filed or no jurisdiction.

It is important to recognize that a board modification does not necessarily indicate that the department did a poor job; it may indicate merely a different judgment related to the most appropriate level of discipline in the circumstances. However, the interim executive officer of the board wrote in a letter to the Legislature related to adverse actions statewide that the most common reason the board modifies adverse actions is when the most serious of the allegations are unproven. The board reports that it often revokes disciplinary cases because of poor case preparation or advocacy during the disciplinary hearing. Moreover, based on information provided by the board, 11 of the 15 department employee dismissal cases it revoked or modified from 2002 were due to a failure of proof.

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*The department does not analyze or benchmark its performance statistics concerning cases that go before the State Personnel Board.*

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Currently, the department does not analyze its individual and overall performance statistics concerning cases that go before the board, nor has it established any benchmarks. We believe it would be useful to the department to continually monitor these statistics to measure any improvements and to assist it in identifying training needs, as well as to ensure that responsible parties are accountable and learn from mistakes made, while it reforms its disciplinary process.

### **THE PROCESSES FOR HANDLING EMPLOYEE MISCONDUCT ALLEGATIONS AND DISCIPLINE ARE NOT SIGNIFICANTLY DIFFERENT, BUT CONSISTENCY CAN BE IMPROVED**

The department could improve its disciplinary process by eliminating some of the minor differences in the disciplinary practices and by standardizing penalties at various institutions. Although we did not find any significant issues with regard to varying processes used by institutions and regions, we did find instances of seemingly disparate disciplinary actions for similar offenses. More standardization should help improve consistency and mitigate perceptions that the department handles its disciplinary actions unfairly.

The process at five of the six institutions we reviewed was similar to that described in the Introduction. Specifically, investigative services within the institution is generally responsible for conducting investigations in an ethical and impartial fashion with the primary objective of providing facts surrounding category I investigations, while the ERO is typically associated directly with the adverse-action phase. In fact, five of the six EROs we spoke with said they usually become involved in a case only if the allegations are substantiated. However, according to San Quentin's ERO, he is much more involved earlier on in the process because he maintains the investigation logs for the category I and category II cases and decides whether to forward the case to the investigative services lieutenant or to an associate warden for assignment to an investigator.

Additionally, each institution we tested uses a combination of full-time investigators and other employees at the rank of sergeant or above who do not work solely for investigative services. These "field investigators" have other duties and are called upon to handle investigations as needed. Although this is an acceptable way to deal with cases the full-time investigators cannot handle due to their workload, the department may want to consider conducting a workload study to determine the

number of full-time investigators each institution may need and whether existing resources can be allocated for this purpose. Increasing the number of dedicated investigators may improve the timeliness of the investigative reports. In fact, according to its warden, Pelican Bay State Prison (Pelican Bay) was required to staff its investigative services unit with full-time investigators to improve the timeliness and quality of the investigations as a result of the special master's involvement in the Madrid case.<sup>9</sup>

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*We found instances in which the institutions took different adverse actions for similar offenses.*

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We also found instances in which the institutions took different adverse actions for similar offenses; however, it is unclear whether these disparities resulted from the minor differences in processes or the value given to mitigating circumstances by the decision maker. For example, for two different (but somewhat similar in severity) cases of mistreatment of the public or other employees at one institution, the warden recommended penalties of a letter of reprimand in one case and a 5 percent salary reduction for six months in a second case. In another example, one institution had a case where an employee was arrested for driving under the influence of alcohol. The institution's originally recommended penalty was a letter of reprimand. Another institution had a very similar case for which it recommended a 5 percent salary reduction for six months. EROs also differ on their views of reasonable penalties. One ERO told us that although he uses the personnel office's comparable cases, he tries to make the recommended penalty as high as reasonable to allow room for negotiation; other EROs said they rely on the personnel office's comparable cases, their own experience with similar cases, or a combination of both to establish their penalties. Using different bases for imposing discipline can result in inconsistency, which could in turn result in the perception of bias or unfairness in the process.

The opportunity to assess inconsistent penalties may decrease when the department implements its discipline matrix, which will prescribe standard penalties within a range for specific employee offenses, along with provisions to apply mitigating and aggravating factors to decrease or increase the discipline imposed. This matrix is designed to ensure a consistent foundation and common approach regarding what type of penalty, if any, to impose. However, for the matrix to be fully effective, the department will need to ensure the wardens are held accountable for their penalty decisions by requiring them to document their reasons for any deviations from the prescribed penalty range.

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<sup>9</sup> The special master is the court-appointed individual responsible for developing a plan to remedy the conditions at Pelican Bay deemed unconstitutional as the result of a lawsuit alleging misconduct on the part of correctional officers at that prison.

Moreover, although the department's operations manual requires that the regional OIS track and audit all category I cases, we found no evidence that the auditing or review of the investigation authorization forms or completed investigative reports occurs at one OIS regional office. A senior special agent in this office said that staff perform random reviews of the investigation authorization forms but do not review the completed investigative reports. By not following its policy, the department is failing to monitor and missing an opportunity to provide feedback and training to its investigators.

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*Many of the disciplinary case files we reviewed were disorganized and had key pieces of information missing.*

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Finally, although the three regional offices of Civil Rights appear to handle investigations in a similar manner, the quality of case files vary, even within the same regional office. Many cases we tested were disorganized and had key pieces of information missing. In fact, three files did not contain the investigative report. When case files are incomplete and inconsistently organized, users may have difficulty understanding and monitoring the progress of the cases. In recognition of this issue, as of September 2004, the Office of Civil Rights is working on implementing a file setup and maintenance policy for the category III cases.

### **INVESTIGATIVE AND OTHER DEPARTMENT OFFICES THAT HANDLE EMPLOYEE MISCONDUCT ALLEGATIONS AND DISCIPLINE CAN IMPROVE THEIR COORDINATION AND COMMUNICATION**

The department has had difficulty coordinating efforts and fostering effective communication among its various offices and institutions involved in employee misconduct allegations and discipline. The overall lack of interaction among the major investigative bodies is unfortunate: if communication and coordination improved, the three could coordinate policy development, learning opportunities, and related investigative work. For the most part, the department readily admits it has a problem in this area and has begun addressing some of the underlying issues.

Achieving coordination and effective communication among more than a dozen units and hundreds of employees statewide is a difficult task requiring clear procedures and cooperation. In its March 2004 charter and strategic plan (plan), OIS acknowledges the findings of a report by the special master, which identified a lack of coordination in the department's disciplinary process. In its plan, OIS indicated that to successfully identify

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*Achieving coordination and effective communication statewide is a difficult task requiring clear procedures and cooperation.*

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misconduct, carry out complete and timely investigations, and reach appropriate and consistent dispositions, all of the department's participants must be aware of or actively involved in the entire process from inception to the final outcome of each case. Therefore, the plan proposes that OIS coordinate with the regional offices and legal affairs to clarify the role of the regional office attorneys and to establish regular communications with the wardens, EROs, institution investigative services, and legal affairs regarding the employee disciplinary process. Although its plan has merit, it has not yet been fully implemented.

We found that breakdowns are occurring among the units involved in different case categories (categories I, II, and III) and, in some cases, with legal affairs and headquarters. The three distinct investigative branches—the regional OIS offices, the regional offices of Civil Rights, and institution investigative services—provide good examples of the communication breakdowns. For example, according to four investigative services lieutenants at the institutions visited, staff from the regional OIS do not consistently communicate with them outside of their role of coordinating interviews and assisting with some of the fact-finding efforts for the category II investigations. For example, the investigative services staff could benefit from receiving feedback regarding the quality of their investigations or related to new investigative techniques or policies.

Additionally, the Office of Civil Rights has not always communicated or reported to the affected institutions when it discovers departmental policy violations or supervisory issues during its investigations. As a result, the department may have missed opportunities to take corrective or punitive action against the guilty employee. As mentioned in the Introduction, the regional offices of Civil Rights conduct the department's formal investigations into allegations of discrimination, harassment, and retaliation within its institutions. To sustain an EEO allegation, the investigation must determine that it meets certain criteria. For example, in a sexual harassment case, the allegation must be proven severe and pervasive to meet the legal standard. However, in some cases, although not severe and pervasive, the actions may violate departmental policy. Because the Office of Civil Rights has not always reliably referred departmental policy violations uncovered during EEO investigations to the institutions, the institutions may not have been aware of the violations.

To resolve this problem, in June 2004 the Office of Civil Rights implemented a new policy requiring its investigators at regional offices to sustain instances of policy violations and to return these reports to the institutions for appropriate action. One effective way to monitor this process and to ensure policy or supervisory issues are not missed would be for the offices of Civil Rights to send all investigation reports, including those for unsustained cases, to the warden for review.

In addition, regional OIS staff experience difficulty effectively communicating and coordinating with headquarters. In an October 2003 questionnaire designed to gauge employee satisfaction with OIS operations at headquarters, employees cited the level of communication between the headquarters and the regional offices as a concern and requested better and more consistent updates and information from headquarters. Our conversations with the special agents in charge at the three regional offices in April and May 2004 confirmed that they continue to have very little contact with headquarters. The assistant director of OIS told us that he has taken several steps to address these concerns. Specifically, he holds weekly telephone meetings with each special agent in charge, meets with all staff at each regional office on a quarterly basis, forwards all pertinent department information to the special agent in charge, and solicits input from all staff on a project or policy basis.

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***The department's Legal Affairs Division generally has minimal involvement in the employee disciplinary process.***

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Moreover, legal affairs generally has minimal involvement in the employee disciplinary process. For example, according to the assistant director of the Office of Civil Rights, legal affairs currently becomes involved in a category III case only after the regional Office of Civil Rights has completed its investigation and sustains the cases. At that time, the Office of Civil Rights sends the category III reports to legal affairs for review at the same time it sends the report to the warden to take the necessary adverse action. However, because the department does not require legal affairs to respond within a certain period, the warden may take action before legal affairs has reviewed the case and identified any problems. This is disconcerting in light of the fact that these cases can be costly for the department. The department's deputy director of legal affairs acknowledges that this is not an ideal situation; however, this review process is merely an interim measure until the department can decide how best to integrate the Office of Civil Rights into the vertical advocacy program, a new program we describe in the next section.

## THE DEPARTMENT IS IMPLEMENTING A PROCESS REQUIRING ITS ATTORNEYS TO BECOME MORE INVOLVED IN EMPLOYEE MISCONDUCT ALLEGATIONS

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*The department is moving forward with a plan it believes will ensure competent legal representation during the employee disciplinary process.*

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The department is moving forward with a plan to improve communication between legal affairs and the institutions to have its attorneys more involved with employee misconduct allegations. It will implement a vertical advocacy model, which it believes will ensure competent legal representation during the employee disciplinary process.

Currently, legal affairs' communication with the institutions seems to be limited. Our conversations with the EROs at five of the six institutions we visited revealed that such communication generally occurs when they have a specific legal question. In fact, the deputy director of legal affairs indicated that its role in the disciplinary process has been limited to taking certain cases appealed to the board and offering ad hoc assistance through the officer-of-the-day telephone service. A March 2003 memo stated that in prioritizing case assignments, legal affairs would most likely accept cases that involve a significant level of penalty, complex factual or legal issues, discipline of management employees, or employees engaged in litigation with the department. The vertical advocacy model will involve an attorney early in the investigative process and should provide additional legal guidance to the EROs and improve the integrity, quality, and timeliness of investigations.

In response to the special master's oversight resulting from the Madrid case at Pelican Bay, the department implemented the vertical prosecution model at that institution, requiring early involvement in disciplinary cases by a staff attorney, called the vertical prosecutor. According to Pelican Bay's interim vertical prosecution procedures, this model requires that the vertical prosecutor is made aware of all new investigations, has an opportunity to provide input during the course of the investigation, reviews draft reports and adverse actions, and provides guidance to the EROs with respect to Skelly and board hearings, in addition to presenting the case, when necessary, at hearings.<sup>10</sup>

According to the deputy director of legal affairs, the department has not yet implemented the vertical prosecution model outside of Pelican Bay, but it is using this model as the prototype for a department-wide policy, which it calls the vertical advocacy model.

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<sup>10</sup> A Skelly hearing is a meeting between the employee and an independent representative of the hiring authority who was not involved in the disciplinary process to discuss the disciplinary action face to face.

We believe that, when established, this model should create a new level of direction and communication between legal affairs and the various parties involved in the employee disciplinary and investigative processes. Additionally, the department has received approval from the Department of Finance for the additional legal personnel it needs to implement this model.

## **THE DEPARTMENT NEEDS TO UPDATE AND FOLLOW ITS POLICIES ON EMPLOYEE MISCONDUCT ALLEGATIONS AND DISCIPLINE**

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*The department last updated, with a few exceptions, the articles in its department operations manual related to disciplinary matters in 1990.*

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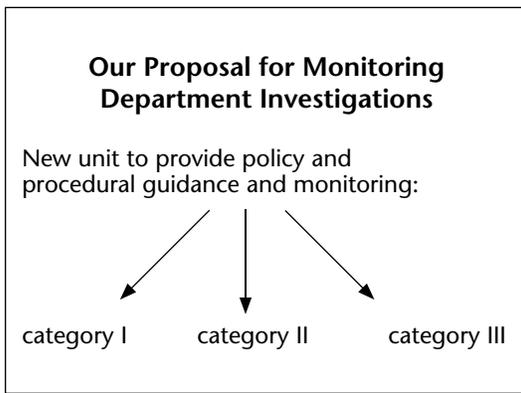
In recognition of the need to address the investigative and disciplinary process throughout the State, the department recently began an effort to update its operations manual, which includes its department-wide policies and procedures for employee misconduct allegations and discipline. The department last updated, with a few exceptions, the articles related to disciplinary matters in 1990, and much of the operations manual in this area is outdated. In addition, the current operations manual does not require common practices or forms, which may contribute to inconsistencies. According to its remedial plan timeline, the department will not finish revising its policies and its operations manual until between December 2004 and August 2005. Given our concerns, the department should consider attempting to expedite the process.

One example of department employees lacking current guidance on the discipline process is within the Office of Civil Rights. Specifically, regional managers and staff of the Office of Civil Rights are using the case analysis manual of the Department of Fair Employment and Housing for direction on how to investigate alleged violations of EEO laws. The assistant director of the Office of Civil Rights admits that she is aware of the age of the manual (most chapters were last updated in 1990 and 1992) but believes it still offers valuable assistance. However, the assistant director also stated that the investigators use it with the assistance of their managers to ensure no misinformation is used. To its credit, the Office of Civil Rights provided us with its operations procedures, consisting of various directives distributed in June 2004 by the assistant director. These directives set forth the investigative procedures related to category III complaints and the procedures for requiring legal opinions, which should assist in clarifying many pertinent issues for investigators. However, these directives are not an adequate substitute for a current operations manual or legal reference tools.

These issues illustrate only a few of the concerns we have related to the department's disciplinary policies. Because it is reviewing and plans to reform all its processes, the department's challenge will be to include all recent and proposed changes to provide current and clear direction to all its operating units. For example, the operations manual updates will need to include directives that mirror the new ERO training and its newly developed disciplinary matrix.

### **THE DEPARTMENT SHOULD CONSOLIDATE ITS POLICY AND PROCESS DEVELOPMENT FOR ALL TYPES OF INVESTIGATIONS**

To better standardize institutional and regional investigation procedures and processes, the department should centralize the oversight of the various investigatory bodies. Currently,



OIS manages the category II process, the Office of Civil Rights manages the category III process, and each of the investigative services units under the direction of the respective warden or designee manages the category I process. Although each category of investigation has its own nuances, the generic processes and results are the same in that each conducts a fact-finding exercise that often involves interviews and results in a report of findings. Centralizing policy and process development for the three types of investigations would allow the department to create and introduce more standardization into the processes, the investigative report formats, and the case files and would foster communication and coordination among investigators.

We are not suggesting combining the investigative units; however, receiving consistent, across-the-board guidance and monitoring from a central unit could help the department provide a more effective and efficient investigative process and enhance the ability of end users to review cases. The department will have some external monitoring of its most serious and complex investigations by the bureau of independent review within the inspector general's office. In fact, the governor and the Legislature approved Senate Bill 1400 in September 2004, which creates the bureau of independent review and makes it responsible for quality control of OIS investigations—the unit that conducts the category II investigations—and for advising the department regarding the adequacy of each investigation. A similar but expanded model would be useful for all three case categories.

## THE DEPARTMENT CAN DO MORE TO RESOLVE EMPLOYEE PROBLEMS SHORT OF LITIGATION AND ADVERSE ACTIONS

The department can also improve its efforts to resolve employment-related disputes without litigation. For example, better communication regarding the availability and use of a mediation program could help to resolve disputes before they escalate into litigation or adverse actions that are heard by the board. These proactive steps should help the department avoid potentially time-consuming and costly litigation.

To its credit, to assist in avoiding employment-related disputes, the department required its employees to attend a four-hour training course about state and federal laws and its policies on EEO and discrimination. The department also required employees at the supervisory level to take an additional two-hour training course in these subjects. In addition, it plans to provide an annual two-hour refresher class to all employees. The department has also recently developed pamphlets regarding its policies as they pertain to state and federal laws, such as discrimination in employment. The pamphlets we viewed are clear about the fact that the department will not tolerate violations of the state and federal EEO laws. The assistant director of the Office of Civil Rights told us that the department is currently working on the logistics, including the costs involved, of distributing the pamphlets. Effective communication of these policies should be another important tool to help prevent unwanted behavior.

However, the department can improve its efforts to resolve employment-related disputes without litigation. As we will discuss in the next section, when disagreements about adverse actions occur, the department sometimes engages in settlement conferences. However, it seldom uses a mediation program, which could be effective in resolving adverse-action disputes before reaching the board hearing stage or the courts. In fact, the board administers a state employee mediation program, which it reports is successful in resolving over 95 percent of the cases that go to mediation. Further, the board indicated that mediation may avoid the costs and disruptions associated with taking a disciplinary action to hearing; it also avoids pitting employees against one another and allows the workplace to move forward with the tools to manage future conflicts.

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*The department rarely uses a mediation program, which could be effective in resolving adverse action disputes before reaching the State Personnel Board hearing stage or the courts.*

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## THE LACK OF DOCUMENTATION AND MONITORING PREVENT THE DEPARTMENT FROM ENSURING APPROPRIATE ADVERSE-ACTION SETTLEMENTS

An administrative bulletin discussing department policies for settling appealed adverse actions exists, and the department recently implemented training on factors to consider during settlement negotiations. Unfortunately, the policies are not completely followed, and the department does not monitor settlements. In 2003, the department settled 54 percent of closed cases appealed to the board, which saved the State both time and money. However, because the department does not monitor settlements, it cannot identify potential training opportunities or ensure its settlements are appropriate, consistent, or effective.

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*Staff do not follow the department's settlement policy designed to provide staff with guidance on settlement authority and documentation of the process, among others.*

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Staff do not completely follow the department policy, which was distributed through a departmental administrative bulletin in 2003, for settling adverse actions, and the department never added it to the operations manual. The settlement policy, if used, would provide staff with guidance on settlement authority, factors to consider, essential settlement language, and documenting the process. Although we did not determine if all the other steps are followed, the department clearly fails to follow the last step.

The policy includes a form for use by the department's legal representative or the ERO to identify the settlement decision maker, the terms of the settlement, the underlying reason(s) for settlement, and other generic information. Completion of this form would allow for independent review of the appropriateness of the settlement. The policy indicates that copies of this form should remain in the files at the facility and in the personnel office, and a copy should be sent to the Employment Law Unit. However, none of the settled adverse-action files contain these forms or any other documentation providing the reason or basis for case settlements. More recently, as part of its advocacy curriculum course, the department is providing its EROs with training that includes guidance for preparing for settlements, factors to consider, checklists, and an example of standard settlement agreements. The training appears beneficial, but it does not include any directives or guidance on steps to take to ensure monitoring of the process.

The department was unable to explain why it did not fully implement its settlement policy. However, legal affairs designed the policy for headquarters to provide meaningful oversight of and guidance regarding settlements to ensure consistency

in the process. Without these forms or other documentation that includes the rationale for settling, this monitoring cannot occur. The monitoring of settlements is important to ensure consistency and fairness when agreeing to reductions in penalties.

## **RECOMMENDATIONS**

To improve its ability to discipline employees quickly and efficiently, the department should do the following:

- Identify, benchmark, and monitor for improvement the adverse action timelines for each step in the process for each case category.
- Implement procedures to allow for expedited investigations and actions for uncontested, straightforward cases such as driving under the influence.
- Eliminate headquarters and regional reviews before serving disciplinary actions that meet the parameters of the disciplinary matrix.
- Discontinue the practice of transcribing all interviews and transcribe only those that are necessary.

To measure any improvements made, assist in identifying training needs, and ensure the responsible parties are accountable and learn from mistakes made, the department should benchmark its individual program and overall performance statistics for cases that go before the board and continually monitor these statistics.

To improve the quality and consistency of its cases for all types of disciplinary actions, the department should:

- Standardize, as much as possible, adverse-action and investigative processes, forms, reports, and file checklists for the three types of cases.
- Continue its efforts to implement a disciplinary matrix and ensure the wardens are held accountable for their penalty decisions by requiring them to document their reasons for any deviations from the prescribed penalty range.

To ensure supervisory issues or policy violations contained in category III reports are not missed, the Office of Civil Rights should consider sending all unsustained cases to the warden for review.

To ensure it completes category I investigations in a timely manner, the department should consider conducting a workload study to determine the number of full-time investigators each institution may need and whether existing resources can be allocated for this purpose.

To allow it to provide feedback and training to the Investigative Services Units, the department should ensure that it monitors and enforces its requirement for its OIS to review all category I investigations.

To improve the quality and consistency of its adverse-action investigations, the department should do the following:

- Continue its efforts to implement a department-wide vertical advocacy model to allow for greater attorney involvement in adverse-action cases, including EEO cases.
- Consolidate policy and procedure development and monitoring for all types of adverse-action investigations under one branch and continue its efforts to update its employment-related policies and procedures.

To resolve protracted disputes with and between employees, the department should implement its own or use an outside mediation program, such as the one offered by the board, and make the program known to and available to all programs and institutions.

To ensure that it is settling adverse-action cases as often and as appropriately as possible, the department should follow its existing policy or design and implement a comprehensive new settlement policy, ensure all pertinent employees are aware of the policy, and monitor compliance at the headquarters level. ■

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# CHAPTER 2

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## ***The California Department of Corrections Can Do More to Improve Its Monitoring of Cases and Training of Employees***

### CHAPTER SUMMARY

**M**ore than three years after an audit first identified problems, the California Department of Corrections (department) is making an effort to improve its ability to track and monitor employment-related actions and outcomes. However, its new systems will take time to implement and will only be useful if the department improves its efforts to ensure that the data input is reliable and that the data is analyzed and acted upon. Moreover, although it is taking steps to ensure that employees who oversee employment-related actions are adequately qualified and trained, the department can still do more.

To monitor and oversee employee misconduct allegations and discipline caseloads in its prisons and other facilities, the department currently uses at least six electronic systems or databases at its headquarters and regional offices. Prison facilities use their own independent manual or electronic spreadsheets to track employment matters. This causes much duplication of effort and adds to the redundant information. More troubling, our review of the data contained in four of these systems found the information to be unreliable because the department fails to ensure timely and accurate updating. Additionally, none of the systems are comprehensive enough to allow management to adequately oversee the progress of employment-related actions. To remedy these issues, the department is currently installing two new data systems that should resolve most of these problems if they are implemented and used properly. However, full implementation will not occur until late 2005, based on the current schedule.

The department has also recently begun to require and provide job-specific training to its employee relations officers (EROs)—a key position for ensuring the success of disciplinary actions. However, it still can do more to provide adequate training for other key positions involved in the disciplinary process

to improve its ability to prepare solid adverse-action cases. Additionally, the department recently has taken steps that should help to improve the competency and tenure for EROs.

Finally, although it has made much progress recently, the department has been slow to address some previous audit findings and recommendations and has chosen not to address others. As a result, many earlier issues, such as the lack of adequate employee disciplinary monitoring systems, continue to linger.

### **THE DEPARTMENT’S ELECTRONIC DATABASES DO NOT ALLOW IT TO ADEQUATELY MONITOR EMPLOYEE MISCONDUCT ALLEGATIONS AND DISCIPLINE**

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*A primary database used to track compliance with statutory guidelines was missing the entire case for 24 of 127 cases we tested at six institutions.*

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Gaining an overall understanding of the department’s current or past employee disciplinary actions is severely hindered by a lack of cohesive or integrated electronic data systems. One must currently obtain data from six different computer databases—all of which track combinations of similar and entirely different information—to try to piece together a complete picture of the department’s actions. Further exacerbating this problem, the four primary systems we tested are incomplete and include erroneous data because the department does not keep the databases current. A primary database used to track compliance with statutory deadlines is missing important data, including all the information related to 24 of 127 cases we tested at six institutions.<sup>11</sup>

Partially as a result of its poor tracking systems and management’s inaction in using the data it does have, the department does very little to monitor the disciplinary actions it pursues. In response to these problems, it is implementing two new, integrated computer databases for disciplinary and legal matters to replace the six outmoded systems currently in place. Although the new systems, which include deadline reminders and management reporting capabilities, appear promising, the department will need to ensure that it updates and maintains the systems to realize the benefits.

### **The Department’s Computer Databases for Tracking Employee Misconduct Allegations and Discipline Cases Are Incomplete and Redundant**

The department currently relies on several computer databases to track its employee investigations, disciplinary actions served, and employment-related lawsuits. Because its electronic data

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<sup>11</sup> We did not test eight of the 135 cases because the department decided not to investigate them or they were initiated prior to the beginning date of our review.

### Terminology Used in the Disciplinary Process

**Discovery date**—The date a person authorized to initiate an investigation becomes aware of the misconduct and the statutory clock starts ticking.

**Adverse-action deadline**—The one-year statutory deadline for serving a notice of adverse action upon peace officers or three-year deadline for serving a notice of adverse action upon employees other than peace officers.

**Tolling**—A time during which the statutory deadline clock stops moving for reasons such as pending criminal investigations.

systems and databases we reviewed cannot provide a complete picture for the types of adverse actions they are designed to track, any attempts by staff to use the systems to obtain useful management reports is impractical. Further, because several of the systems require input of the same information and the information is not input consistently, the department has conflicting information in its various databases and loses valuable staff time to input redundant information.

As shown in Table 4 on the following page, the department uses six different primary databases at its headquarters and regional offices to track all types of employment matters, including category I and category II actions, equal employment opportunity (EEO) or category III cases, and legal matters.<sup>12</sup> Table 4 does not include the different electronic and manual spreadsheets used by the institutions. We reviewed four of these systems and found that they all are missing key information; thus, the department cannot use any of its systems to track the process from beginning to end for all cases statewide. For example, one of the two databases used by the Office of Civil Rights does not include information indicating one of the most important elements of a case—whether the allegation is sustained or not. Until August 2003, according to the chief of the personnel operations discipline and project development section, the database used by the Office of Personnel Management (personnel office) did not include the adverse-action service date—one of the more important dates, as it is used to determine whether the department is meeting the statutory deadline for imposing adverse action.

As another example, according to the project manager for the user group at the time of system development, the purpose of the employee misconduct investigation system (misconduct system) is to track a case from inception to either closure or service of an adverse action. Although the misconduct system has the ability to track all crucial dates such as the date of discovery of alleged actions and adverse action dates, the project manager told us it was not designed to generate reports to list the cases the department completed within mandated time frames. As a result, the database does not allow management to adequately monitor or oversee the progress of employment-related actions.

<sup>12</sup> Equal employment opportunity cases refer to cases of alleged discrimination, harassment, and retaliation.

TABLE 4

### The Department of Corrections Uses Numerous Computer Database Systems to Track Employee Misconduct Allegations and Discipline

Division/Office	Name of Database	Type of Database	Implementation Date	Examples of Main Fields	Institutional or Regional Access	Links to Other Systems	Supported/Maintained by Information Systems Division	Type of Cases Tracked
Institutions	Various	Various	Various	Case number, subject name, subject title, allegation.	No	No	No	All
Office of Personnel Management	Adverse Personnel Action Tracking System	Microsoft Access	1994	Primary charge, date of discovery, final penalty, adverse action effective date, investigation case number, date of Skelly, State Personnel Board decisions.	No	No	No	All
Office of Civil Rights	Discrimination Complaint Activity Tracking System	Paradox	Various: 1995 to February 2002	Complainant, respondent, complaint disposition/remedy, date closed.	No	No	Yes	Category III
Legal Affairs Division	Employee Misconduct Investigation System*	Paradox	2001	Complainant, respondent, investigator, date of discovery, date received, date intake completed, date investigation began, date report of finding completed, date closed.	Regions used to have access. Currently no access due to system crashes.	No	No	Category III
			May 2003	Investigation type, discovery date, incident date, adverse action service deadline, actual service date, closure date, administrative time-off date.	Regional offices have read-only access. Pelican Bay State Prison is the only institution that can enter data into it.	No	Yes	All
	Microsoft Access	Microsoft Access	July 2002	Date received, primary legal theory, defendant, plaintiff, house counsel, contract attorney, facts, outcome, date closed, fiscal data.	No	No	No	Legal matters
Office of Investigative Services	Office of Investigative Services Database	Microsoft Access	1999	Category, hiring authority, requestor, date of incident, date of discovery, complainant, subject and allegation, status.	Regional offices have access, but institutions do not.	No	No	Category II
	Case Management System <sup>†,‡</sup>	Structured Query Language	Starting April 2004	A client-server relational database. Standard features: request for investigation, case assignment, case activity, case reminder, subjects, allegations, witnesses, file location.	Yes (when fully installed)	Yes	Yes	Currently category II, eventually all
Legal Affairs Division	ProLaw <sup>‡</sup>	Integrated off-the-shelf matter management system	April to December 2004	An integrated software to support a law firm's practice management needs: case, client, docket and document management tools, plus time keeping, billing and accounting, dynamic court rules, and calendaring.	No		Currently by the State's Teale Data Center, later by the department's Information Services Division.	Legal matters

Source: Based on information provided by various staff at the Department of Corrections (department).

\* Office of Personnel Management, Office of Investigative Services, and Office of Civil Rights also have access to this system.

† Legal Affairs Division, Office of Civil Rights, Office of Personnel Management, regional offices of Investigative Services, and all institutions will also implement this system.

‡ One of the two new systems the department is currently implementing. They will eventually eliminate the need for all other systems and therefore replace them.

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*For the cases we were able to match to the employee misconduct information system from three of the department's databases, between 19 percent and 68 percent contained discovery dates that did not agree.*

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In addition to being incomplete, some of the information maintained in the various department databases is redundant. For example, because the misconduct system does not share information with the databases used in other offices such as the Office of Civil Rights and the Office of Investigative Services (OIS), staff at these offices enter data that already exist in their own systems into the misconduct system. This creates duplicate work, which increases the chance for input errors, and can result in inconsistent data among the various systems. As we discuss in more detail later in the report, for the cases we were able to match to the misconduct system from the other three databases, between 19 percent and 68 percent contained discovery dates that did not agree. Moreover, each of the institutions use their own independently developed tracking mechanisms that include much of the same information found in each of the systems used by headquarters and the regional offices. As a result, department staff waste valuable time inputting redundant information into the various systems.

#### **Because the Department Does Not Ensure Timely and Accurate Updating, Its Computer Databases Are Unreliable**

Our review of four of the department's employment-related databases showed that they are missing important information and contain inaccurate data. Because the systems are so unreliable, we were unable to obtain a complete or accurate picture of the department's employment-related actions, and any attempt by the department to use the systems to obtain management information would be faulty at best. In addition, because of these data problems, the department cannot ensure it is effectively monitoring statutory deadlines for adverse actions.

As shown in Table 5 on the following page, we found inaccurate and missing information in the department's misconduct system. To track timelines, every case in the misconduct system should have a discovery date; however, we found that over 200 cases (more than 4 percent) are missing discovery dates. In fact, 180 of these cases had a case-closed date or other information indicating that the case had been in the system for more than one month, an adequate amount of time to determine the discovery date for tracking purposes. Without a discovery date, the department cannot monitor statutory timeline requirements or ensure it is meeting those requirements.

**TABLE 5**

**The Department of Corrections' Computer Databases Are Unreliable**

Database Name	Results of Data Reliability Testing			Fiscal Year 2003–04 Results of Comparisons of the APA, OCR, and OIS Databases to the EMIS Database		
	Percent of Sample Items Missing From Database	Percent of Sample Items Present With Blank or Incorrect Dates of Discovery	Other Fields Tested	Percent of Sample Item Records With Blank or Incorrect Values in Other Fields	Percent of Records in Database With No Matching Case Number in EMIS	Percent of Records With Matching Records in EMIS That Have Inconsistent or Invalid Discovery Dates
EMIS*	19%	20%	Adverse action service date and closure date	25%	—	—
APA†	1	29	Investigation number, penalty served	24	27%	19%
OCR‡	14	52	Received and closure dates	25	85	68
OIS§	2	21	Closure date	7	19	26

Sources: Data from the four databases provided by various Department of Corrections' staff.

\* Employee Misconduct Investigation System.

† Adverse Personnel Action tracking system.

‡ Office of Civil Rights' database.

§ Office of Investigative Services' database.

Of greater concern, 24 of the 127 (19 percent) cases we reviewed at six institutions are missing entirely from the system. In addition, 20 percent had incorrect or blank discovery dates and nearly 25 percent had incorrect or blank adverse-action service or closure dates. In fact, only 60 percent of the cases in this system are accurate for the key fields we reviewed. The assistant chief counsel of the Legal Affairs Division (legal affairs) told us that these data problems occur because the institutions and other divisions do not always provide needed information. However, without complete and reliable information, the department cannot ensure it is meeting its statutory timeline requirements. Conversely, as discussed in Chapter 1, EROs told us they frequently waste time responding to headquarters requests for information already provided.

Our review of the adverse personnel action database (adverse action database) maintained by the personnel office revealed similar issues. According to the chief of the personnel operations discipline and project development section (personnel chief), this system is designed to track all adverse actions against department employees to identify the need for increased disciplinary action and to provide comparable data that staff can use to try and achieve consistency in department-wide disciplinary actions, among other reasons. Although more complete than the misconduct system, the adverse action

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*The department's adverse personnel action database is also inaccurate as it contains incorrect or blank misconduct discovery dates nearly 30 percent of the time.*

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database is also inaccurate as it contains incorrect or blank discovery dates nearly 30 percent of the time and almost 25 percent of the cases have incorrect or blank investigation numbers or penalties served. The personnel chief also told us that these problems are the result of the institutions and other divisions not sending timely information. The lack of timely information hinders the department's ability to effectively use the employee misconduct database.

As previously shown in Table 4 on page 40, the Office of Civil Rights currently uses two different systems to track allegations and investigations of alleged EEO violations such as discrimination, harassment, and retaliation. Because these cases have the potential to be costly to the department, effective monitoring is important. The Office of Civil Rights uses two systems because it is the product of a merger of two units that each had their own systems. Unfortunately, we had similar issues with regard to the accuracy of these systems as well. For instance, over half the cases in the Office of Civil Rights database have incorrect or blank discovery dates, and nearly one-quarter of them contain inaccurate or blank dates in the fields indicating that the Office of Civil Rights received and closed them.

Disturbingly, the Office of Civil Rights database is currently only available on one computer—making its usefulness even more limited. As an example of the repercussions that can occur when cases are not effectively monitored, we learned from the assistant director of the Office of Civil Rights, that 77 EEO case files were kept in one person's office and were not processed for between one and 21 months, until after the person retired. The assistant director of the Office of Civil Rights, who joined the department in October 2003, indicated that she was aware of the problems before our audit and has taken steps to compile and update the missing information and to find a suitable replacement system.

Data quality issues exist that transcend the limitations of the current systems and are likely contributors to the lack of data integrity. As indicated earlier in Table 4, systems lack common development and maintenance; each unit is generally responsible for maintaining its own data systems. Furthermore, since data entry, data quality, and reporting are not reviewed, consistency among the systems suffers. The lack of accurate and complete data hampers the department's ability to derive important management information such as

case aging, case clearance rates, and prosecution rates, which could be derived by combining the information from the department's current systems.

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*Because the department is not effectively monitoring cases, it did not process 77 case files that were kept in one person's office between one and 21 months, until after the person retired.*

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Incompleteness in these data systems is mirrored in the department's paper case files. We had to visit three locations—the personnel office, the institutions, and the regional OIS—to obtain complete case file information. Within and among these locations, we found that paper files lacked standardization and contained varying types of information. For example, the hard-copy files maintained by the personnel office—the source documents for entering information into the adverse action database—were sometimes missing and incomplete. The personnel chief told us that distributing a checklist to the appropriate individuals may help correct this situation. Altogether, these issues not only hinder the department's ability to monitor and manage its employment-related actions, they also decrease the transparency of the department's actions and obstruct efforts at performing certain types of analyses such as case aging.

### **The Department Is Implementing Two New Computer Databases to Monitor Employee Misconduct Allegations and Discipline Cases**

To remedy the numerous problems with its current array of electronic data systems, the department is replacing existing systems with two new computer databases—one for the entire disciplinary process and one for legal matters. The first is a case management system that will allow real-time documentation of case activities; the second, according to the department's feasibility study, is ProLaw software capable of managing legal affairs' information needs. These two new systems should allow managers to generate reports to assist them in planning and making decisions. However, given the poor job the department has done with the current systems, it needs to ensure that staff involved with the new systems receive proper training, enter data accurately and consistently, and update the systems in a timely manner. Because full implementation for both systems will not occur until late 2005, the department has time to be thorough in its approach.

The notion that the department is in need of an improved computer database for its employment-related investigations is not new. In fact, the Office of the Inspector General (inspector general) in its 2001 report and the federal court special master expressed the need for a meaningful new case management

### Benefits of the Department's New Case Management System

- Real-time documentation of case activities.
- Generation of automatic notices and reminders to ensure compliance with statutory and other timelines.
- Ability to isolate and identify specific case information, such as misconduct trends and at-risk employees.
- Capability of ongoing monitoring of high-profile cases and cases where an employee is on paid administrative leave.
- Recording of hours spent on each case.
- Recording of reviewer approvals and case dispositions.
- Generation of management reports on caseloads, case clearance rates, prosecution rates, and case aging.

Source: California Department of Corrections, Office of Investigative Services, draft charter and strategic plan for 2004, dated March 2004.

system.<sup>13</sup> The department completed initial development and began implementing the new case management system in its OIS in April 2004. Because the system is expandable and supported by one of the State's main data centers, according to its data processing manager, the department also plans to install this system in its Office of Civil Rights, legal affairs, and the personnel office, in addition to all institutions and other areas within the department. The system is an expanded version of the one currently in use by the inspector general. As shown in the text box, the system includes several benefits for the department and, once implemented department-wide, should eliminate the need for redundant data input and allow tracking of a case through the entire process.

Additionally, legal affairs is installing a new system—ProLaw—for use by its attorneys. The ProLaw system will assist the department in overcoming issues such as a lack of data consistency, integrity, and quality control that occur because each unit within legal affairs currently has its own, independent, electronic tracking system. According to staff counsel, ProLaw allows for storing and assembling case

information and documents electronically and the generation of more meaningful reports to allow management to be more proactive in identifying trends and patterns, thus potentially lowering legal costs through early intervention in appropriate cases. Finally, ProLaw will also allow legal affairs to implement a recommendation we made in November 2001—to track its attorney time by case—so that it can better determine the actual cost by case.

### THE DEPARTMENT CAN STILL DO MORE TO TRAIN EMPLOYEES WHO DEAL WITH MISCONDUCT ALLEGATIONS AND DISCIPLINE

Although the department has recently begun to provide job-specific training to its EROs, a key position for ensuring the success of disciplinary actions, it can do more to provide

<sup>13</sup> The special master is the court-appointed individual responsible for developing a plan to remedy the conditions at Pelican Bay State Prison that were deemed unconstitutional as the result of a lawsuit alleging misconduct on the part of correctional officers at that prison. The remedial plan includes a series of steps developed by the department to address these conditions.

adequate training for other key positions involved in the disciplinary process. A commitment to ensuring the skill level of the employees who administer the discipline process is important for the department to improve its ability to assemble and prepare the strongest adverse-action case possible.

A March 2002 report by the inspector general noted that the department had established neither minimum background requirements nor regular mandatory training for its EROs, which contributes to its difficulty in meeting statutory deadlines and impairs its ability to assemble and present the strongest adverse-action cases possible. In response to the inspector general's concerns, the department developed and provided its first ERO training curriculum in May 2004. It designed this new course to meet the specific training requirements of the ERO position. Additionally, in June 2004 the department's deputy directors over legal affairs and the institutions division sent a notice to all wardens, regional administrators, and EROs that this training is mandatory for EROs. Because it only recently implemented this new course, we could not determine whether the program will accomplish its purpose. Five other key positions play various roles in the department's disciplinary process; therefore, we also reviewed the job-specific training requirements for them. Table 6 summarizes our review of all six positions.

It is important to ensure that the employees who administer the discipline process have the necessary training to do so. Training is even more important for the employees in five of these positions—the EROs, the Office of Civil Rights investigators, the EEO coordinators, the investigative services staff, and the litigation coordinators—because the positions do not have specific state classifications, which means these employees did not need to meet minimum qualification requirements specific to these five positions. The department appears to be moving in the right direction and appropriately responding to the inspector general's report by developing, implementing, and requiring a job-specific training course for its EROs. Additionally, it has developed job-specific training courses for the litigation and EEO coordinators, as well as its Office of Civil Rights investigators, but it should consider establishing mandatory job-specific training requirements for these three positions as it has already done for its EROs, investigative services staff, and special agents. In recognition of the need to have training requirements, the

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***The department should consider establishing mandatory job-specific training requirements for other key positions involved in the employee disciplinary process.***

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**TABLE 6**

**Three Key Positions Lack Mandatory Training Requirements**

<b>Positions <u>With</u> Job-Specific Mandated Training</b>			
<b>Positions With Job-Specific Mandated Training</b>	<b>General Description of Duties</b>	<b>Description of Job-Related Training</b>	<b>Job-Related Training Received</b>
Employee relations officer (ERO)	Analyzes investigations of employee misconduct, prepares adverse actions, and often prepares for and represents the Department of Corrections (department) at State Personnel Board (board) hearings.	The department recently developed a 40-hour advocacy curriculum course designed to train EROs to represent the interests of the department at board hearings on employee discipline. As of June 2004, the department developed, implemented, and now requires all EROs to attend this course.	The six EROs we reviewed either attended or are scheduled to attend the new ERO training.
Investigative Services Unit staff	Oversees investigations of inmate misconduct and category I investigations of employee misconduct.	The department's operations manual requires that staff assigned to category I and category II investigations complete an investigator training course. The department sends staff to the Sacramento Regional Criminal Justice Training Center to attend its 40-hour basic internal affairs investigation course.	All but one of 11 staff we reviewed attended the internal affairs investigation course.
Office of Investigative Services investigator (special agent)	Conducts more sensitive and serious investigations of alleged employee misconduct.	The department's operations manual requires that staff assigned to category I and category II investigations complete an investigator training course. The department sends staff to the Sacramento Regional Criminal Justice Training Center to attend its 40-hour basic internal affairs investigation course. Additionally, special agents are required to attend 16 hours of advanced investigator training annually.	Although we could not completely verify his assertion, the assistant director of the Office of Investigative Services told us that all his staff completed the 40-hour training. All but one of 23 special agents appear to have taken the 16 hours of advanced training.
<b>Positions <u>Without</u> Job-Specific Mandated Training</b>			
<b>Positions Without Job-Specific Mandated Training</b>	<b>General Description of Duties</b>	<b>Description of Job-Related Training</b>	<b>Job-Related Training Received</b>
Office of Civil Rights investigator	Collects and discovers factual information concerning claims of discrimination.	The department provided an investigator training course in June 2004 specifically designed for its Office of Civil Rights investigators. However, as of August 6, 2004, according to the assistant director for the Office of Civil Rights, the department has not established any job-specific mandatory training requirements for this position.	All but three of 21 Office of Civil Rights investigators we reviewed attended the new training course in June 2004. Additionally, 17 have participated in the internal affairs investigation course or other investigative or equal employment opportunity training.
Equal employment opportunity (EEO) coordinator	Assists supervisors and managers in determining how to handle EEO complaints.	The department provided a coordinator/counselor training course in both 2003 and 2004. However, according to the assistant deputy director of the Office of Departmental Training, as of August 10, 2004, the department has not established any statewide mandatory training requirements specific to this position.	Five of the six coordinators we reviewed received EEO coordinator training. The one remaining is scheduled to take the course in September 2004.
Litigation coordinator	Works with the Office of the Attorney General and the Legal Affairs Division to assist the department in legal matters.	The department provided a litigation coordinator workshop in both 2003 and 2004. However, according to the assistant deputy director of the Office of Departmental Training, as of August 10, 2004, the department has not established any statewide mandatory training requirements for this position.	We were unable to determine from the training records whether six litigation coordinators we reviewed attended the litigation workshops. However, five of them attended as few as four hours and as many as 19.5 hours of total training during 2003 and 2004 identified as litigation training on their training records.

Sources: Department training records generally from January 2002 to present and interviews with various department staff.

Office of Civil Rights completed a proposal in September 2004 that would make training mandatory for all new investigators and require annual training for all investigators.

### **THE DEPARTMENT COULD SAVE THE STATE MONEY BY FILLING ITS ERO POSITIONS WITH EMPLOYEES WHO ARE NOT PEACE OFFICERS**

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*Staffing the employee relations officer position with staff other than peace officers could save the State money in salaries, retirement, and reduced overtime, and avoid the inappropriate use of custody personnel in administrative positions.*

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The department has taken steps recently that should help to improve the competency and tenure for those staff filling the ERO position; however, it should consider the success rates of the varying levels of staff in this position to determine if one level is better than others. Using staff other than peace officers could reduce salary, overtime, and retirement costs and help relieve the possible shortage of correctional officers to work in areas for which they are specifically trained.

In a March 2002 report, the inspector general recommended that the department convert its ERO position from a temporary training assignment to a permanent position. The inspector general reported that the ERO position was often designated as a training and development position with only a two-year term. The report also noted that because of the lack of experience and training requirements, most EROs were faced with a need to learn on the job, finally gaining proficiency just as their term ended and a new person moved into the assignment. In response, in June 2004 the department obtained approval from the Department of Personnel Administration to fill the ERO position with correctional lieutenants on a four-year rotation. Although we believe this is an improvement, the department needs to ensure that any employee who fills this position is properly trained and prepared. In fact, the Department of Personnel Administration approval requires that the department send EROs to training courses in the preparation of formal personnel actions and the State Personnel Board hearing process. The department's new ERO training curriculum, discussed above, will help to ensure that this requirement is met.

Although we agree that using peace officers, such as correctional lieutenants may have merit due to their managerial experiences, we believe that staff other than peace officers may also be a viable alternative. However, we found that the department has not always vigorously pursued filling the position with employees other than peace officers. According to department staff and job announcements, only three of the six institutions we visited even advertised their ERO vacancies. Of the three

that did advertise, only one did so outside of the institution. Ultimately, one of the three institutions was able to recruit a labor relations analyst. According to the personnel chief, as of December 2003, three of the six institutions budget for their ERO position at the labor relations analyst level, but only two fill it at this level; the other four fill the position with peace officers.

Even though we found a lack of recruitment effort, the personnel chief told us that this is probably due to the prior lack of success in recruiting for staff other than peace officers for the ERO positions. Given that the department provides job-specific mandatory training to EROs whether they are correctional lieutenants or staff other than peace officers, we believe it should consider filling ERO positions with qualified staff other than peace officers to save money and to avoid the inappropriate use of custody personnel in administrative positions. For example, staffing the ERO position at the 32 correctional institutions with staff services manager I employees rather than correctional lieutenants would save \$226,000 annually, assuming entry-level status, and \$290,000 annually at top salaries.

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***As an example, filling its employee relations officer positions at the 32 institutions with a staff services manager I rather than a correctional lieutenant would save \$290,000 annually at top salaries and allow the department to redirect the correctional lieutenants to help alleviate the more than \$9.8 million it paid in overtime for eight months.***

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Additionally, as peace officers, correctional lieutenants have a higher retirement benefit formula than staff services manager I's do. Therefore, the State would save more from reduced contributions to the California Public Employees' Retirement System. Furthermore, from July 2003 through March 2004, the department paid correctional lieutenants at all its institutions more than \$9.8 million in overtime, indicating a potential staff shortage at this level. The State could achieve additional savings by redirecting the correctional lieutenants currently in the ERO position, thereby potentially reducing overtime within the institutions.

A personnel program manager at the Department of Personnel Administration also has concerns regarding use of the correctional lieutenant classification to fill the ERO position. For example, the correctional lieutenant's job specifications do not require previous experience or training in the areas of employee discipline that would prepare an individual to be a successful ERO. These concerns led the Department of Personnel Administration to require that each of the incumbents take training courses in the preparation of formal personnel actions and the State Personnel Board hearing process and that the department provide statistical data in two years to demonstrate the success rate of adverse actions and rejection on probation for which a correctional lieutenant is the ERO. However, given

the savings that can be achieved, the department should also track the success rates for the staff other than peace officers to determine if significant differences exist.

### **THE DEPARTMENT HAS BEEN SLOW TO IMPLEMENT SOME CHANGES TO IMPROVE ITS EMPLOYEE MISCONDUCT ALLEGATION AND DISCIPLINE PROCESS**

Despite several prior audits that identified weaknesses in the department's employee disciplinary practices and that made recommendations for improvements, the department has at times been slow in taking action or has not taken any action at all. This has likely contributed to the ongoing problems we describe throughout this report.

Table 7 summarizes the results of our review of the recommendations from four audits and the department's remedial plan, and Appendix B provides the details. As Table 7 indicates, the inspector general conducted two audits (2001 and 2002) with numerous recommendations that directly related to the department's employee disciplinary practices, and we conducted two audits (2000 and 2001), which included one recommendation in each audit related to employment matters. Additionally, in response to a report dated January 2004 by the federal court special master, the department prepared a comprehensive remedial plan with implementation timelines, largely addressing its investigation and employee disciplinary processes. Combined, we identified and reviewed the department's progress in addressing 121 audit-recommended and department-proposed corrective actions that relate to changes needed to improve its employment practices. It is important to note that 41 of the steps in the remedial plan (included in the 121 reviewed) were not yet due by the end of our fieldwork.

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*The seven corrective actions the department has yet to implement from three years ago should not require years to implement.*

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Table 7 also shows that the department has yet to implement seven and chose not to implement six of the recommendations designed to bring about change to its employment practices. All seven it has not yet implemented were recommended three years ago; none of these corrective actions should require years to implement. For example, the inspector general in its October 2001 report recommended that OIS perform periodic audits at each of the regional offices to ensure compliance with the department's policies and procedures. According to the department's remedial plan, it does not plan any action on this until December 2004, more than three years later. In another example, the inspector general also recommended

**TABLE 7**

**The Department of Corrections Has Not Yet Implemented All Corrective Actions**

	January 2000, Bureau of State Audits—California Department of Corrections: Poor Management Practices Have Resulted in Excessive Personnel Costs	October 2001, Office of the Inspector General—Special Review of the Office of Investigative Services	November 2001, Bureau of State Audits—California Department of Corrections: Its Fiscal Practices and Internal Controls Are Inadequate to Ensure Fiscal Responsibility	March 2002, Office of the Inspector General—Review of the Employee Disciplinary Process	2004 Special Master's Remedial Plan*	Totals
Total number of corrective actions	15	33	14	6	91	159
Total number of corrective actions reviewed†	1	22	1	6	91	121
Number of corrective actions implemented	0	10	0	3	28	41
Number of corrective actions partially implemented	0	2	1	3	3	9
Number of corrective actions not implemented	1	6	0	0	0	7
Chose not to implement corrective action	0	4	0	0	2	6
Duplicate to previous corrective action	NA	NA	NA	NA	17	17
Corrective action not due yet‡	NA	NA	NA	NA	41	41

Sources: Various departmental records and staff, the remedial plan, and prior audit reports.

\* The remedial plan is a series of steps developed by the department to address conditions at Pelican Bay that were deemed unconstitutional as the result of a lawsuit alleging misconduct on the part of correctional officers at that prison.

† We only reviewed those recommendations related to the current audit.

‡ The due date per the remedial plan has not yet occurred.

NA = Not applicable.

in its October 2001 report that OIS establish a managerial review checklist to ensure uniformity in the maintenance and documentation of investigative files. However, almost three years later, according to a special agent in OIS, the department has yet to implement this recommendation. Although staff provided a few reasons for not taking action, given the years elapsed since the original recommendations, the responses are inadequate.

We also gave the department credit for partially implementing six recommendations from three of the prior audits. For example, we recommended in our November 2001 report that the department fully implement its legal affairs cost-cutting strategies and fix or replace its case-tracking database. According to the department's deputy director of legal affairs, the department implemented most of its cost-cutting strategies. However, according to its implementation schedule, the department is in the process of finally replacing its case-tracking systems with ProLaw, but not until late 2004, more than three years later.

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***One reason for delays in implementing corrective actions is that until May 2004, the department did not have a centralized division or unit with responsibility for ensuring that the department addresses external audit recommendations.***

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According to its deputy director of legal affairs, the department's efforts to implement corrective actions related to the inspector general reports were delayed, in part, because of hearings that resulted from disciplinary problems at Pelican Bay State Prison. Another reason for implementation delays is that until May 2004, the department did not have a centralized division or unit with responsibility for ensuring that it addresses external audit recommendations. Instead, each individual office and division maintained responsibility for responding to applicable audit recommendations and tracking their corrective action status. In May 2004, the department created a new division and charged it with monitoring due dates and alerting executive management when deadlines for responding to recommendations approach.

In addition, according to the assistant secretary for administration and oversight for the Youth and Adult Correctional Agency, it recently began conducting bi-weekly project meetings with department staff in an effort to discuss the status of key projects or program issues, including some that have been the subject of external audits. Centralizing the responsibility for tracking corrective actions, along with additional monitoring, should help ensure that the department implements them in a timely fashion.

## RECOMMENDATIONS

To ensure that it can appropriately and accurately monitor and track employment-related actions and outcomes, the department should do the following:

- Complete its implementation of the new computer databases, eliminate the redundant systems, and consolidate monitoring of these systems within the information systems division.
- Ensure that staff involved in maintaining the new computer databases receive proper training, enter data accurately and consistently, and appropriately update the systems in a timely manner.

To ensure that it provides adequate training for key positions involved in the disciplinary process, the department should consider establishing job-specific mandatory training requirements for its litigation and equal employment opportunity coordinators. Further, the Office of Civil Rights should continue its efforts to implement mandatory training for its investigators and ensure its policy is followed, as it already did for its EROs, investigative services staff, and special agents.

To determine the most cost-effective job classification to fill its ERO position, the department should track the success rates of all its EROs, including staff other than peace officers.

To promptly address all current and future audit findings and recommendations, the department should ensure that its newly created division charged with tracking audit recommendations and corrective action is proactive in doing so.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE  
State Auditor

Date: October 19, 2004

Staff: Denise L. Vose, CPA, Audit Principal  
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Mandi Gallardo  
Suzi Ishikawa  
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Loretta Wright

# APPENDIX A

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## ***Legal Expenses for Fiscal Years 2001–02 Through 2003–04***

**A**s shown in the following tables, legal expenses have remained relatively stable during the past three fiscal years. Table A.1 on the following page presents the department's legal expenses; Tables A.2 and A.3 on pages 57 and 58 focus on legal expenses related to employment matters, primarily expenses of the Employment Law Unit and settlements and judgments for each institution.

TABLE A.1

**The Department of Corrections' Legal Expenses For  
Fiscal Years 2001–02 Through 2003–04**

	Fiscal Year		
	2001–02	2002–03	2003–04
<b>Personal Services</b>			
Salaries and wages	\$ 3,851,864	\$ 3,813,104	\$ 4,465,746
Temporary help	339,822	156,787	15,083
Overtime	85,679	64,354	27,637
Benefits	547,350	568,498	664,876
Retirement	22,688	125,200	515,933
Worker's compensation	24,641	32,197	24,239
<b>Total Personal Services</b>	<b>4,872,044</b>	<b>4,760,140</b>	<b>5,713,514</b>
<b>Operating Expenses and Equipment</b>			
General expense	135,803	188,537	121,031
Printing	6,168	6,585	11,802
Communications	2,282	4,955	5,683
Postage	5,967	3,077	3,362
Travel inside state	194,110	174,676	157,267
Travel outside state	2,788	4,906	—
Training	12,165	16,350	27,126
Consulting and professional services	12,385,997	8,438,683	11,061,660
Consolidated data center	—	—	16,185
Data processing	8,017	13,281	21,554
Facilities operations	135,443	183	2,319
Equipment	20,328	—	65,628
Other items of expense	350	63	89
<b>Total Operating Expenses and Equipment</b>	<b>12,909,418</b>	<b>8,851,296</b>	<b>11,493,706</b>
Special items of expense*	11,645,948	15,384,360	12,759,634
<b>Grand Totals</b>	<b>\$29,427,410</b>	<b>\$28,995,796</b>	<b>\$29,966,854</b>

Source: Expenditure reports from the Department of Corrections for fiscal years 2001–02 through 2003–04.

Note: Figures include expenses and encumbrances.

\* Special items of expense include settlements and judgment payments, debt service taxes, and assessments.

**TABLE A.2**

**Major Legal Expenses Related to Employment Misconduct Allegations and Discipline**

	Fiscal Year					
	2001-02		2002-03		2003-04	
	Expenses	Percentage	Expenses	Percentage	Expenses	Percentage
Employment Law Unit personal services	\$ 1,798,911	16%	\$1,445,387	15%	\$ 1,624,106	15%
<b>Consulting and Professional Services</b>						
Department of Justice attorney fees	4,997,754	—	3,915,954	—	5,255,514	—
Department of Personnel Administration attorney fees	199,793	—	243,266	—	320,367	—
State Personnel Board attorney fees	1,353,500	—	1,326,832	—	1,421,102	—
Consulting contracts	1,004,323	—	389,446	—	315,969	—
<b>Total Consulting and Professional Services</b>	<b>7,555,370</b>	<b>68</b>	<b>5,875,498</b>	<b>60</b>	<b>7,312,952</b>	<b>68</b>
Settlements and judgments	1,842,721	16	2,418,482	25	1,805,912	17
<b>Employment Law Unit Totals</b>	<b>\$11,197,002</b>	<b>100%</b>	<b>\$9,739,367</b>	<b>100%</b>	<b>\$10,742,970</b>	<b>100%</b>

Source: Payment information from the Legal Affairs Division, Department of Corrections.

Note: Operating expenses and equipment for the Employment Law Unit are not included in this table.

**TABLE A.3**

**Legal Settlement and Judgment Expenses for Each Institution**

Institution/Department Unit	Fiscal Year			Totals
	2001-02	2002-03	2003-04	
Avenal State Prison	\$ 95,000	—	—	\$ 95,000
California Correctional Center	622,129	\$ 9,536	—	631,665
Central California Women’s Facility	53,000	1,500,000	—	1,553,000
Headquarters	106,499	—	—	106,499
California Institution for Men	—	—	\$ 40,000	40,000
California Men’s Colony	18,500	18,000	—	36,500
California Medical Facility	91,500	—	—	91,500
Correctional Training Facility	—	216,076	—	216,076
Deuel Vocational Institution	—	75,000	—	75,000
Folsom State Prison	—	75,000	—	75,000
High Desert State Prison	5,000	—	102,000	107,000
High Desert State Prison/California Correctional Center	400,000	—	—	400,000
Ironwood State Prison	20,000	—	—	20,000
Ironwood State Prison/Chuckawalla Valley State Prison	—	—	380,254	380,254
California State Prison, Los Angeles County	15,000	347,240	995,000	1,357,240
North Kern State Prison	93,000	—	—	93,000
Pelican Bay State Prison	66,000	—	6,158	72,158
Parole Region 3	—	—	2,500	2,500
Parole Region 4	35,000	10,000	—	45,000
Richard J. Donovan Correctional Facility at Rock Mountain	107,343	—	47,500	154,843
California State Prison, Sacramento	—	40,993	150,000	190,993
Sierra Conservation Center	—	75,000	—	75,000
California State Prison, Solano	—	35,599	65,000	100,599
California State Prison, San Quentin	24,750	—	—	24,750
Salinas Valley State Prison	—	14,000	—	14,000
Valley State Prison for Women	—	—	17,500	17,500
Wasco State Prison	90,000	—	—	90,000
Parole and Community Services Division	—	2,038	—	2,038
<b>Totals</b>	<b>\$1,842,721</b>	<b>\$2,418,482</b>	<b>\$1,805,912</b>	<b>\$6,067,115</b>

Source: Payment information from the Legal Affairs Division, Department of Corrections.

# APPENDIX B

## **Status of Employment-Related Audit Recommendations and Corrective Actions From 2000 to Present**

Combined, two prior audit reports by the Bureau of State Audits, two prior audit reports by the Office of the Inspector General, and the Department of Corrections' (department's) remedial plan contain 121 recommendations and corrective actions related to employee discipline at the department. As shown in Table 7 on page 51 of this report, the department has implemented 41, has partially implemented nine, has not implemented seven, and chose not to implement six. Furthermore, 17 corrective actions in the remedial plan duplicate prior corrective actions recommended and 41 of the remedial plan items were not due by the end of our fieldwork on July 31, 2004. Table B.1 provides the detailed results of our testing and the support for Table 7.

**TABLE B.1**

<b>Status of Action Items</b>		
<b>No.</b>	<b>Action Items</b>	<b>Department's Progress</b>
<b>Office of Inspector General, October 2001, Special Review of the Office of Investigative Services: California Department of Corrections</b>		
1	The department should reassess the mission and responsibilities of its Office of Investigative Services (OIS) and allocate sufficient resources to allow it to meet its mandate.	<i>Implemented.</i> OIS received budget authority in fiscal year 2004–05 to hire an additional seven special agents and five supporting positions. In addition, the department created two new units within OIS: the Administrative Services Unit and the Special Investigations Unit.
2	OIS should review its organizational structure and administrative processes to ensure standardization in the operation of the regional offices. As part of the process, OIS should develop a formalized system for prioritizing cases.	<i>Partial corrective action taken.</i> The department has created two new units within OIS: the Administrative Services Unit and the Special Investigations Unit. However, there is no case prioritization system.
3	The department should review and modify the OIS case-tracking system to ensure that it fully meets management information needs and department requirements.	<i>Implemented.</i> As of July 1, 2004, the department has procured and implemented a new case management system within OIS.
4	The department should allow OIS to develop and manage its own training budget.	<i>Implemented.</i> OIS is managing its own training budget.
5	The department should allow OIS staff members to comply with the 40-hour training requirement on a calendar year or fiscal year basis instead of basing compliance on each staff member's performance appraisal period.	<i>Not implemented.</i> According to a special agent with OIS, it is developing a new training program with an expected completion date of January 2005.

*continued on next page*

No.	Action Items	Department's Progress
6	The department should establish minimum training requirements for each job classification to ensure that employees possess the minimum skills needed to perform assigned duties and to ensure comparability in the proficiency of staff members among the various offices.	<i>Implemented.</i> OIS has established minimum training requirements.
7	OIS should prepare an annual training plan that identifies and summarizes training needs by employee, office, and topical area.	<i>Not implemented.</i> According to the remedial plan, the new training program is not due until May 6, 2005. However, according to a special agent with OIS, the training program will be implemented by January 2005.
8	The department should establish a separate training database for OIS staff members and maintain the training database at OIS headquarters.	<i>Implemented.</i> OIS has a training database.
9	OIS should establish a managerial review checklist to ensure uniformity in the maintenance and documentation of investigative files. The checklist should be signed and dated by the senior special agent responsible for reviewing the case files.	<i>Not implemented.</i> According to a special agent with OIS, corrective action may not be taken.
10	The department should amend the operations manual to provide for centralized review and acceptance or rejection of investigation requests to ensure consistency.	<i>Not implemented.</i> According to the remedial plan, this is due August 16, 2005.
11	The department should adopt a policy and procedures for assigning priority for case acceptance or rejection.	<i>Not implemented.</i> According to the remedial plan, this is due March 30, 2005.
12	The department should provide refresher training for special agents in charge and senior special agents on the definitions of category I and category II misconduct.	<i>Chose not to implement.</i> According to the assistant director of OIS, the department chose not to implement this recommendation because the definition of what constitutes category I and category II misconduct is currently under review. The assistant director went on to say that the issue is not isolated to one of training but includes questions such as what is or is not an investigation.
13	The department should establish procedures to ensure that case rejection letters are issued within the prescribed 10-day time frame.	<i>Chose not to implement.</i> According to a special agent in OIS, the department chose not to implement this recommendation as the requirement is already in the operations manual.
14	The department should implement a process providing for independent review of rejection letters to ensure that the letters adequately explain why the case was rejected.	<i>Chose not to implement.</i> The department chose not to implement this recommendation due to a lack of resources.
15	OIS should perform an analysis of the workload and resources necessary to implement an effective tracking system, perform data analysis, and conduct audits of the category I investigations. OIS should also develop a work plan to identify the initial objectives and timelines for implementing a legitimate oversight process.	<i>Partial corrective action taken.</i> An initial analysis of workload has begun, and the new case management system will track category I cases.
16	If additional resources cannot be obtained, OIS should determine the best way to provide at least minimal oversight of category I investigations using existing resources.	<i>Implemented.</i> According to a special agent with OIS, this is done as resources are available.
17	The department should provide training to all staff on general evidence handling policies and procedures.	<i>Implemented.</i> The evidence officer and backup officer at the region in question, as a result of the audit, did receive on-the-job training and did travel to the other regional offices to ensure that evidence is processed in the same manner. In addition, both the evidence officer and backup officer obtained and reviewed the <i>Peace Officer Standards and Training Law Enforcement Property and Evidence Guidebook</i> . Finally, an internal evidence handling procedure was written and implemented.
18	The department should provide specialized training for evidence custodians and alternates.	<i>Implemented.</i> See previous entry.

No.	Action Items	Department's Progress
19	The department should make physical modifications, as necessary, to the regional evidence rooms to ensure that they meet all requirements.	<i>Chose not to implement.</i> The Southern Regional OIS pursued financing for an alarm for the evidence room, but department management denied financing due to budgetary considerations and an assessment that the existing alarm system for the building as a whole was sufficient. According to the special agent in charge at the Southern Regional OIS, unauthorized entry into the evidence room would set off several alarms and would require dismantling of several other locking devices.
20	The department should rekey evidence rooms to limit access to the evidence custodian, the alternate, and the regional special agent in charge.	<i>Implemented.</i> Only the evidence officer, the backup officer, and the special agent in charge have access to the evidence room.
21	The department should use bound evidence logs that provide space for all mandatory information.	<i>Implemented.</i> All evidence is now logged into a bound evidence book.
22	The department should perform periodic audits at each of the regions to ensure compliance with policies and procedures.	<i>Not implemented.</i> According to the remedial plan, the department will develop a self-audit plan by December 30, 2004.

**Office of the Inspector General, March 2002, Review of the Employee Disciplinary Process: California Department of Corrections**

23	The department should establish a centralized system to monitor and track the status of employee disciplinary cases. The system should also include an early warning mechanism for cases in danger of exceeding statutory time limits.	<i>Implemented.</i> This is part of the new case management system.
24	The department should issue clear guidelines defining what constitutes the date of discovery, which is authorized to initiate the investigation, and the date the department makes its decision to impose discipline.	<i>Partial corrective action taken.</i> The Legal Affairs Division (legal affairs) prepared a policy titled "Time Frames (Statutes of Limitations) for Investigative and Disciplinary Actions," which was submitted to the special master in early 2003.* According to the deputy director of legal affairs, the policy has been disseminated to department employees, but is not yet implemented.
25	The department should establish a formalized training program for employee relations officers (EROs) at the institutions and convert these positions from temporary training assignments to permanent positions.	<i>Implemented.</i> The department commenced implementation of the ERO advocacy curriculum in March 2004. The department also received Department of Personnel Administration approval to fill ERO positions with correctional lieutenants on a four-year rotational basis.
26	The department should establish formalized policies and procedures to expand the role and responsibility of the Employment Law Unit in the preparation of employee disciplinary actions. As part of that effort, the department should provide internet access to EROs, including a comprehensive e-mail system.	<i>Partial corrective action taken.</i> The department implemented a formalized vertical prosecution model at Pelican Bay State Prison on February 8, 2003. The department has received approval from the Department of Finance for the additional statewide legal personnel it needs to implement this model on a statewide basis. Of six institutions we reviewed, only one ERO was connected to the department's e-mail system. Three of the remaining EROs had outside e-mail addresses and two did not have e-mail access. The department has not established a timeline whereby all EROs will be connected to its network.
27	The department should evaluate its policies and procedures for evaluating and appealing cases.	<i>Implemented.</i> Unit policies regarding State Personnel Board hearing writs and appeals were issued to all Employment Law Unit attorneys on December 6, 2002.
28	The department should establish policies and procedures governing employee disciplinary action settlements and require that the necessary documentation be maintained for monitoring and evaluating the settlement process.	<i>Partial corrective action taken.</i> Even though an administrative bulletin detailing the new settlement procedures was issued on May 16, 2003, they have not been implemented or used.

\* The special master is the court-appointed individual responsible for developing a plan to remedy the conditions at Pelican Bay deemed unconstitutional as the result of a lawsuit alleging misconduct on the part of correctional officers at that prison.

*continued on next page*

No.	Action Items	Department's Progress
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**Bureau of State Audits, November 2001, California  
Department of Corrections: Its Fiscal Practices Are Inadequate  
to Ensure Fiscal Responsibility**

- |    |  |   |
|----|--|---|
| 29 | The department should fully implement legal affairs cost-cutting strategies, fix or replace its case-tracking database to provide a stable tracking system for all settlement and judgment costs, and consider the viability of tracking all internal and external attorney costs associated with each legal case. | <i>Partial corrective action taken.</i> According to a staff counsel in legal affairs, the department plans full implementation of ProLaw by the end of 2004. ProLaw will allow tracking of attorney time (costs) and settlement and judgment costs. The department has not fully implemented its 13-step strategy for mitigating legal expenses. |
|----|--|---|

**Bureau of State Audits, January 2000, California  
Department of Corrections: Poor Management Practices  
Have Resulted in Excessive Personnel Costs**

- |    |   |  |
|----|---|--|
| 30 | The department should take progressively aggressive disciplinary action against employees it believes use sick leave excessively. | <i>Not implemented.</i> According to the department's deputy director of legal affairs, after its policy was challenged, it has not implemented a revised sick leave policy. She also told us that as of August 2004, the department is working on a statewide procedure for sick leave. |
|----|---|--|

**Remedial Plan, February 2004**

**Plan for Addressing Code of Silence**

- |    |  |   |
|----|--|---|
| 31 | The department should arrange for an organizational/cultural assessment by outside entity.                             | <i>Not due.</i>   |
| 32 | The department should publish zero tolerance policy for employees.   | <i>Implemented.</i> A zero tolerance policy was published in February 2004.   |
| 33 | The department should revise code of ethics to show duty to report and cooperate.                                      | <i>Implemented.</i> A revised code of ethics was distributed in May 2004.   |
| 34 | The department should distribute code of ethics via departmental memorandum to wardens.                                | <i>Implemented.</i> A revised code of ethics was distributed in May 2004.   |
| 35 | Department should address duty and discipline for failure-to-report misconduct (via disciplinary matrix).              | <i>Not due.</i>   |
| 36 | Department should address prohibition of retaliation against employees reporting misconduct (via disciplinary matrix). | <i>Not due.</i>   |
| 37 | The department should circulate a special message regarding the code of silence from its agency secretary to wardens.  | <i>Implemented.</i> A special message regarding the code of silence was delivered at a meeting on February 18, 2004.  |
| 38 | The department should arrange for a special video message from its agency secretary to academy cadets.                 | <i>Implemented.</i> According to the assistant director of the Office of Departmental Training, in the absence of a video message, the secretary personally addressed the last class at the academy. A video message was subsequently created but is currently being revised. |
| 39 | The department should develop an ethics course for each institution.   | <i>Not due.</i>   |
| 40 | The department should publish employee duties in service training bulletins.   | <i>Not due.</i>   |
| 41 | The department should conduct ethics training.   | <i>Not due.</i>   |

**Plan for Investigation Process**

- |    |   |                 |
|----|---|-----------------|
| 42 | The department should evaluate role, responsibility, mission, functions, and interface of OIS, the Office of Independent Review, and the Office of the Inspector General. | <i>Not due.</i> |
| 43 | The department should revise Section 13 of its operations manual.   | <i>Not due.</i> |

No.	Action Items	Department's Progress
<b>Develop and Implement Action Plan and Management Controls</b>		
44	The department should review existing policies and procedures for revision.	<i>Partial corrective action taken.</i> A draft of a revised policies and procedures manual has been created but is not finalized.
45	Department should survey OIS employees and managers.	<i>Implemented.</i>
46	Department should issue a confidentiality policy and other key procedures.	<i>Implemented.</i> The department issued multiple policy memos in December 2003 and January 2004.
47	Department should issue an OIS strategic plan.	<i>Implemented.</i> The plan was published in March 2004.
<b>Develop OIS Case Management System</b>		
48	Department should procure additional software security procedures.	<i>Chose not to implement.</i> According to the department's chief of a technology management section, technology staff found that this was not necessary.
49	Department should develop and test application, import base from Office of the Inspector General.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004, and OIS staff are trained.
50	Department should install system at OIS headquarters for testing.	Duplicate to number 3 ( <i>implemented</i> ).
51	Department should develop case management system desk procedures.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004, and OIS staff are trained.
52	Department should install system at Northern Regional OIS.	Duplicate to number 3 ( <i>implemented</i> ).
53	Department should train Northern Regional OIS users.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004, and OIS staff are trained.
54	Department should install system at headquarters.	Duplicate to number 3 ( <i>implemented</i> ).
55	Department should train headquarters users.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004, and OIS staff are trained.
56	Department should install system at Central Region OIS.	Duplicate to number 3 ( <i>implemented</i> ).
57	Department should train Central Regional OIS users.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004, and OIS staff are trained.
58	Department should install system at Southern Regional OIS.	Duplicate to number 3 ( <i>implemented</i> ).
59	Train Southern Regional OIS users.	<i>Implemented.</i> The new case management system is implemented at OIS headquarters and the regional offices as of July 1, 2004 and OIS staff are trained.
60	Full implementation of case management system within OIS.	Duplicate to numbers 3 and 23 ( <i>implemented</i> ).
61	Department should prepare project implementation evaluation report.	<i>Not due.</i>
62	Department should provide system adjustments and additional training.	<i>Not due.</i>
63	Department should merge employee misconduct investigation system (misconduct system) database with case management system database.	<i>Chose not to implement.</i> The new case management system replaces misconduct system database.

continued on next page

No.	Action Items	Department's Progress
64	Department should train Employment Law Unit users on the case management system.	<i>Not due.</i>
65	Department should install system at 32 institutions.	<i>Not due.</i>
66	Department should train institution staff on the case management system.	<i>Not due.</i>
<b>Develop Administrative Support Unit</b>		
67	Department should select staff for function.	<i>Implemented.</i> Staff were selected as of July 2004.
68	Department should coordinate and develop policies and procedures manual.	<i>Partial corrective action taken.</i> A draft of a revised policies and procedures manual has been created.
69	Department should develop investigators' guide.	<i>Not due.</i>
70	Department should standardize a category I review process.	Duplicate to number 15 ( <i>partial corrective action taken</i> ).
71	Department should develop self-audit plan.	Duplicate to number 22 ( <i>not implemented</i> ).
72	Department should develop new case initiation model.	Duplicate to numbers 10 and 11 ( <i>not implemented</i> ).
73	Department should revise operations manual accordingly.	<i>Not due.</i>
<b>Develop Management and Oversight Report</b>		
74	Department should survey for report models.	<i>Implemented.</i> The assistant director of OIS requested input from various employees.
75	Department should build table reports in the case management system.	<i>Not due.</i>
76	Department should develop case-aging report.	Duplicate to number 23 ( <i>implemented</i> ).
77	Department should develop OIS monthly report on the case management system.	<i>Not due.</i>
<b>Develop Special Investigations Unit</b>		
78	Department should identify sensitive case types.	<i>Implemented.</i> This is at the discretion of the special agent in charge or the assistant director.
79	Department should select staff for function.	<i>Implemented.</i> Staff were selected as of July 2004.
80	Department should test Special Investigations Unit case management system.	<i>Implemented.</i> The new case management system is implemented throughout OIS as of July 1, 2004.
81	Department should implement case management system for Special Investigations Unit cases.	<i>Implemented.</i> The new case management system is implemented throughout OIS as of July 1, 2004.
<b>Training Assessment</b>		
82	Department should select training coordinators for headquarters and regions.	<i>Implemented.</i> Training coordinators were selected as of June 2004.
83	Department should conduct statewide coordinator meeting.	<i>Implemented.</i> According to a special agent in OIS, this was done via teleconference in July 2004.
84	Department should conduct training assessment.	<i>Not due.</i>
85	Department should present training course alternatives.	<i>Not due.</i>
86	Department should develop training plans.	<i>Not due.</i>
87	Department should implement training program.	<i>Not due.</i>

No.	Action Items	Department's Progress
<b>Continuing Operational Assessments and Review</b>		
88	Department should request external assistance.	<i>Implemented.</i> This was done in May 2004.
89	Department should evaluate existing staff resources and skills to align with new responsibilities.	Duplicate to number 1 ( <i>implemented</i> ).
90	Department should conduct first self-audit and review.	Duplicate to number 22 ( <i>not implemented</i> ).
<b>Plan for Disciplinary Process</b>		
91	Department should evaluate role, responsibility, mission, and function of the Employment Law Unit.	<i>Not due.</i>
<b>Outside Consultant to Conduct Evaluation of the Employment Law Unit</b>		
92	Develop protocol for interviews and focus group.	<i>Implemented.</i>
93	Conduct interviews and focus group.	<i>Implemented.</i> According to the deputy director of legal affairs, the outside consultant is in the process of completing the final report.
94	Provide summary of interview findings.	<i>Implemented.</i> According to the deputy director of legal affairs, the outside consultant is in the process of completing the final report.
95	Provide recommendations.	<i>Not due.</i>
96	Provide consultation on implementation.	<i>Not due.</i>
<b>Develop Structural Changes in Employee Disciplinary Process</b>		
97	Department should develop vertical prosecution model.	Duplicate to number 26 ( <i>partial corrective action taken</i> ).
98	Department should define roles and duties in disciplinary process.	<i>Not due.</i>
99	Department should evaluate and streamline process to ensure statute of limitations is adhered to.	<i>Not due.</i>
100	Department should develop an approach to preventing inappropriate communications between management and bargaining units related to employee investigations and discipline.	<i>Not due.</i>
101	Department should develop disciplinary matrix.	<i>Partial corrective action taken.</i> An updated draft disciplinary matrix was developed as of July 2004 but is not finalized.
102	Implement disciplinary matrix.	<i>Not due.</i>
103	Evaluate existing misconduct system.	<i>Not due.</i> Even though the case management system will eventually replace the misconduct system, until cases already entered into the misconduct system are complete, it will continue to be used. Therefore, this does not conflict with our assessment of number 63.
104	Develop management and oversight reports of actions.	<i>Not due.</i>
105	Revise Article 22 of operations manual.	<i>Not due.</i>
<b>Department Should Make the Following Policy Changes</b>		
106	Develop policy for vertical prosecution.	Duplicate to number 26 ( <i>partial corrective action taken</i> ).
107	Develop settlement policy for adverse actions.	Duplicate to number 28 ( <i>partial corrective action taken</i> ).
108	Develop Skelly hearing policies.	<i>Not due.</i>

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No.	Action Items	Department's Progress
109	Develop policy for employees testifying as expert witnesses.	<i>Not due.</i>
110	Develop policy for writs and appeal.	Duplicate to number 27 ( <i>implemented</i> ).
111	Revise Article 22 of operations manual.	<i>Not due.</i>
<b>Department Should Provide the Following Hiring and Training</b>		
112	Train ERO officers and wardens on administrative evidence standards.	<i>Not due.</i>
113	Revise qualifications for EROs concerning labor relations.	<i>Not due.</i>
114	Implement training for EROs.	Duplicate to number 25 ( <i>implemented</i> ).
115	Develop and implement training for Employment Law Unit attorneys.	<i>Not due.</i>
116	Provide EROs access to electronic training for adverse-action process.	<i>Not due.</i>
<b>Department Should Plan for Continual Monitoring and Assessment</b>		
117	Develop procedures and reports for review by agency.	<i>Not due.</i>
118	Develop performance metrics for review by agency.	<i>Not due.</i>
119	Track settlement agreements in the case management system.	<i>Not due.</i>
120	Schedule 30-day review with Madrid plaintiffs.	<i>Implemented.</i> Multiple meetings were held.
121	Schedule 60-day review with Madrid special master.	<i>Implemented.</i> Multiple meetings were held.

*Agency's comments provided as text only.*

Youth and Adult Correctional Agency  
1515 K Street, Suite 520  
Sacramento, CA 95814

October 7, 2004

Elaine M. Howle, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Ms. Howle:

The Youth and Adult Correctional Agency (YACA) has reviewed your draft audit report entitled "California Department of Corrections: Although Addressing Deficiencies in Its Employee Disciplinary Practices, the Department Can Improve Its Efforts." We appreciate the opportunity to respond to the draft report. Enclosed is the California Department of Corrections' (CDC) response to the report's recommendations.

We truly appreciate the attention to accuracy and detail that the Auditor's staff put into the process. Your staff has been professional and at all times available to discuss the issues. Please extend our appreciation to those who participated in this review.

As indicated in the enclosed response, the CDC continues to improve its employee disciplinary process and is committed to making further improvements by addressing the issues presented in the report. If you have any questions concerning the response, please contact me at 323-6001.

Continued Success,

*(Signed by: G.K. Carruth for)*

RODERICK Q. HICKMAN  
Secretary  
Youth and Adult Correctional Agency

**Memorandum**

To: Roderick Q. Hickman, Secretary  
Youth and Adult Correctional Agency  
1515 K Street, Suite 520  
Sacramento, CA 95814

Subject: **BUREAU OF STATE AUDIT RESPONSE**

Attached is a response to State Auditor Elaine Howle, regarding the Bureau of State Audits Report No.2004-105 entitled, "California Department of Corrections: Although Addressing Deficiencies in Its Employee Disciplinary Practices, the Department Can Improve Its Efforts." This response has been prepared for your signature. Also attached is the report on disk.

If you should have any questions, or revisions please contact me at 445-7688.

Sincerely,

*(Signed by: Ernie Van Sant for)*

J. S. WOODFORD  
Director

Attachment

**Response to Bureau of State Audits' Report No. 2004-105 – “California Department of Corrections: Although Addressing Deficiencies in Its Employee Disciplinary Practices, the Department Can Improve Its Efforts”**

**OVERVIEW**

The California Department of Corrections (the CDC or the Department) has received and reviewed the 13 recommendations contained in the California State Audit Report (Report) on employee disciplinary practices.

At the outset, the CDC appreciates the Bureau of State Audits (BSA) acknowledging that the Department takes employment-related matters and discipline seriously and has been actively involved in efforts to improve the quality and consistency of its adverse actions. Many dedicated staff put tremendous effort into the development of: (1) a vertical advocacy model, an innovative initiative that provides for earlier and more intense legal support during the investigative and disciplinary process; (2) a disciplinary matrix which imposes specific levels of discipline for specified conduct; (3) a comprehensive mandatory advocacy training program for all Employee Relations Offices; and (4) a Case Management System which will replace outdated and unreliable systems with one comprehensive database for the entire disciplinary process that will provide for real-time documentation of case activities. These initiatives are merely the beginning of an ongoing effort to revitalize a broken system.

The Department Director and its Youth and Adult Correctional Agency (YACA) Secretary personally committed to federal court district Judge Thelton Henderson that they will ensure the Department designs and implements a revamped and reconstituted transparent employee investigative and disciplinary system that will enhance the quality and consistency of the entire employee discipline process. Like the BSA, Judge Henderson has acknowledged the Department's efforts to date towards meeting that commitment.

The CDC views this Report and its recommendations as assisting the Department in continuing its efforts. Some of the recommendations bring novel suggestions and ideas to the process. Others reinforce efforts and initiatives already underway. Ultimately, all of the suggestions have merit which the CDC will address as it continues to improve its employee disciplinary process. The following represents the detailed response of the Department to each of the recommendations identified in Report No. 2004-105.

## RECOMMENDATIONS

### CHAPTER 1

#### The Department Can Improve Its Timeliness and Handling of Employee Misconduct Allegations and Discipline.

##### **RECOMMENDATION # 1:**

*To improve its ability to discipline employees quickly and efficiently, the department should do the following:*

- A. Identify, benchmark, and monitor for improvement, the adverse action timelines for each step in the process for each case category.*
- B. Implement procedures to allow for expedited investigations and actions for uncontested, straightforward cases such as driving under the influence.*
- C. Eliminate headquarters and regional reviews before serving disciplinary actions that meet the parameters of the disciplinary matrix.*
- D. Discontinue the practice of transcribing all interviews and transcribe only those that are necessary.*

##### **CDC'S RESPONSE TO RECOMMENDATION # 1:**

- A. Agree.** The CDC agrees that there is a need to identify, benchmark and monitor for improvement, the adverse action timelines for each step in the process. In recognition of that need, the CDC committed to the federal court to develop a plan for continual monitoring and assessment of the investigative and disciplinary process.
- B. Agree – Partially Implemented.** With respect to investigations conducted by the Office of Civil Rights (OCR), in March 2004 the OCR implemented policy and procedures allowing for expedited investigations. Specifically, on March 25, 2004, and on May 10, 2004, informal processes were begun by way of memorandum to staff regarding the use of the Department Operations Manual closure category of “No Findings” that would allow for expedited case closures wherein jurisdiction is lacking. In addition, a draft directive has been developed and is currently pending review and approval from our contract attorney prior to release and training to staff. The OCR has increased the availability of closing categories to expedite those complaints that do not require a complete investigation. Additional policy is being developed.

With respect to investigations outside of the OCR, the CDC is considering a centralized intake process and other procedural changes, which, along with the new Case Management System, will facilitate implementation of these recommendations.

- C. Agree.** The Department agrees with this recommendation and plans to eliminate most, if not all, headquarters and regional office reviews for actions as described. The Department will meet in November 2004, develop a timeline for implementing this recommendation and report back to the BSA on those efforts in the next 60 days.
- D. Agree – Partially Implemented.** One of the first policies issued by the OCR during the Fall of 2003 was the directive to investigative staff to immediately cease and desist from the practice of transcribing all interviews and transcribe only those that are necessary on the premise it was simply too time consuming. Although staff were instructed to continue taping interviews, they were advised to “take notes” in lieu of relying upon the tapes. An in-house Auditor, hired September 1, 2004, will determine if this directive is followed. The auditor will prepare periodic written reports concerning compliance. The first report is expected in December 2004.

The CDC will implement this recommendation for all other investigations.

#### **RECOMMENDATION # 2**

***To measure any improvements made, assist in identifying training needs, and ensure the responsible parties are accountable and learn from mistakes made, the department should benchmark its individual program and overall performance statistics for cases that go before the State Personnel Board and continually monitor these statistics.***

#### **CDC’S RESPONSE TO RECOMMENDATION # 2:**

**Agree.** The CDC agrees that there is a need to benchmark and later monitor its individual program and overall performance statistics for cases that go before the State Personnel Board (SPB). In recognition of that need, the CDC committed to the federal court to develop a plan for oversight of SPB cases continual monitoring and assessment of the investigative and disciplinary process. The plan will incorporate this recommendation. The Department will develop management and oversight reports of SPB actions by November 2004.

#### **RECOMMENDATION # 3**

***To improve the quality and consistency of its cases for all types of disciplinary actions, the department should:***

- A. *Standardize as much as possible adverse action and investigative processes, forms, reports, and file checklists for the three types of cases.***
- B. *Continue its efforts to implement a disciplinary matrix and ensure the wardens are held accountable for their penalty decisions by requiring them to document their reasons for any deviations from the prescribed penalty range.***

### **CDC'S RESPONSE TO RECOMMENDATION # 3**

- A. Agree.** The CDC agrees that the Department should standardize as much as possible forms, reports, and file checklists for use in the adverse action and investigative process. In recognition of that need, the CDC is in the process of reviewing and modifying all of its policies and procedures in the employee investigative and discipline process. The Department will report its progress on implementing this recommendation in future updates to the BSA.
  
- B. Agree – Implementation Initiated.** The CDC appreciates the BSA acknowledging the Department's development of a disciplinary matrix, which imposes specific levels of discipline for specified conduct. As recommended, the Department will hold the wardens accountable for their penalty decisions by requiring them to document their reasons for any deviations from the prescribed penalty range. Indeed, the matrix itself contains a form that the wardens will be required to use to document their penalty decisions. In addition, the Department has committed to the federal court that it will develop management and oversight reports to monitor the use of the matrix by November of 2005.

### **RECOMMENDATION # 4**

***To ensure supervisory issues or policy violations contained in category III reports are not missed, the Office of Civil Rights should consider sending all unsustained cases to the hiring authority for review.***

### **CDC'S RESPONSE TO RECOMMENDATION # 4**

**Agree to Consider.** The OCR agrees to consider the BSA's proposed recommendation on this matter. However, there remain a number of competing concerns that must be considered before adopting this recommendation. The OCR must take into consideration its effort to create an environment that fosters a "safe" environment for those who participate as witnesses. In that regard, OCR must be in a position to offer confidentiality to those who provide testimony in order to minimize their fear of reprisal. Although there has been discussion as to "redacting" witness names or coding them in some manner as to protect their identity, many cases are sufficiently unique and will enable the reader to identify witnesses. Further, a good portion of OCR investigations involve medical issues. As such, the Department must make every effort to maintain confidentiality of these documents.

These concerns need to be balanced against the benefit to the hiring authority in receiving the Category III reports. Consequently, the Department agrees to develop a plan that will accommodate both competing concerns and report back to the BSA in 90 days.

**RECOMMENDATION #5**

***To ensure it completes Category I investigations in a timely manner, the department should consider conducting a workload study to determine the number of full-time investigators each institution may need and whether existing resources can be allocated for the purpose.***

**CDC'S RESPONSE TO RECOMMENDATION # 5**

**Agree.** The CDC agrees with the recommendation. The YACA chartered an "Internal Affairs" team to address recommendations made by the IRP, the BSA, and the federal court. As part of this review, the team will consider the Category I investigation workload to determine the number of full time investigators each institution may need and whether existing resources can be allocated for that purpose.

**RECOMMENDATION # 6**

***To allow it to provide feedback and training to the Investigative Services Units, the department should ensure that it monitors and enforces its requirement for its Office of Investigative Services to review all category I investigations.***

**CDC'S RESPONSE TO RECOMMENDATION # 6**

**Agree – Implementation initiated.** The CDC agrees with the recommendation. As part of the Madrid Remedial Plan, the CDC previously committed to develop a self-audit plan for Category I investigations by December 30, 2004.

**RECOMMENDATION # 7**

***To improve the quality and consistency of its adverse action investigation, the department should do the following:***

- A. Continue its efforts to implement a department-wide vertical advocacy model to allow for greater attorney involvement in adverse action cases, including equal employment opportunity cases.***
- B. Consolidate policy and procedure development and monitoring for all types of adverse action investigations under one branch and continue its efforts to update employment-related policies and procedures.***

**CDC'S RESPONSE TO RECOMMENDATION # 7:**

- Agree – Implementation Initiated.** The CDC appreciates the BSA acknowledging the Department's efforts to implement a departmentwide vertical advocacy model to allow for greater attorney involvement in adverse action cases, including equal employment opportunity cases. The pilot project implemented at Pelican Bay State Prison under the mandates of the Madrid Remedial Plan has been extremely successful. On September 15, 2004, the Department presented the status of plan to implement this model statewide, in conjunction with the disciplinary matrix,

to the federal court judge and the special master in the Madrid case. The judge was very complimentary and commented on the history making precedents that are being set by the individuals involved in this process. The Department agrees with this recommendation and is continuing the implementation as scheduled.

- B. Agree to Consider.** The CDC agrees with the recommendation. YACA chartered an “Internal Affairs” team to address recommendations made by the IRP, the BSA, and the federal court. As part of its activities, the team will be considering various structural changes, including the viability of consolidating all types of adverse actions under one organization. Final action on the recommended structural changes is dependent upon the Agency’s reorganization decisions. After the Agency reorganization is released, the CDC will share it with the BSA.

### **RECOMMENDATION #8**

***To resolve protracted disputes between employees or with the department, the department should implement its own or use an outside mediation program such as the one offered by the State Personnel Board, and make the program known to and available to all programs and institutions.***

### **CDC’S RESPONSE TO RECOMMENDATION # 8**

**Agree.** The CDC agrees that it should implement a mediation program such as the program offered by the SPB. The CDC has already initiated contact with the SPB to discuss its program and will be making that program known to and available to all programs and institutions. The CDC will report back on its progress relative to this recommendation.

### **RECOMMENDATION # 9**

***To ensure that it is settling adverse action cases as often and appropriately as possible, the department should follow its existing policy or design and implement a comprehensive new settlement policy, ensure all pertinent employees are aware of the policy, and monitor compliance at the headquarters level.***

### **CDC’S RESPONSE TO RECOMMENDATION # 9**

**Agree – Implementation Initiated.** The CDC agrees that the department implement and train staff on a comprehensive new settlement policy and monitor compliance. In recognition of that need, the CDC committed to the federal court to revise its settlement policy for adverse actions by October 2004. As noted by the BSA, the CDC has already initiated training on the settlement process in its Employee Relations Advocacy Training. The CDC appreciates the acknowledgement of the benefits of that training and agrees that additional training in the area of monitoring settlements would be useful. This recommendation will be incorporated into the ERO Advocacy Curriculum by the end of the calendar year.

## CHAPTER 2

### The Department Can Do More to Improve Its Monitoring of Cases and Training of Employees

#### **RECOMMENDATION # 10**

***To ensure that it can appropriately and accurately monitor and track employment-related actions and outcomes, the department should do the following:***

- ***Complete its implementation of the new computer databases, eliminate the redundant systems, and consolidate monitoring of these systems within the information systems division.***
- ***Ensure that staff involved in maintaining the new computer databases receive proper training, enter data accurately and consistently, and appropriately update the systems in a timely manner.***

#### **CDC'S RESPONSE TO RECOMMENDATION # 10**

- A. Agree – Implementation Initiated.** The CDC appreciates the BSA acknowledging the Department's new case management system. The system is designed to provide the department real-time case management activity. As noted in the report, while the initial implementation effort has been limited to the Office of Investigative Services the Department intends to extend implementation to the institutions, OCR, the Legal Affairs Division and the Office of Personnel Management. The CDC also appreciates the acknowledgment of the efforts of the Legal Affairs Division, initiated back in 2001, to obtain a comprehensive legal case management system. The full implementation of both these systems will eliminate the redundant systems currently in use. Full implementation will be incrementally implemented by August 30, 2005.
- B. Agree.** The CDC agrees that staff involved in maintaining the new databases should be trained on an ongoing basis.

#### **RECOMMENDATION # 11**

***To ensure that it provides adequate training for key positions involved in the disciplinary process, the department should consider establishing job-specific mandatory training requirements for its litigation and equal employment opportunity coordinators. Further, the Office of Civil Rights should continue its efforts to implement mandatory training for its investigators and ensure its policy is followed, as it already did for its ERO's, investigative services staff, and special agents.***

## **CDC'S RESPONSE TO RECOMMENDATION # 11**

**Agree – Partially Implemented.** The CDC appreciates the observation of the BSA that the CDC is moving in the right direction by developing, implementing, and requiring a job-specific training course for its Employee Relation Officers (ERO). The CDC also appreciates the acknowledgement of the development of similar programs for the Litigation Coordinators, the Equal Employment Opportunity Coordinators and the OCR investigators. The CDC agrees that making this training compulsory will add value to the disciplinary process.

The CDC also appreciates the recognition that the OCR initiated and continues to develop a formal training platform for investigative staff. The CDC held its first 40-hour session in June 2004 and plans to hold another 40-hour session by January 2005. We will be developing and requiring new investigative staff to participate in a two-week investigative course along with ongoing on-the-job training by immediate supervisors who will be guided by an EEO Investigator Training Manual currently under revision. The manual will be completed by January 2005.

## **RECOMMENDATION # 12**

***To determine the most cost effective level to fill its ERO position, the department should track the success rates of all its EROs, including staff other than peace officers.***

## **CDC'S RESPONSE TO RECOMMENDATION #12**

**Agree.** The Department has been implementing a new database system to provide more consistent, nonredundant data collection. An outcome of this system will be the ability to sort and track data such as the success rates of actions within a particular institution. Further database modifications are being discussed in order enable a differentiation of success rates for cases with representation by an attorney, versus an ERO and specific classifications performing the ERO function of Discipline. The Department is developing a timeline for implementation and will report back to the BSA on those efforts within the next 60 days.

It should be noted that within current context the report refers to ERO with respect to Discipline. The designation of "ERO" with the Department is a working title consisting of two functions Labor Relations and discipline.

## **RECOMMENDATION # 13**

***To promptly address all current and future audit findings and recommendations, the department should ensure that its newly created division charged with tracking audit recommendations and corrective action is proactive in doing so.***

## **CDC'S RESPONSE TO RECOMMENDATION # 13**

**Agree – Implemented.** As noted by the BSA, in March of 2004, shortly after the arrival of the new Director of Corrections, the CDC announced the establishment of a centralized unit responsible for ensuring that the Department addresses external audit recommendations. Additionally, both the YACA Secretary and the Department's Directorate have begun conducting bi-weekly project status meetings at YACA and the Department to apprise executive staff of developments in key high profile projects. Further, YACA is initiating efforts to establish an agency wide tracking system to ensure that audit finding and recommendations are being appropriately addressed. YACA's goal is to have the audit tracking system online by the end of the calendar year. Both YACA and the Department agree that these initiatives should help ensure that the Department implements corrective actions in a timely manner.

### **CONCLUSION**

The CDC and YACA are serious about employee-related matters and are committed to redesigning the entire employee disciplinary system. It has demonstrated that commitment to the federal courts, the legislature, and the office of the State Auditor. As part of its ongoing efforts to improve the process, the CDC will take appropriate actions to address the issues presented in the report.

The CDC recognizes that the past timeliness and responsiveness to rectify identified deficiencies has been unacceptably slow. The Department appreciates the auditor's recognition, however, of the progress made over the last year and we look forward to positive progress reports in the future.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press