

## **Department of Alcoholic Beverage Control:**

**Weaknesses in Its Enforcement Program  
Leave It Vulnerable to Allegations  
of Unfair Practices**



May 1998  
97111

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# CALIFORNIA STATE AUDITOR

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May 6, 1998

97111

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 Department of Alcoholic Beverage Control's (department) enforcement program and allegations of selective and discriminatory enforcement activities against minorities. This report concludes that, although we did not identify any pattern of discriminatory enforcement or individual instances of unjustified enforcement activity, inconsistencies in the department's enforcement activities and penalty assessments leave it vulnerable to accusations of discrimination. Further, the department should improve its management of enforcement activity.

Respectfully submitted,

A handwritten signature in black ink that reads "Kurt R. Sjoberg". The signature is written in a cursive style.

KURT R. SJOBERG  
State Auditor

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# Summary

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## Audit Highlights . . .

*Although our review of the Department of Alcoholic Beverage Control's enforcement program did not reveal a pattern of discrimination, it did show:*

- Inconsistencies in the promptness and extent of complaint investigations.*
- Lack of consistent penalty assessments and the application of related mitigating and aggravating conditions.*
- An absence of good management information, leaving the department to rely on inaccurate data, extracted manually from records, as the basis for critical decisions and reports to the Legislature.*



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## Results in Brief

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The Department of Alcoholic Beverage Control (department) is responsible for enforcing the Alcoholic Beverage Control Act, which provides for the licensing and regulation of the manufacture, sale, purchase, and transportation of alcoholic beverages within the State. Almost all of the department's enforcement efforts are responses to outside complaints from local law enforcement agencies, citizens, and other state and federal agencies.

Our review assessed whether the department's enforcement actions discriminated against establishments serving minority clientele. Because the department does not maintain sufficient data for us to conclude whether it discriminated against these establishments, we used various sampling techniques to attempt to address this issue. While we found no pattern of discrimination in our limited sample, we also lacked enough information to be able to say that no discrimination takes place. Our review did uncover other issues of concern in the department, however. For instance, district offices are not always consistent in the promptness or extent of their complaint investigations, even for high-priority complaints. In addition, they are not consistent in the penalties they assess licensees and in their application of mitigating or aggravating conditions during penalty assessments. It is because of the department's lack of clear guidance for prioritizing complaints and assessing penalties that it is vulnerable to accusations of discrimination.

The department also lacks the necessary information for good management decisions, relying on inaccurate data extracted manually from records at the district offices to track its enforcement activity and to report its workload to the Legislature. Recognizing that its current information system does not meet its basic needs, the department plans to update and enhance its automated system by April 30, 1999.

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## Recommendations

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So that it can better serve the public by ensuring prompt follow-up of complaints that pose an immediate threat to public safety, the department should take the following action:

- Establish a formal system for prioritizing each complaint by type and by the number of previous complaints about the licensee. This system should alert district management to high-priority complaints that need prompt action.
- Encourage district offices to use the services of Special Operations Units' staff.
- Review alternatives to staffing and workload assignments to determine if other personnel or contractors could handle some administrative duties currently performed by investigative staff, thus freeing investigators for more complaint follow-up.

In addition, to ensure that it assesses penalties consistently throughout the State, the department should provide specific guidance for applying aggravating and mitigating factors and for dealing with subsequent violations when assessing penalties.

Furthermore, so that both headquarters and district offices can more effectively monitor enforcement activities, the department should do the following:

- Develop and implement an efficient system that captures and summarizes the districts' enforcement activity.
- Establish a formal policy requiring headquarters and district management to routinely review patterns of enforcement activities to decide how to distribute its investigative resources.

Finally, to provide for more efficient and accurate reporting of enforcement activity, the department should establish procedures that require the district offices to perform a routine review and periodic reconciliation of the data to the supporting records. The procedures should also require the district offices to track and report complaints and referrals separately from other enforcement activities so that the department will know the status of complaints against licensees.

### ***Agency Comments***

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The Department of Alcoholic Beverage Control concurs with each of the findings we reported. Further, it has established timelines for the completion of corrective action on each.

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# *Introduction*

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## *Background*

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A 1954 amendment to the California Constitution created the Department of Alcoholic Beverage Control (department). Currently within the Business, Transportation and Housing Agency, the department enforces the Alcoholic Beverage Control Act (Act), which provides for licenses and regulates the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the State. The same amendment also established the Alcoholic Beverage Control Appeals Board to review licensees' appeals of the department's disciplinary decisions.

For fiscal year 1997-98, the department's budget is approximately \$33.4 million, supporting a staff of 447 budgeted positions divided among its headquarters office in Sacramento, Northern and Southern Division Offices, and 24 field offices. These field offices, headed by district administrators or supervisors, are staffed by investigators, licensing representatives, and support personnel. The department has three major functions in administering the provisions of the Act: licensing, enforcement, and administration.

The department ensures that only qualified persons and legitimate businesses have licenses to sell, manufacture, or otherwise deal in alcoholic beverages. Its licensing section performs background investigations of applicants and reviews licensee facilities. The department maintains a database of over 71,200 licensed establishments, including bars, restaurants, and liquor stores. The database includes the license number, type, location of licensees, and other information.

The department's enforcement activities include investigating complaints against licensees. Its investigators have full peace officers' powers to enforce the Act, the California Penal Code, and the department's rules. These powers include the right to inspect the premises of a licensee at any time during which the licensee is exercising the privileges authorized by the license. Department investigators conduct investigations and can make

arrests for statute violations, such as serving minors or obviously intoxicated patrons, and allowing lewd conduct or narcotics violations on or about a licensed establishment.

In addition to the district offices' investigations, the department operates both Northern and Southern Special Operations Units (SOUs). Made up of 32 special investigators, these SOUs primarily serve as the department's strike force, assisting district offices and other law enforcement agencies in undercover operations involving vice and criminal activities, as well as high-profile operations at large events. They also perform more routine work, such as helping district offices reduce backlogs of complaints.

The department's administrative section supports staff and holds administrative appeal hearings. It primarily provides business, personnel, fiscal, and training services to the department.

### ***Overview of the Investigative and Disciplinary Process Within the Enforcement Section***

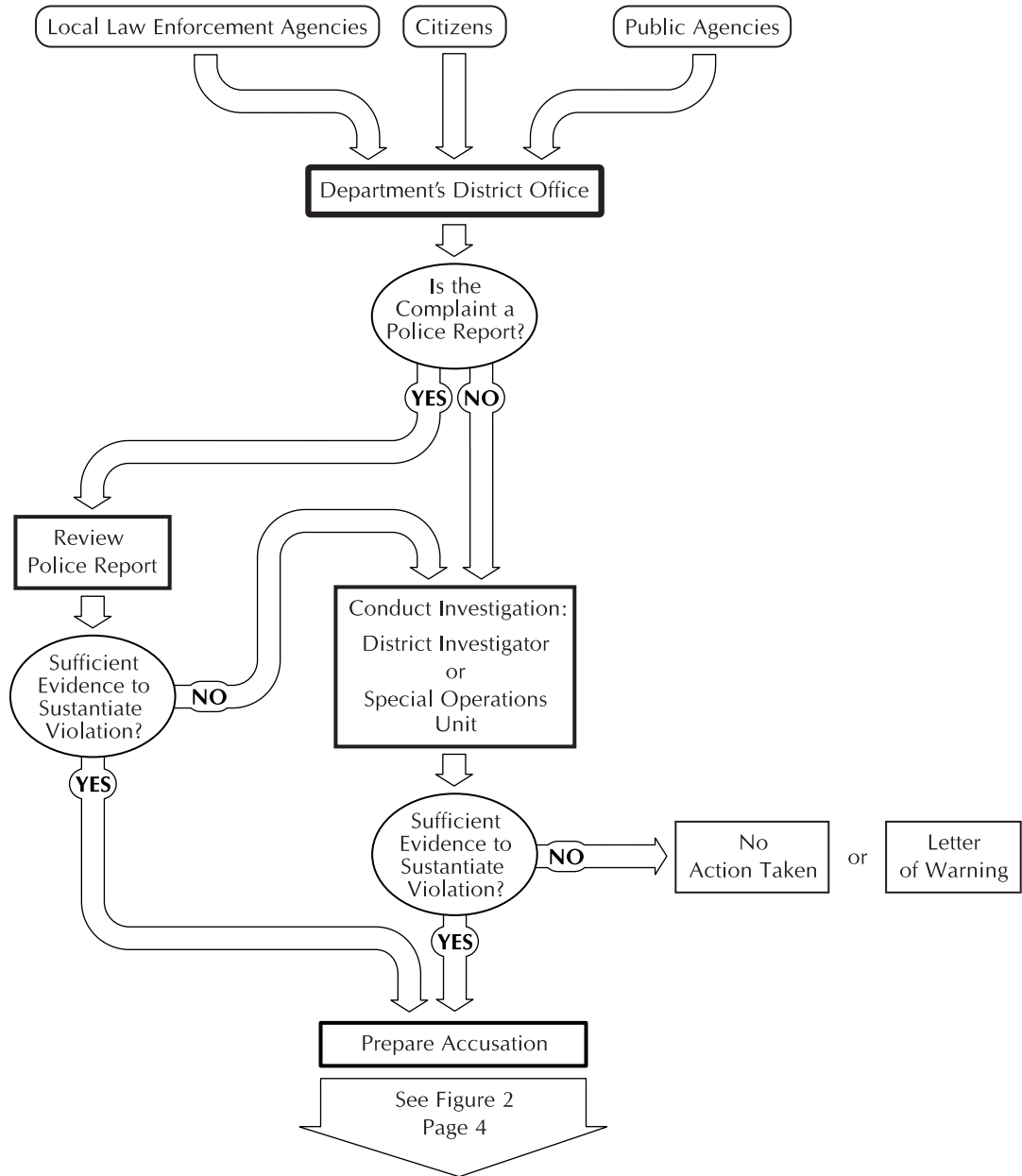
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As Figure 1 indicates, the district offices receive complaints against licensees from several sources, including local law enforcement agencies, citizens, and public agencies. Generally, for those complaints from local law enforcement agencies with sufficient evidence to substantiate a violation, the district office prepares an accusation against the licensee and begins the disciplinary process. It investigates other complaints and begins the disciplinary process by preparing an accusation for those it substantiates. If it does not find sufficient evidence to prove an allegation, the district office will either take no action or issue a letter notifying the licensee that the department received a complaint.

When the district office prepares an accusation, it also suggests a penalty. It then gives the licensee the opportunity to discuss the charges and penalties at a meeting with the district office. If the licensee contests the accusation, the department schedules a public hearing before an administrative law judge, who determines whether the department proved the charges. The administrative law judge sends a proposed decision and penalty to the department's director, who generally adopts it. A licensee who is still not satisfied with the decision can appeal it with

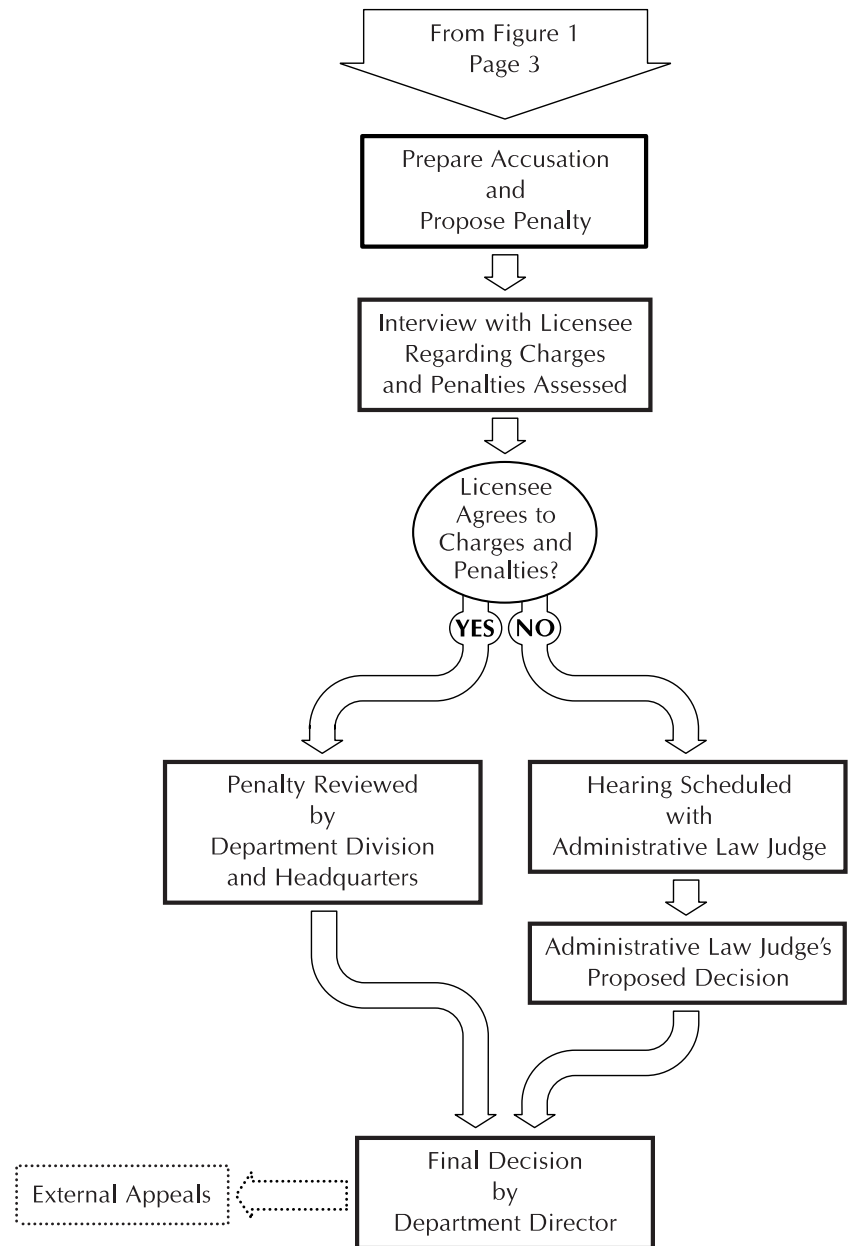


**Figure 1**  
**Process for Investigating Complaints**



the Alcoholic Beverage Control Appeals Board and the District Court of Appeal or the State Supreme Court. Figure 2 illustrates the disciplinary process.

**Figure 2**  
**Disciplinary Process**



## ***Scope and Methodology***

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The Joint Legislative Audit Committee requested that the Bureau of State Audits audit the Department of Alcoholic Beverage Control to determine whether the department was practicing selective and discriminatory enforcement of the Alcoholic Beverage Control Act and related regulations.

To understand the department's responsibilities and the environment in which it operates, we reviewed applicable laws, rules, regulations, and other relevant background information. We also visited several district offices and interviewed appropriate staff. In addition, we met with licensees and representatives from local law enforcement agencies.

To determine whether the department has systems in place designed to ensure that employees are not practicing selective or discriminatory enforcement, we interviewed appropriate staff and reviewed policies and procedures. We also reviewed the department's information systems as they relate to management's effective monitoring of enforcement activities. Further, we evaluated the districts' processes for prioritizing complaints and investigations. Finally, we reviewed the department's penalty guidelines to determine their adequacy and assessed how consistently the districts applied them.

During our review, we had difficulty obtaining statewide complaint and investigative data from the department, as its existing database does not maintain detailed data for monitoring complaints or statewide enforcement activity. Although the department provided manually compiled reports, we found that these were too general and inaccurate and, therefore, unreliable. As a result, we used alternative methods to identify any patterns in enforcement, which we discuss in Chapter 1.

To determine if the department was following its processes when enforcing the laws and to determine whether it was discriminatory in its enforcement practices, we selected three district offices for review—Los Angeles, San Diego, and San Francisco—that serve significant minority populations. For these district offices, we attempted to select a sample of licensees with primarily minority clientele, including Hispanic, African American, Asian, gay, and lesbian. We also selected another sample without regard to minority status from the same district offices. We reviewed the department's activity records for these selected licensees including complaint, enforcement, and disciplinary history, to try to determine if the district offices discriminated against certain groups. We also analyzed investigator activity reports from these three district offices and

the Northern and Southern Special Operations Units, as well as information obtained from law enforcement agencies and joint task force investigations.

To evaluate the policies and procedures for handling complaints against the department or its agents, we examined the processes for internal affairs review and disciplining agents. We also examined allegations against investigators in the past five years to determine if the department adequately investigated and reasonably resolved those complaints. Of the 41 allegations received in the past five years, we determined that the department followed its procedures and took appropriate action when enough evidence was present to prove an allegation. Nineteen of the 41 allegations resulted in disciplinary action ranging from counseling to termination. The remaining 22 were either unfounded or not substantiated.

To determine whether the department uses outreach and education programs for licensees regarding the Act and other relevant laws and regulations, we noted the department's educational efforts through the voluntary Licensee Education on Alcohol and Drugs Program.

To determine whether its training requirements for investigators are adequate, we reviewed the department's investigator training records. The law requires investigators to meet certain training requirements regulated by the Commission on Peace Officer Standards and Training, including basic academy training, continuing education, and specialized courses on sexual harassment, cultural diversity, and hate crimes. We reviewed the training records of 25 department investigators and found that although they generally met the training requirements, many have not completed the required 80 hours of field narcotics training. According to the training officer, this shortfall is due in part to an increase in new investigators and a reduction in investigators with qualifications to supervise narcotics field training. As staffing priorities permit, the department assigns investigators to the SOU or local law enforcement to meet the field training requirement.

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# *Chapter 1*

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## *Although We Found No Pattern of Discrimination, the Department of Alcoholic Beverage Control's Practices Leave It Vulnerable to Accusations of Inequitable Treatment*

### *Chapter Summary*

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**B**ecause almost all its work is in response to outside complaints, the Department of Alcoholic Beverage Control's (department) opportunity to discriminate against any particular group of licensees lies in its choice of when and how to investigate each complaint and how severely to penalize those who violate the Alcoholic Beverage Control Act (Act). We could not conclude decisively whether the department practiced discriminatory enforcement against any particular group of licensees because of the lack or inaccessibility of information. Given the limited information, we found no pattern of discrimination or individual instances of unjustified enforcement activity.

However, the department is vulnerable to accusations of discriminatory behavior because it is not always consistent in the promptness or extent of its complaint investigations or the severity of its penalties. The department's lack of clear guidance for prioritizing complaints and its inefficient use of investigative resources contribute to inconsistencies in complaint investigation at the district offices. Further, the department gives inadequate guidance in assessing penalties for documented violations of the liquor laws, resulting in inconsistent application of its penalty guidelines. Although its policy to consider any mitigating or aggravating circumstances for each violation is appropriate, the department does not clearly indicate how the district offices should apply these circumstances when assessing penalties, resulting in differing assessment practices among the district offices. Furthermore, in their required reviews of district offices' penalty assessments, division offices and headquarters do not ensure consistency.


Inconsistencies in the investigation of complaints and application of penalty assessments can have serious consequences for both licensees and the communities in which they operate. Additionally, when it does not meet the public's expectation of prompt and consistent enforcement, the department risks losing the confidence of those it serves.

### ***Almost All the Department's Work Is in Response to Outside Complaints***

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*The department receives complaints against licensees from law enforcement agencies, citizens, and other state and federal agencies.*



The department's enforcement work results almost exclusively from complaints received from local law enforcement agencies, citizens, and other state and federal agencies. Most of the department's complaint cases are referrals from local law enforcement agencies, such as city police or county sheriff departments, or result from joint operations with other state or local agencies. Thus, the department's potential for discriminating against certain groups of licensees rests primarily in its choice of when and how vigorously to investigate each complaint and how strictly to assess penalties.

In the course of their law enforcement work, local agencies often uncover violations of the Act. The Business and Professions Code, Section 24202(a), specifically requires local law enforcement agencies to notify the department of any arrests for violations over which the department has jurisdiction involving a licensee or licensed establishment. The department has the authority to take disciplinary action against the licensee, whereas local law enforcement agencies seek charges against the persons directly involved in the violation. These local agencies can act and enforce the laws independent of the department or in concert with the department's investigators during joint investigations, task force assignments, and special programs. The appendix describes several of these joint programs. The department also works with other state agencies, including the Employment Development Department, the Department of Industrial Relations, and the Department of Consumer Affairs to ensure, among other things, that licensees give employees specific benefit coverage and minimum wages and pay appropriate employment taxes.

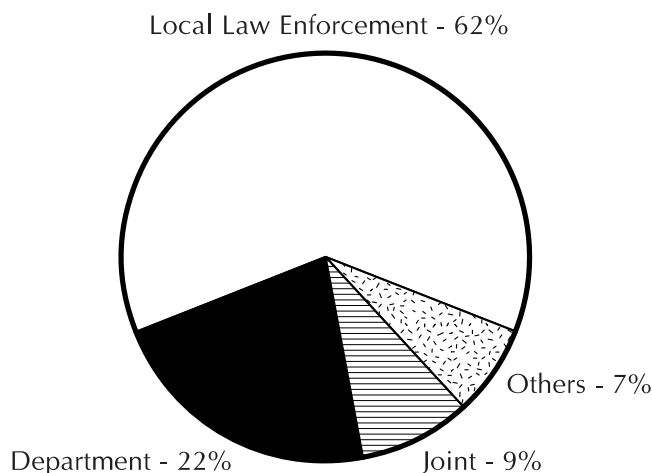
In many instances, local agencies' reports of violations involving a licensee are sufficient for the department to initiate formal disciplinary action. However, in some cases, the department may do additional investigative work to substantiate a violation. The department's enforcement investigators also work independently to follow up on complaints from the public and local government officials alleging violations of the law. They can notify the licensee of the complaint or visit the

establishment, often in an undercover capacity, and observe operations. The department investigators may also randomly visit some establishments without a complaint, typically when they travel from one complaint assignment to the next or when the establishment is near another with a complaint.

As illustrated in Figure 3, the 3,509 accusations filed against licensees during fiscal year 1996-97 originated from three primary sources. Law enforcement activities generated 62 percent of the department's disciplinary workload, with complaints received directly by the department being second at 22 percent, and joint efforts and others constituting the remaining 16 percent.

**Figure 3**  
**Most Accusations Originated From Law Enforcement During Fiscal Year 1996-97**

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Information in the figure is based on the department's California Alcoholic Beverage Information Network database.

***We Found No Pattern of Discrimination Against Licensees Serving Minority Clientele***

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We found no pattern of discriminatory enforcement activity against licensees serving minority clientele. Although our review of licensee files disclosed inconsistencies in enforcement activity, which we discuss later in the chapter, it did not disclose either a pattern of excessive enforcement against any particular group of licensees or individual instances of

—◆—  
*Although we found some inconsistencies, our audit did not disclose a pattern of either excessive or unjustified enforcement against any group or individual licensee.*  
—◆—

unjustified enforcement activity. Instead, licensees with more investigative activity had more complaints lodged against them or had more serious complaints. For example, the Los Angeles District Office visited a licensee 12 times between January 1994 and November 1997.<sup>1</sup> Our review indicated, however, that the investigative activity was justified because it involved narcotics investigations and high-priority complaints from an independent crime-reporting agency. Similarly, the San Francisco District Office visited a licensee seven times between December 1994 and October 1996.<sup>2</sup> Because these investigations were in response to several lewd conduct and disorderly complaints from law enforcement and citizens, the activity appears justified. However, serious limitations in information about enforcement, detailed below, affected our ability to fully assess discriminatory practices.

***Available Data Limited Our Ability to Determine if the Department Discriminated***

Several factors limited our ability to conclude decisively whether the department discriminates against minority licensees. For example, the department does not have accurate data concerning statewide enforcement activity, including comprehensive statistics on the number and types of complaints, follow-up, or the age of outstanding complaints. As a result, we could not:

- Determine if different patterns of enforcement existed within the State or within individual district offices
- Identify licensees with above average enforcement activity or complaints
- Determine if a correlation existed between the number and type of complaints and enforcement activity



Instead, we selected three district offices for review—Los Angeles, San Diego, and San Francisco—that serve significant minority populations.

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<sup>1</sup> The establishment's clientele were of mixed race and sexual orientation.

<sup>2</sup> The establishment served primarily heterosexual, Hispanic clientele.



  
*Because the department lacks centralized, accurate data, we could not identify patterns of enforcement activities.*  


Although these offices had information on the number and types of complaints and the related enforcement activity for each licensee, this information was available only in the thousands of individual licensee files at each district. Department procedure does not require the district offices to maintain centralized or summarized data on complaints by type or by licensee, and we therefore could not identify comprehensive patterns of enforcement activity at any of these district offices. Further, although the district office investigators may be aware of which licensees in their jurisdiction have more enforcement activity, we had no comprehensive source from which to efficiently identify and independently select for review individual licensees with more enforcement activity than normal.

As an alternative, we selected 175 licensees from the files at the three district offices and reviewed their histories of enforcement activity. We attempted to compare the department's enforcement activities for the same type of complaint and violation, allowing us to assess whether the treatment of licensees differed with their clientele. However, we were frequently faced with the problem of comparing a district's handling of similar but not identical complaints. For example, we attempted to compare the penalties the San Francisco District Office assessed against two licensees cited for serving alcoholic beverages between 2 a.m. and 6 a.m., which Section 25631 of the Business and Professions Code prohibits. However, in one case the licensee violated the law by permitting a patron to consume alcohol after hours,<sup>3</sup> whereas in the second case the licensee violated the law by permitting employees to drink alcohol after hours.<sup>4</sup> As a result, the department appropriately assessed different penalties for these apparently similar violations.

Another factor that affected our ability to conclude whether the department discriminates against some licensees serving minority clientele was the lack of any definitive information about the establishments' clientele. We did not expect the department to maintain this information and it does not. Further, for many of the licensees reviewed, we were unable to obtain information independently about whether their clientele was primarily minority, such as gay, lesbian, African American, Hispanic, or other ethnic groups. We attempted to gather this data through a voluntary survey of the licensees whose files we reviewed. Though 103 of the 169 currently active licensees returned surveys, many declined to characterize their clientele. Most that did respond indicated they had primarily mixed

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<sup>3</sup> The establishment served an Asian clientele.

<sup>4</sup> The establishment served mixed race, heterosexual clientele.


race, heterosexual clientele. Because we were often unable to determine client mix from the department's files or our survey, we could not ascertain whether the inconsistencies we observed in the department's enforcement activities involved licensees serving primarily minorities. However, no apparent pattern of discriminatory enforcement could be inferred from the limited number of licensees we reviewed who did identify the nature of their clientele.

We believe that, in order to conclude decisively about the existence of any discriminatory patterns in enforcement, we would need the information we attempted to obtain from these procedures. Because we could not obtain comprehensive data to make a conclusion, our specific comments in the following sections about the department's enforcement activity are primarily anecdotal. We disclose the nature of an establishment's clientele only when the licensee supplied this information.


### ***The District Offices Are Inconsistent in Following Up on Complaints***

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The districts we visited were inconsistent in the response time of their follow-up on similar complaints. The California Business and Professions Code, Section 23049, requires the department to ensure a strict, honest, impartial, and uniform administration and enforcement of the liquor laws throughout the State. Good business practices also demand that the department's policies and procedures be reasonably consistent and uniform. The department has asserted that violations classified as disorderly premises and sales to minors and obviously intoxicated patrons are its highest priorities. Violations involving a disorderly premises have a blatant pattern of conduct injurious to the public morals, health, convenience, or safety of the communities in which the licensees operate.



*Significant variances exist between the time district offices receive high-priority complaints and the time they investigate them.*



However, a significant variance exists between the time district offices receive high-priority complaints and the time they begin investigative activity. The variances occur both within and among the districts we visited. For example, we reviewed follow-up on complaints of sales to minors made directly to district offices. For the 13 complaints we reviewed at the Los Angeles District Office, the timing of the investigative follow-up ranged from nine days to 23 months. The San Francisco District Office took from four days to over 14 months to investigate the 9 complaints we reviewed.

Response time for other types of high-priority complaints also varies. For example, in February 1994, the Los Angeles District Office received a complaint alleging that one licensee sold narcotics.<sup>5</sup> In this case, the district did not visit the licensee until September 1996, two years and seven months later. In contrast, in November 1996 the same complainant reported a similar narcotics complaint to the district for a different licensee.<sup>6</sup> In this instance, the district office made five follow-up visits between February 1997 and May 1997. Based on our review, we believe the district's activity on the second case was justified, but the differences in the investigative follow-up on these two complaints might lead others to conclude that the district office employed selective enforcement.

—◆—  
*One district office had more than 50 complaints from 1996 or earlier with no investigative follow-up.*  
—◆—

In addition, the San Francisco District Office had more than 50 investigative assignments for complaints from 1996 or earlier with no follow-up investigative activity noted. Some of these were high-priority complaints from citizens for sales to minors and disorderly premises, including narcotics violations. The San Francisco district administrator identified insufficient investigative personnel as a cause for not following up on many of these complaints. Further, the San Diego District Office could not verify that the district followed up on four complaints for the 57 licensees we examined. According to the district administrator, for three of the four complaints, the investigators recall doing some follow-up work.<sup>7</sup> However, without these records, the department cannot demonstrate the appropriate course of action—follow-up, closure, or accusation—for these complaints.

***District Offices Do Not Have Written, Consistent Guidelines Prioritizing Complaint Follow-Up***

The department has not formally established a system to prioritize its investigations. The department's headquarters and each of the three district offices we visited supplied their unwritten priorities for complaint follow-up. While each district's priorities are not dramatically different from those of the headquarters or other district offices, each has a different focus. Further, some of the priority guidelines are vague. Generally, each district claims it prioritizes its enforcement

<sup>5</sup> The licensee served a mixed race, gay clientele.

<sup>6</sup> The licensee served clientele of mixed race and sexual orientation.

<sup>7</sup> Of the four licensees, one reported its primary clientele as of mixed race and sexual orientation, one as mixed race and gay and lesbian, another as mixed race but did not identify sexual orientation, and the last one did not answer our survey.

—◆—  
*Although district offices assert that they give priority to those complaints the department considers most significant, enforcement resources are not necessarily deployed in that manner.*  
—◆—

activities to deal first with those complaints the department considers the most important or significant. However, as we discuss above, the district offices do not necessarily deploy their investigative resources in the manner described. The absence of clear, written policies and procedures for prioritizing and responding to complaints can result in inconsistent enforcement and failure to ensure that critical complaints are promptly addressed.

While the department has no formal written policy for the districts to follow in prioritizing their complaints, its chief deputy director states that the main priorities for enforcement efforts are violations involving disorderly premises, and sales to minors and obviously intoxicated patrons. However, he also states that it is important his administrators be responsive to communities that are served by their district offices and know that there may be occasions where the use of enforcement resources on lower priority complaints may not only be justified, but necessary. Further, the assistant director for administration has indicated that district offices should concentrate on specific, chronic complaints, rather than general spot checks of premises.

Although we saw no evidence that the San Francisco District Office actually followed a priority system, the district administrator states that the office prioritizes the investigative follow-up based on the type and source of complaint. It prioritizes complaints in the following order: (1) disorderly or disruptive premises, (2) sales to minors, (3) sales to obviously intoxicated patrons, (4) violations directly impacting the surrounding community, and (5) other violations. In addition, the priorities of sources include: (1) identified community citizens, (2) police departments, (3) other local agencies, and (4) anonymous parties.

According to its district administrator, the Los Angeles District Office considers sales to minors, sales to the obviously intoxicated, and frequent activities of a disorderly nature as the highest priority complaints. It also gives a higher priority to complaints from public officials.


In contrast, the San Diego District Office has no specific priority list and its district administrator asserts that it assigns complaints a higher priority if they pose a law enforcement or public safety problem. The availability of personnel and the effect of the statute of limitations may also affect priorities.

Parts of each of the stated policies are too vague or general to be effective in actually assigning complaints for priority follow-up. In particular, disorderly premises complaints can


encompass a wide variety of activities, from obstructing an investigation to murder on the premises, and usually involve an accumulation of complaints over time. The department has not clearly explained which of the 25 violation types in the disorderly premises category are actually considered for prioritization and when an individual complaint becomes a disorderly premises complaint. Without clear, written policies for prioritizing complaints, the department has not taken all possible steps to ensure that its investigative activity is consistent or that it addresses genuinely critical complaints promptly.

### ***Inconsistent Enforcement Practices Have Several Causes***

Several causes contribute to the department's inconsistent enforcement practices. First, the district offices rarely indicate prioritization on complaint documents. Initially, according to the district administrators, the enforcement supervisors at the districts assess the enforcement priority for each new complaint and create assignment sheets for the complaints. They also conduct periodic staff meetings to discuss enforcement problems and priorities. In mid-1997, the Los Angeles District Office began using a priority stamp for assignments. However, without a good system for tracking priority complaints and managing caseload, any assessment of relative priority for specific complaints may be meaningless.



*Without a good system to track complaints and manage caseload, as new work comes in, district offices may lose the benefit of priority assessments.*




The department's chief deputy director contends that another reason for the inconsistencies in following up on complaints has been the lack of trained investigative personnel, resulting in backlogs. In fact, during 1991-92 and 1992-93 fiscal years, the department lost 108 budgeted positions, or approximately 28 percent of its fiscal year 1990-91 staffing level. The department did not regain its fiscal year 1990-91 staffing level until the 1995-96 fiscal year. Its current budgeted staffing level is approximately 445. Although the department has regained all of the staff it lost, hiring and training new investigative staff also required time that the department could have devoted to investigations.

This shortage of enforcement investigators partially explains the variances in response times to complaints. For example, the Los Angeles district administrator indicated her office had between five and eight investigators during 1992 to 1994. However, almost no field enforcement was done from 1991 to 1993. Additionally, during this period, the district focused on licensing. Although investigators from Northern California assisted Southern California district offices with the licensing


caseload, only one Los Angeles district investigator was assigned to enforcement until June 1996, when a second joined the enforcement investigation staff. A third was assigned to enforcement in August 1996.

However, this explanation does not totally justify the inordinate delay in the Los Angeles district's follow-up for some complaints such as the narcotics case discussed on page 13. In fact, the district office more promptly followed up on other complaints during this period. For example, in August 1994, the same district received an anonymous complaint of lewd conduct at one of its licensed premises and made two follow-up visits the same month.<sup>8</sup> The investigator observed the violation on both visits and started the formal disciplinary process after the second visit. Despite the shortage of investigators and lower priority of this case compared to the narcotics case discussed previously, the district investigated the lewd conduct case within one month, but waited over two years to respond to the narcotics case.

Further, we question the wisdom of concentrating the Los Angeles District Office activity exclusively on licensing. Licensees continued to draw complaints during the time the district office suspended its enforcement activity. Also, the district office's resumption of its complaint investigations after the hiatus may have contributed to perceptions of discriminatory enforcement if the increased enforcement activity created a sharp contrast to the prior period.



*Even though staff reductions likely contributed to inconsistent and late follow-up, district offices do not always use investigators in the most efficient and cost-effective manner.*





Even though staff reductions likely had a part in inconsistent and delayed follow-up on complaints, the district offices do not always use investigators in the most efficient and cost-effective manner possible. All of the department's districts use sworn peace officers as investigators. Their primary duties include following up on complaints, working with police on specific alcohol-related programs, and processing police department reports involving alcohol-related violations. Other duties include responding to licensee or attorney requests for copies of investigative reports, serving subpoenas, posting suspension notices, and verifying the fine a licensee must pay. For example, during November 1997, San Francisco and Los Angeles district investigators completed 126 assignments. These included processing 21 police department reports, serving 11 subpoenas, and verifying 21 fines, in addition to following up on complaints.<sup>9</sup>

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<sup>8</sup> The establishment served a gay clientele of mixed race.

<sup>9</sup> The San Diego District Office is not included in this discussion because it erroneously recorded 98 assignments as completed in November even though, according to the district administrator, it actually completed all of these assignments in prior months.

  
*Administrative staff or contractors could perform certain duties and free sworn officers' time for investigations.*  


However, the department may not need the skills of sworn peace officers to perform some of these duties. Although the amount of time spent on these activities may not consume a large part of investigators' time, district offices could free sworn officers' time for investigations and achieve cost savings if administrative staff or contractors performed certain duties. For example, copying investigative reports for licensees or attorneys, picking up records from a licensee or the court, and preparing an accusation from a police report that does not require additional investigation may be duties that trained administrative staff could perform. It may also be possible to contract out the service of subpoenas. According to its chief deputy director, the department has actually shifted some of its licensing investigators' work to staff who are not sworn peace officers and would consider a similar change for its enforcement investigation activities if the change could be made through a budget augmentation.

Another factor contributing to the lack of follow-up on complaints is that district offices do not consistently request assistance from the department's Special Operations Unit (SOU) to help relieve backlogs. Based on our review of specific complaints, the San Francisco District Office worked frequently with the Northern SOU staff through 1994, but very little since then. Believing that he had insufficient investigative staff, the San Francisco district administrator could have requested SOU staff to help address the backlog of 50 unworked complaints from 1996 and earlier.

By assessing alternatives in the investigator staffing and workload assignments, the department may more effectively follow up on backlogged complaints and more closely achieve the legislative intent of strict, honest, impartial, and uniform administration and enforcement of the State's liquor laws.


***The Department Does Not Consistently Apply Penalties for Documented Violations***

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Our review also revealed that the department does not consistently assess penalties against licensees for similar violations. While some differences result from the department's appropriate consideration of special circumstances, others arise because of the department's incomplete and sometimes vague penalty guidelines. This leaves the 24 district administrators and supervisors to interpret these guidelines, further amplifying the potential for inconsistencies. The impact is especially apparent in considering mitigating and aggravating

circumstances when assessing penalties. Despite the divisional and headquarters reviews of penalty assessments, they do not always ensure consistency statewide.

***The Department Must Ensure  
Uniform Enforcement of the Law  
While Considering the Unique  
Conditions of Each Case***



*As a deterrent to future violations, the department has the option of imposing a stay, or probation, as a substitute for all or part of a penalty.*



The law requires the department to ensure the strict, honest, impartial, and uniform administration and enforcement of the Act. The department uses various forms of disciplinary action to enforce the law, including suspending or revoking licenses or issuing letters of warning. Under certain conditions, the law allows the licensee to petition the department to pay a fine instead of serving the suspension. The department also has the option of imposing a stay, or a probationary period, to substitute for all or part of a penalty if it believes probation will still deter future violations.

Another factor that can influence the penalty assessment is the stipulation and waiver. The licensee may agree to a negotiated penalty as part of a stipulation and waiver, in which the licensee waives rights to challenge the penalty in exchange for an expedited settlement, avoiding legal costs and time for both parties. The department offers this option when it believes that resolution would adequately discipline the licensee. Although the department has the authority to use the stipulation and waiver process, the policy manual indicates that district management should not resort to the process to quickly dispose of difficult cases. However, the department's procedure does not provide further guidance on the impact the stipulation and waiver can have on penalties.

Although the law generally authorizes the department to establish penalty guidelines, it specifically establishes the standard penalty for 3 of the 55 violations listed in the department's guidelines. According to the department's chief deputy director, most standard penalties are based on a combination of guidance from appellate court decisions and the department's assessment of the relative impact the violation has on the public safety, health, welfare, peace, and morals of the people of the State.

Department policy expects district administrators and supervisors to consider the circumstances of each case when recommending disciplinary action because few violations are identical. When aggravating factors exist, such as a licensee's



intentional disregard for the law, the administrators and supervisors have the authority to recommend a stricter penalty. Conversely, when mitigating factors exist, such as no prior disciplinary action, management can recommend a less severe penalty. When a recommended penalty differs from the standard, the penalty guidelines state that the accusation report must indicate the aggravating or mitigating circumstances considered in the assessments.

***Assessed Penalties Frequently Differ From Standard Penalties***


To determine the impact of mitigating and aggravating circumstances on penalty assessments, we summarized the penalties for first-time violations from the high-priority cases reviewed at the three district offices and in a statewide sample. Table 1 indicates the department imposed the standard penalty in only 34 of these 74 cases. Of the 34, only 13 licensees served suspensions while the remaining 21 licensees paid a fine instead. Table 1 includes only first-time violations because the department’s guidelines rarely provide standard penalties for subsequent violations. Further, the table excludes cases involving multiple types of violations.

***Table 1***  
***The Department Frequently Assessed Nonstandard Penalties***


<b>Violation (Standard Penalty)</b>	<b>Standard Penalty</b>	<b>Standard Fine<sup>a</sup></b>	<b>Nonstandard Penalty</b>	<b>TOTAL</b>
Sales to Minors (15-day suspension)	1	1	4	6
Sales to Minors/Decoys <sup>b</sup> (10-day suspension)	9	20	18	47
Lewd Conduct (30-day suspension)	1	0	10	11
Sales to Obviously Intoxicated Patrons (20-day suspension)	2	0	8	10
<b>TOTAL</b>	<b>13</b>	<b>21</b>	<b>40</b>	<b>74</b>

<sup>a</sup> Although the licensees received the standard penalty, they ultimately paid a fine instead of serving any suspension.

<sup>b</sup> A decoy is a minor under 20 years of age who participates in the decoy program with the local law enforcement community. As part of the program, local law enforcement agencies send decoys to purchase alcoholic beverages.



*Nonstandard penalties  
were assessed in  
54 percent of the  
cases we reviewed.*



Of the six licensees we reviewed who violated the law prohibiting the sale of alcoholic beverages to minors, only two received the standard penalty. Further, for the 10 licensees who sold alcoholic beverages to obviously intoxicated persons, the department assessed 8 licensees less than the standard penalty; 6 received a 15-day suspension or less, despite the department's standard penalty of 20 days. Four of the 6 negotiated a fine instead of having their licenses suspended. The law allows payment of a fine only when the assessed penalty is a 15-day suspension or less. Thus, if the department had assessed the standard penalty of 20 days for these violations, the licensees would have had to serve at least part of their suspensions.

In another example, we reviewed 11 cases of lewd conduct, a violation that falls within the disorderly premises category. The standard penalty for lewd conduct is a 30-day suspension for occasional or isolated offenses, and revocation for recurring and aggravated offenses. For the 11 lewd conduct cases we reviewed, the penalties ranged from a 15-day suspension with 5 of these days stayed for a one-year probationary period to a 30-day suspension instead of revocation.

We also reviewed the department's assessment of penalties during fiscal year 1996-97 for the same types of high-priority cases included in Table 1 and found similar results: of the 1,600 cases for sales to minors and obviously intoxicated patrons, the department assessed nonstandard penalties in 703 (44 percent) of the cases. Thus, mitigating and aggravating circumstances frequently affect penalty assessments.

The legitimate application of mitigating and aggravating circumstances is not the only cause of differences in penalty assessments. The department's incomplete and, at times, vague guidelines also contribute to these differences and may lead to inappropriate inconsistencies in assessments. The guidelines lack specific application criteria that district administrators and supervisors should consider when assessing the significance of various other factors. We discuss specific problems with the guidelines in the following sections.

***Penalty Guidelines Do Not Provide Adequate Structure for Assessing the Impact of Mitigating and Aggravating Circumstances***

Because mitigating and aggravating circumstances so frequently affect penalty assessments, good guidance in their application is essential. However, the department's guidelines fail to provide this necessary structure for consistent decision making. Although they provide mitigating and aggravating conditions, the guidelines do not explain how to apply these circumstances, thus leaving crucial decisions to the discretion of the 24 district administrators and supervisors who make initial penalty recommendations and to the divisional offices reviewing these recommendations. Listed below are the department's guidelines for mitigating and aggravating circumstances. The guidelines do not include an exhaustive list of all circumstances.

For example, although the penalty guidelines include the apparent and chronological age of a minor as a mitigating factor

in sales-to-minors cases, the department does not have a specific written policy for applying the age of the minor in penalty assessments. The guidelines do not clearly identify at what point age should become a mitigating factor. According to the chief deputy director, the age of a minor who is between 20 and 21 years old could be mitigating if the minor looked older. A minor who is younger than 18 years could be an aggravating condition if the minor had the appearance of a 15-year-old and no identification card was requested. However, the department does not consistently apply these factors. For example, of the 27 violations of sales to minors we reviewed for the statewide sample, we found 6 that involved service to minors under 18 years; however, only 2 specifically indicated the age as an aggravating factor. Further, of the 3 violations involving minors between 20 and 21 years old, only 2 included the age of the minor as a mitigating factor.

**Aggravating Factors**


- The licensee's involvement in or knowledge of the violation
- The licensee's intent to commit a violation
- The location of the licensee's establishment in areas with a high incidence of alcohol-related crimes
- The licensee's prior history of violations
- The licensee's failure to correct violations or objectionable conditions after receiving departmental notice

**Mitigating Factors**


- The apparent and chronological age of the minor in sales-to-minor cases
- The licensee's lack of disciplinary action for at least the previous three years
- The licensee's willingness to correct objectionable conduct

Another factor considered in assessing penalties for service to minors is the intention of the licensee, specifically whether the licensee asked to see the minor's identification card before the sale. The guidelines indicate that sales to minors in which the licensees know the purchasers are under 21 are intentional violations, considered an aggravating factor. For seven sales-to-minors violations we reviewed for the statewide sample, the licensee requested and viewed the identification card indicating the purchaser was under 21. Nevertheless, the department penalized only four licensees.

### ***Guidelines for Progressive Discipline Are Not Sufficiently Specific***



*In most cases, the penalty recommendation for subsequent violations is at the discretion of the district administrator.*




In conjunction with consideration of mitigating and aggravating factors, the department considers progressive discipline essential in assessing penalties for repeat violators. These guidelines are also vague, allowing inconsistent penalty assessments. For example, the guidelines generally do not indicate when to consider a prior violation or letter of warning in assessing penalties for new violations. The guidelines specifically set the standard penalty for subsequent violations for sales to minors and permitting minors to consume alcoholic beverages, but are silent on all others. Therefore, in most cases, the penalty recommendation for subsequent violations is at the discretion of the district administrator or supervisor.

Further, although the department's guidelines do not specifically address letters of warning as either a mitigating or aggravating factor, the district offices sometimes consider them when recommending penalties. The district offices send these letters to licensees when they have sufficient evidence of violations but believe filing an accusation is not in the best interest of justice. They might issue a letter of warning, for example, when they have insufficient documentation to actually present a case. According to the chief deputy director, a recent letter of warning involving the same issue should be considered an aggravating factor for a violation. However, for one violation we reviewed, a district office considered the letter of warning an aggravating factor, whereas for another a district office considered the letter a mitigating factor.

***The Department Does Not Have  
Sufficient Guidelines for Considering  
Potential Deterrence of Future Violations***

The department's guidelines will allow a stayed penalty, or probation, for all or part of a penalty period if it believes this will deter future violations. When a penalty is stayed, the department places the licensee under probation, which generally lasts one year. Should the licensee commit another violation during this time, the department can reverse its stay and reimpose the original suspension.

The written guidelines indicate that the department recommends partially stayed penalties only in aggravated cases or cases where the likelihood of future violations is great. According to the chief deputy director, the department generally recommends a total stay on a penalty when the licensee has had no prior violations for a long period of time, there are factors in the case that mitigate the violation, or the case is weak and it is both just and a deterrent to future violations. However, the guidelines do not reflect the chief deputy director's perspective or indicate the length or duration of the stay.


  
*A stayed penalty may deter future violations when there is some assurance that investigators will visit the licensee during the probation period.*

We believe that a stayed penalty may deter future violations if investigators periodically visit the licensee's premises to assure compliance with the Act. We do not believe that relying on complaints from outside sources is sufficient. If licensees on probation knew that investigators would visit their premises, they would be more likely to comply with the law. However, according to the chief deputy director, the department does not currently have a policy requiring such visits. Furthermore, for the 28 stayed penalties we reviewed for which the probationary period was over, the department did not visit 14 during the probationary period. The chief deputy director stated that the department does not have a sufficient number of investigators to actively monitor the estimated thousands of licensees who are serving out a stayed penalty. However, without this follow-up, the department loses an opportunity to make the probationary period a more effective deterrent to future violations.


### ***The Penalty Assessment Guidelines Are Outdated***

The department does not have a policy requiring the periodic review and updating of its guidelines for penalty assessments to ensure they meet the current public need. In fact, existing guidelines do not fully conform to the law. In 1991, the department's director instructed staff to reexamine current penalties and assess whether changes were needed because he was concerned that public officials, community organizations, law enforcement colleagues, and the general public perceived the department as too lenient with retail licensees who violated the law. The chief deputy director indicated that the department did not complete its review until 1996 because of staffing cuts in prior years.

The department's strategic plan, dated July 1997, reflects its continuing concern with public perception of its enforcement practices. In responding to a survey the department conducted, randomly selected licensees, alcohol industry associations, trade publications, and law enforcement agencies indicated that the department needs stronger enforcement, tougher penalties, and greater uniformity in interpreting statutes and regulations.



*Stakeholders indicate the department needs stronger enforcement, tougher penalties, and greater uniformity in interpreting statutes and regulations.*



The department did not provide us with evidence of the extent of its review of penalty guidelines during 1991 through 1996. In addition, it has not promptly incorporated changes in the law into the penalty guidelines. For example, it took the department two years to incorporate a 1995 law requiring mandatory suspension for licensees guilty of a second violation of sales to minors. Further, since 1979, the law has required the mandatory suspension of licensees with a second violation within 36 months for sales to the obviously intoxicated, but the guidelines do not reflect this law. Although the department has informed the division and district offices of regulatory and policy changes through memoranda and staff meetings, we believe it is critical that those changes be formally incorporated into the department's written guidelines.

The problems arising from incomplete, vague, or outdated guidelines are amplified for the department because 24 different district administrators and supervisors must interpret and apply them. Based on our review of licensee files, we believe the division and headquarters reviews of penalty assessments do not adequately counteract the inconsistencies that arise from discretion allowed at the district office level.

***If the Department Fails to Ensure Consistent Treatment of Licensees, It Can Negatively Affect Licensees, Their Communities, and the Department***

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Several unfortunate results arise from the department's failure to ensure consistent treatment of licensees throughout the investigative and disciplinary process. Most important is the threat to the health and safety of citizens. When the department does not investigate a complaint against a licensee, the surrounding community can suffer. The department's reputation also suffers, as may the reputations of law-abiding licensees. Although we did not find evidence that the department discriminated against any particular group of licensees, its inconsistent enforcement and lack of firm, clear guidelines for penalties leave the department open to the perception that it discriminates against certain licensees or groups of licensees. If it does not consistently follow its stated priorities in following up on complaints, does not ensure reasonably prompt follow-up on all complaints, and does not apply penalty assessment guidelines more uniformly, the department runs the additional risk of losing public confidence in its ability to serve the State's communities.

## ***Recommendations***

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Although we found no pattern of discrimination against minorities in the department's enforcement activities, limited overall information about the nature of licensees' clientele and about enforcement activity throughout the State and at each district office prevents us from concluding decisively that discrimination does not exist. However, inconsistent investigative and disciplinary practices leave the department vulnerable to accusations of discrimination. Therefore, to ensure that district offices provide consistent and prompt follow-up to complaints, the department should:

- Establish a formal system for prioritizing each complaint by type and by the number of previous complaints received against the licensee. This system should alert districts to high-priority complaints needing prompt action.

- Review alternatives to staffing and workload assignments to determine if some administrative duties that investigative staff currently perform could be handled by other personnel or contractors. For example, the department could assign to noninvestigative staff such duties as responding to a request for copies of investigative reports.
- Encourage district offices to use the services of the Special Operations Units' staff.

To ensure that it assesses penalties consistently, the department should:

- Provide more specific guidance on how to apply aggravating and mitigating factors and how to deal with subsequent violations when assessing penalties. Further, for certain common violations, the department should consider establishing higher and lower penalty limits to address mitigating and aggravating conditions.
- Provide more specific guidance about using stayed penalties as a deterrent to future violations. Further, to increase the effectiveness of stayed penalties, the department should implement a policy requiring that investigators visit licensees' establishments during probationary periods.
- Provide more specific guidance on stipulation and waivers.
- Create and implement a policy for formal, periodic review of penalty assessments that includes a provision for public input. For example, the department could create a stakeholders' advisory group made up of licensees, local law enforcement, and the general public.



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# Chapter 2

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## *The Department of Alcoholic Beverage Control Should Improve Certain Management Tools and Its Monitoring of Enforcement Activity*

### *Chapter Summary*

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The Department of Alcoholic Beverage Control (department) lacks some of the necessary tools for making good management decisions and for monitoring its enforcement activity. In particular, the department does not have accurate information on the number and status of complaints, or easily accessible automated management information for determining workload, assessing staffing needs, and obtaining a comprehensive view of enforcement activity at the district and statewide levels.

### *The Department Bases Decisions on Inaccurate Information*

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The department relies on inaccurate and inconsistent reports that district offices prepare manually each month to measure workload performance and report activity to the Legislature. Additionally, according to the assistant director for administration, the department utilizes these reports as one of many factors in assessing resource needs, staffing allocations, priorities, and potential problem areas. Because of inaccuracies in the reports, the department's management and the Legislature may be making important decisions that do not meet the department's needs. For example, an inappropriate staffing allocation could affect the promptness or extent of investigations of complaints by a district office.

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*We found district offices' enforcement workload data to be inaccurate and inconsistent.*

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Because the three district offices we reviewed did not follow the department's procedures in preparing their monthly workload reports, their enforcement workload data was inaccurate and inconsistent. Additionally, the department does not require the district offices to routinely review and periodically reconcile the workload data to supporting documents.

The enforcement assignment data the department requires its district offices to report each month include the number of assignments pending from the previous month, the assignments received and completed during the current month, and those pending at the end of the month. Enforcement assignments consist of complaints received from local law enforcement, citizens, and public agencies, as well as the investigative and administrative activity the district investigators perform when following up on complaints and filing accusations against a licensee. These activities can include visiting a licensed establishment to determine whether violations are occurring and, if necessary, writing reports to file accusations against licensees; following up on police reports of violations; serving subpoenas; determining licensees' fines; and posting suspension notices. The procedures also require the district offices to report separately the number of subpoenas served, fines verified, and police reports received.



*Inflated workload data, resulting from double counting activity and accumulating prior months' mistakes, resulted in inaccurate reports.*



When we reviewed the November 1997 reports from the three districts we visited, we identified errors that generally resulted in inflated workload data. Many of the errors resulted from double counting activity and accumulating prior months' mistakes. For example, the Los Angeles and San Diego District Offices double counted the number of subpoenas served and fines verified during the month. Both offices reported these items separately as required but erred by including them in the enforcement assignment category as well. Additionally, the San Francisco District Office double counted its activity relating to police reports.

Table 2 below shows the difference in the enforcement assignment activity the three district offices reported for November 1997 and the enforcement assignment activity we identified and counted using the department's written procedures. Because we found numerous, significant errors in the reports for November 1997, we have reason to believe that recorded activity from prior months is also inaccurate. As a result, the district offices continuously accumulate the errors.

**Table 2****District Offices Made Significant Errors Reporting Enforcement Workload**

	San Francisco			San Diego			Los Angeles		
	Reported by District	Calculated by Auditor	Error	Reported by District	Calculated by Auditor	Error	Reported by District	Calculated by Auditor	Error
Pending Assignments November 1, 1997	272	186	<b>46%</b>	124	186	<b>-33%</b>	149	130	<b>15%</b>
Assignments Received	68	38	<b>79%</b>	39	31	<b>26%</b>	46	29	<b>59%</b>
Assignments Completed	<59>	<13>	<b>354%</b>	<83>	<110>	<b>-25%</b>	<36>	<15>	<b>140%</b>
Pending Assignments November 30, 1997	281	211	<b>33%</b>	80	107	<b>-25%</b>	159	144	<b>10%</b>

The table does not include police reports.

For example, even though the San Diego District Office reported that it completed 83 assignments in November 1997, we identified 110 assignments the district office completed during the month. After we requested the enforcement assignment activity reports and supporting logs, the San Diego office recorded the closing of an additional 136 enforcement assignment activities. According to the district administrator, the office closed 98 of these assignments before November 1997, but the logs did not indicate the date of actual closeout. By not properly updating the logs, the district understated the amount of activity it completed in November and in prior months.

Additionally, because the San Diego District Office did not begin retaining a complete copy of its enforcement activity log until January 1997, it cannot verify the completeness of the information reported. In Los Angeles, there were several instances in which the logs did not identify the activity or type of complaint. Therefore, the district could not conveniently track or report its complaints and associated activity.

In addition to the errors in the enforcement activity, the San Diego and San Francisco district offices made significant errors when reporting the number of police reports they handled during November 1997. For example, the San Diego District Office reported that it had 12 police reports pending action at the end of the month; however, we identified


38 reports. Likewise, we identified 50 police reports pending action at the beginning of the month in the San Francisco office; however, the office indicated it had only 27 reports.

Because the department does not differentiate its investigative follow-up on complaints from other enforcement activity, when it reported its workload to the Legislature, it inflated the number of complaints and referrals investigated by reporting all enforcement assignment activity, including serving subpoenas, posting suspensions, and attending hearings, as investigations. For instance, the enforcement assignment activity reported as completed by the three district offices in November 1997 totaled 178, not including police reports. However, we determined that only 23 represented actual investigations of complaints or referrals the department completed that month. When the department uses inaccurate information to compare activity levels among district offices and assess workload, performance, and staffing needs, it risks making decisions that do not address the department's true needs and reduces its ability to operate efficiently and effectively.


### ***The Districts' Ability to Monitor Enforcement Activity Is Limited***

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Although good business practices require the districts to maintain useful and reliable information to monitor their activities and make appropriate management decisions, management at the district offices we reviewed has limited ability to monitor long-term enforcement activity using the current system for gathering information. The district offices have the necessary information available for the day-to-day monitoring of investigators' activities, but the manual system they use is time-consuming and cumbersome and does not give management the ability to efficiently capture, process, and analyze information about enforcement activities for an overall view of the district or for an extended period.



*The time-consuming and cumbersome manual system does not provide district management an overall view of its enforcement activities.*



With the current monitoring system, management can evaluate the daily activity of investigators by reviewing a log of enforcement activity and paper files. The districts use the log to record activity and report monthly workload data to headquarters. The various paper documents include the investigators' daily activity reports indicating the time, location, and reason for enforcement activity. The department requires investigators to complete and district management to review and sign these documents for each shift. The district offices also use an enforcement assignment sheet to assign investigator


duties that can range from following up on complaints to attending hearings. The district offices also use a variety of other documents to assist in monitoring investigators.

For example, according to the district administrator, the San Diego office reviews the evidence processed, arrests made, reports of investigations, and investigators' expense sheets to further assist the monitoring of daily activities. Management also stated that the daily activity log is cross-referenced to the enforcement assignment sheet. The San Francisco district administrator indicated that his supervisors review the enforcement assignment sheets, the report of investigations, and other documents to supervise its investigators. District management at the Los Angeles office also indicated that they use the same documents to monitor the activity of its investigators. We also noted documentation that supervising investigators in the three district offices occasionally accompanied investigators in the field. These reviews, coupled with periodic meetings with individual investigators and with the entire enforcement team, could allow district management to supervise investigators' daily follow-up on complaints and visits to licensed premises.

Nevertheless, a comprehensive, easily available overview of district offices' enforcement activity does not exist. To have such an overview, the district offices would need continuous summaries of complaints received and investigated, the results of investigations, and which investigators conducted the complaint follow-ups. This information would allow the district offices to control their operations more efficiently and effectively.

***The Department's Lack of Centralized Information Impairs Its Ability to Monitor Its Statewide Enforcement Activities***


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*The current system does not meet the department's most basic need for efficient information management.*


An automated system could help district offices track essential information, and could also contain statewide information. The department's current information system does not meet its most basic needs for efficient information management. The department has little centralized, automated data available for managing and monitoring enforcement activity. Without such data, the department cannot readily identify problem licensees and patterns of enforcement activity throughout the State. Additionally, the department cannot efficiently monitor the districts' workloads, measure their performances, or determine their staffing needs.

The department has automated licensing and disciplinary histories using its California Alcoholic Beverage Information Network (CABIN). CABIN maintains a central database of information on each licensee, such as name and address, license type and renewal information, and penalties assessed. This data is important for tracking the number, location, and types of licensees as well as accusations against them. However, CABIN lacks information about enforcement activity, such as:

- When a district office receives a complaint
- The nature of the complaint
- The time and activity spent investigating the complaint and the identity of the investigators
- The date of resolution and outcome of the complaint



*Lacking crucial information, the department cannot readily identify problem licensees and patterns of enforcement activities, measure workload, or make other management decisions.*



As a result of this lack of crucial information, the department cannot readily identify problem licensees and patterns of enforcement activity, monitor the promptness of its follow-up, measure its workload performance, or make other management decisions. Early in our audit work, we requested information on licensees with the most complaints or investigative activity and patterns of enforcement activity for each of the district offices; the department headquarters could not efficiently provide it, nor could we easily obtain this information at the district offices we reviewed. Obtaining such information would require a manual review of each licensee's file at each district office and manual compilation of the data from thousands of licensee files.

According to the assistant director of administration, the department has plans to upgrade its CABIN system and states that, once completed, the enforcement assignment tracking system will begin to provide a database of complaint assignments and their status and disposition. He states that although it has developed the framework for the enforcement assignment tracking system, the department has concentrated its automation efforts and resources on the licensing, revenue accounting, and disciplinary functions. The department is in the process of redesigning input screens for data entry and anticipates distributing them to field offices by September 30, 1998. Based upon field testing, the department projects that it will complete full distribution of the screens by January 31, 1999, and supervisor and investigator training by April 30, 1999.

## ***Recommendations***

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The department does not have the necessary tools to make sound management decisions and effectively monitor its enforcement program. Management is relying on inaccurate data manually extracted from the districts' records to make critical decisions. Although the district offices can review their investigators' daily activities, they do not identify patterns of enforcement activity throughout the district over an extended period. As a result, the district offices have a limited ability to operate an efficient and effective enforcement program. Therefore, to ensure that both the headquarters and district offices can more efficiently and effectively monitor their overall enforcement activities, the department should do the following:

- Develop and implement a system that captures and analyzes the districts' enforcement activity.
- Develop and implement a formal policy that requires district management to routinely review patterns of enforcement activities to decide how to distribute its investigative resources.
- Implement an automated, statewide tracking system for accessing data on enforcement activities. The system should be able to extract data by licensee and district office, allowing the department to obtain important information, such as the status of any single complaint and overall enforcement activity at a district office.
- Review the information from the database regarding enforcement activities to ensure that they are operating as the department intends.

For more efficient and accurate reporting of enforcement activity, the department should establish procedures that will do the following:

- Require the district offices to perform a routine review and periodic reconciliation of the data to the supporting records.
- Require the district offices to track and report complaints and referrals separate from other enforcement activities.

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 governmental 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 "Kurt R. Sjoberg". The signature is written in a cursive, flowing style.

KURT R. SJOBERG  
State Auditor

Date: May 6, 1998

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# *Appendix*

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## *The Department of Alcoholic Beverage Control's Enforcement and Education Programs*

The department of Alcoholic Beverage Control (department), in conjunction with local law enforcement agencies, participates in several special programs designed to enforce the Alcoholic Beverage Control Act (Act), deter violations, and educate licensees about violations of the Act. These programs include:

- **The Grant Assistance to Local Law Enforcement Agencies Project**, an alcohol-related crime assistance program for local communities. Department investigators train officers from local law enforcement agencies on Alcoholic Beverage Control laws, enforcement strategies, and on the process for revoking or suspending a license. Following the training, department personnel and the local law enforcement officers target problematic license outlets.
- **The Minor Decoy Program**, which allows local law enforcement agencies to use persons under 20 years of age as decoys in an attempt to purchase alcoholic beverages from licensed establishments to discourage licensees from selling to minors.
- **The Retail Operating Standards Task Force**, which enforces Business and Professions Code Section 25612.5, requiring licensees to remove litter and graffiti around their businesses, provide proper lighting, and keep windows clear of excess signs.
- **The Informed Merchants Preventing Alcohol-Related Crime Tendencies Program**, which educates licensees on helping to reduce alcohol-related crimes.
- **The Employment Enforcement Task Force**, operated in conjunction with the Employment Development Department, the Department of Industrial Relations, and the Department of Consumer Affairs. It ensures workers receive

certain benefit coverage and minimum wage, businesses obtain proper licenses, and employers avoiding employment taxes comply with the law.

In addition to the above field enforcement programs, the department has outreach efforts to educate licensees on the Alcoholic Beverage Control laws and regulations. The License Education and Alcohol and Drugs Program is a voluntary program that trains licensees, license applicants, and their employees on alcohol responsibility and the law.

Agency's response to the report provided as text only:

State of California  
BUSINESS TRANSPORTATION AND HOUSING AGENCY  
980 9th Street, Suite 2450  
Sacramento, CA 95814-2719  
(916) 323-5401  
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Dean R. Dunphy  
Secretary

April 27, 1998

Kurt R. Sjoberg, State Auditor  
Bureau of State Audits  
660 J Street, Suite 300  
Sacramento, CA 95814

Re: Bureau of State Audits Report Number 97111

Dear Mr. Sjoberg:

I am forwarding the Department of Alcoholic Beverage Control's response to your draft audit report No. 97111 entitled "Department of Alcoholic Beverage Control: Weaknesses in Its Enforcement Program Leave It Vulnerable to Allegations of Unfair Practices."

In addition to the findings, the audit made a number of thought provoking recommendations to the Department to strengthen and improve its investigative and disciplinary practices to minimize vulnerability and allegations of unfair practices.

Thank you for the opportunity to comment on the draft audit report and please extend our thanks to your staff for their professionalism and diligence in conducting this audit.

If you have any questions, please let me know.

Sincerely,

DEAN R. DUNPHY  
Secretary

Attachment

Alcoholic Beverage Control  
Department of State Banking  
Department of Corporations  
California Highway Patrol  
California Housing Finance Agency

Department of Housing &  
Community Development  
Department of Motor Vehicles  
Department of Real Estate

Office of Real Estate Appraisers  
Stephen P. Teale Data Center  
Office of Traffic Safety  
Department of Transportation (Caltrans)

**DEPARTMENT OF ALCOHOLIC BEVERAGE  
CONTROL RESPONSE TO DRAFT  
AUDIT REPORT - 97111**

The Joint Legislative Audit Committee requested the Bureau of State Audits (BSA) to perform an audit of the “Department of Alcoholic Beverage Control to determine whether the Department was practicing selective and discriminatory enforcement of the Alcoholic Beverage Control Act and related regulations.”

The audit report concludes that “Given the limited information, we found no pattern of discrimination or individual instances of unjustified enforcement activity.” In view of the seriousness of the issue of discriminatory or selective enforcement activity, the Department is extremely pleased with the audit findings.

It is the Department’s belief that it has systems and reviews in place to ensure that the Department does not practice discriminatory or selective enforcement against any group. However, the audit finding that certain investigative and disciplinary practices leave the Department vulnerable to accusations of discrimination is valid and these recommendations will be addressed in our following responses.

**Chapter 1**

**BSA Finding**

**Although We Found No Pattern of Discrimination, the Department of Alcoholic Beverage Control’s Practices Leave It Vulnerable to Accusations of Inequitable Treatment.**

**Response to BSA’s Recommendations**

***BSA’s Recommendation 1** - Establish a formal system for prioritizing each complaint by type and by the number of previous complaints received against the licensee. This system should alert districts to high-priority complaints needing prompt action.*

**Response:** We concur. The development of such a priority system with written guidelines will enhance the management control systems now in place and increase the efficiency and effectiveness of the Department's enforcement resources throughout its two divisions and twenty-four district offices.

As a means for providing an increased level of public notice and participation by the Department's constituencies, consideration will be given to disseminating the Department's enforcement priorities through outreach efforts such as the Department's Licensee Education on Alcohol and Drugs (LEAD), Grant Assistance to Law Enforcement (GALE), and Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) programs and through the Department's Home Page.

Timeline: September 1, 1998.

***BSA's Recommendation 2 - Review alternatives to staffing and workload assignments to determine if some administrative duties that investigative staff currently perform could be handled by either non-investigative personnel or contractors. For example, the department could assign to non-investigative staff such duties as responding to a licensee or attorney request for copies of investigative reports.***

**Response:** We concur. This concept is consistent with the Department's past efforts to effectively utilize its staff resources.

In July, 1992, to more effectively utilize its sworn investigative staff, the Department established the non-sworn class of Licensing Representative, ABC. The Licensing Representative class concept was to establish a classification to perform non-sworn licensing functions which enables the Department to maximize the use of its sworn staff to conduct the more complex licensing investigations and enforcement duties. The Department will review available staff alternatives and workload assignments to determine the feasibility and effectiveness of such alternatives.

Timeline: November 1, 1998.

***BSA's Recommendation 3 - Encourage district offices to use the services of Special Operations Units' staff.***

**Response:** We concur. The mission goals of the Department's Special Operations Unit (SOU) will be more clearly articulated to ensure that all division and field office administrators understand the SOU's role as a resource in working field office enforcement complaint backlogs.

A triggering mechanism will be considered that will automatically deploy SOU enforcement resources to a district office when a specific enforcement backlog level is reached.

Timeline: July 1, 1998.

**To ensure that it assesses penalties consistently, the department should:**

***BSA's Recommendation 4 - Provide more specific guidance on how to apply aggravating and mitigating factors and how to deal with subsequent violations when assessing penalties. Further, for certain common violations, the department should consider establishing higher and lower penalty limits within which to address the effects of mitigating and aggravating conditions.***

**Response:** We concur. The Department will provide further written clarification in its manuals not only with regard to what factors actually constitute mitigation or aggravation, but also how they should be applied to specific factual situations. In addition, the Department's penalty guidelines will be expanded to include specific recommended penalties for subsequent violations.

The proposed modifications will:

- Provide more specific examples of aggravation in the area of: willful intent to violate on the part of the licensee, the past record of the licensee with respect to similar violations, including letters of warning, and other unique instances of specific conduct which will warrant higher penalties.
- Provide more specific examples of mitigation such as: length of time in business without a record of violation, a record of implementation of training on behalf of the licensee and the licensee's employees, and specific instances of good conduct by the licensee which would result in reasons for a reduced penalty.
- For certain common violations, after a six-month study in the area, provide a better overview on the application of mitigation and aggravation factors by establishing, where appropriate, higher and lower penalties being assigned to these specific violations.

In addition, the Department will further implement the above by routinely discussing the above procedures at District and Division staff meetings with a view toward providing modification as needed.

Timeline: January 1, 1999.

***BSA's Recommendation 5 - Provide more specific guidance about the circumstances in which to consider using stayed penalties as a deterrent to future violations. Further, to increase the effectiveness of stayed penalties as deterrents, the department should establish and implement a policy requiring that investigators visit licensees' establishments during probationary periods.***

**Response:** We concur. With respect to the State Auditor's recommendations about providing more specific guidance about circumstances in which to consider using stayed penalties as a deterrent to future violations, the Department will modify its policy manual in a fashion

as to indicate for each violation, where appropriate, what factors should be addressed in making such determinations such as: the serious nature of the violation and its effect upon the public (disorderly houses, sale to minors, etc.), the potential of a continuing violation if no stayed penalty is provided, and varied stayed penalty provisions for licensees who are convicted of crimes of moral turpitude.

In addition, such matters would be routinely required to be discussed at district and division staff meetings.

Although we agree that follow-up visits to licensed locations on probation would make the probationary period more effective and meaningful, the Department will need to assess the impact of such follow-up on existing staff resources.

Timeline: January 1, 1999.

***BSA's Recommendation 6 - Provide more specific guidance on the use of stipulation and waivers and how they affect penalties.***

**Response:** We concur. The Department's current written guidelines will be expanded to incorporate a statement of policy regarding the stipulation and waiver process and its potential effect on our over all goal of uniform and consistent penalty assessments.

The Department will also identify and set more clearly defined parameters for district offices to operate within in negotiating penalty settlements through the stipulation and waiver process.

Timeline: January 1, 1999.

***BSA's Recommendation 7 - Create and implement a policy that will ensure a formal, periodic review of penalty assessments that includes a provision for public input. For example, the department could create a stakeholders' advisory group made up of licensees, local law enforcement, and the general public.***

**Response:** We concur. The Department will formalize its current internal procedures which require the legal staff to advise the executive staff of the need for new or modified penalties as the result of new legislation or court decisions.

In addition to the procedure to review the need for new or modified penalties, the Department will create an audit report to allow review for consistency of the current penalties assessed.

The Department currently provides on a subscription basis, a weekly calendar of completed disciplinary actions to four industry trade

publications and twelve additional law enforcement agencies, industry members, and industry consulting services.

The Department is exploring the feasibility of posting its weekly calendar of disciplinary actions to its Home Page.

We will explore the feasibility of providing a mechanism to solicit and receive public input on the Department's disciplinary processes through the Home Page medium and through our current subscriber list of external customers.

In addition, similar efforts will be made to solicit and receive input on disciplinary processes and policies through our existing Customer Satisfaction Survey, Ombudsman, the Licensee Education on Alcohol and Drugs (LEAD), and Grant Assistance to Law Enforcement (GALE) programs.

Timeline: January 1, 1999.

## Chapter 2

### BSA Finding

#### **The Department of Alcoholic Beverage Control Should Improve Certain Management Tools and Its Monitoring of Enforcement Activity**

***BSA's Recommendation 1*** - *Develop and implement a system that captures and analyzes the districts' enforcement activity.*

**Response:** We concur. The Department has already identified this need and current reporting forms will be redesigned to capture relevant enforcement data in a more comprehensive manner.

Timeline: May 1, 1999.

***BSA's Recommendation 2*** - *Develop and implement a formal policy that requires district management to routinely review patterns of enforcement activities so that it can decide how to distribute its investigative resources.*

**Response:** We concur. Using the data gathering system described in Recommendation 1, the Department will explore the feasibility of developing and implementing a policy that requires district management to utilize that data routinely for the purpose of reviewing patterns of enforcement activities so that it can decide how best to distribute its investigative resources.

Timeline: July 1, 1999.



***BSA's Recommendation 3*** - Implement an automated, statewide tracking system for accessing data on enforcement activities. The system should be able to extract data by licensee and district office, allowing the department to obtain important information such as the status of any single complaint and overall enforcement activity at a district office.

**Response:** We concur. This is predicated upon implementing Recommendation 1.

Timeline: May 1, 1999.

***BSA's Recommendation 4*** - Review the information from the database regarding enforcement activities to ensure that they are operating as the department intends.

**Response:** We concur. This is predicated upon implementing Recommendation 1 which will enable the Department to establish the enforcement database and Recommendation 2 which will enable the Department's management and Executive staff to monitor enforcement patterns. Thereafter, the Department's senior management staff will create reports that will allow review to determine if its highest enforcement priorities are being addressed in a manner consistent with the policy of the Executive office.

Timeline: July 1, 1999.

***BSA's Recommendation 5*** - To provide for more efficient and accurate reporting of enforcement activity, the department should establish procedures that will do the following:

A. *Require the district offices to perform a routine review and periodic reconciliation of the data to the supporting records.*

**Response:** We concur. The Department will institute a policy to require an annual reconciliation of data to the supporting records.

Timeline: July 1, 1998.

B. *Require the district offices to track and report complaints and referrals separate from other enforcement activities.*

**Response:** We concur. The Department will modify its current district office monthly reports and establish a policy and procedure to require district offices to track and report complaints and referrals separate from other non-investigative enforcement activities.

Timeline: September 1, 1998.

In closing, we would like to thank the seven Bureau of State Audit staff for their professionalism and diligence in pursuit of the facts throughout the ten month span of this audit.

The recommendations they made for improving the Department's disciplinary processes as well as the perception of them are valued and appreciated.

We are confident that the corrective measures that will result from their observations and recommendations will make the Department more effective in its delivery of public safety services to the people of California.

Sincerely,

Jay R. Stroh  
Director

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Attorney General  
State Controller  
Legislative Analyst  
Assembly Office of Research  
Senate Office of Research  
Assembly Majority/Minority Consultants  
Senate Majority/Minority Consultants  
Capitol Press Corps