

CALIFORNIA DEPARTMENT OF CORRECTIONS

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

REPORT NUMBER 2004-105, OCTOBER 2004

California Department of Corrections' response as of December 2004

Audit Highlights . . .

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

- Spends an average of 285 days to serve an adverse action or close a case.***
- Can improve its disciplinary process by simplifying its investigative process for straightforward, uncontested cases, by eliminating the headquarters review of most adverse actions, and by taking steps to bring more standardization of penalties. Further, many disciplinary case files were disorganized and had key pieces of information missing.***
- Has disciplinary policies and procedures that are incomplete, out of date, and in need of revision.***
- Uses several redundant databases to track disciplinary matters and each system is incomplete and inaccurate.***

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The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the California Department of Corrections' (department) process of handling employee disciplinary matters. Specifically, the audit committee requested that we determine the extent to which the department has established uniform policies and procedures for the use of legal services in employment matters and whether the institutions are following those policies and procedures.

Finding #1: The department averages 285 days to deliver an adverse action or close a case.

On average, the department takes 285 days to deliver a notice of adverse action against an employee or to close a case, and the process occasionally surpasses the one-year deadline for taking action against peace officers—leaving the department unable to correct or punish the employee. We found that the department often does not meet the guidelines from its operations manual and a procedural bulletin for completing the various steps involved in the disciplinary process. To assist in meeting the overall deadlines, the department should include similar steps in its new procedures and then monitor the procedures to ensure that staff are following them. Unnecessarily lengthy time frames between the date an offense is alleged and the date action is taken can undermine the process—potentially lessening the effectiveness of any corrective action taken.

We recommended that the department identify, benchmark, and monitor for improvement the adverse action timelines for each step in the process.

- ☑ Recently began requiring job-specific training for a key position involved in its disciplinary process; however, it can do more to require training for other key positions.
 - ☑ Has yet to implement several audit recommendations related to disciplinary matters from audits conducted in 2000 and 2001.
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Department Action: Partial corrective action taken.

The department stated that it is in the process of designing and implementing database systems in which it will identify and benchmark adverse action timelines for each step in the process. The department estimates that the databases will be operational by March 1, 2005. Until that time, the department is tracking each type of case using its existing databases. The department also reported that the office of civil rights is now closing investigations in an average of 147 days—an improvement since our audit—but still above its goal of 90 days.

Finding #2: The department lacks a formal streamlined process for straightforward cases and wastes time on unneeded information requests.

The department can reduce the time it spends on certain disciplinary matters by simplifying its investigations of uncontested, straightforward cases and eliminating unnecessary requests for information, and the transcriptions of interviews. Additionally, when it implements the disciplinary matrix, which will prescribe standard penalties within a range for specific employee offenses, we believe that the need for a review by headquarters will be limited to those cases that do not fit within the disciplinary matrix parameters. More efficient use of their time allows staff involved in the disciplinary process to focus their efforts on necessary work.

We recommended that the department implement procedures to allow for expedited investigations and actions for uncontested, straightforward cases such as driving under the influence; eliminate headquarters and regional reviews before serving disciplinary actions that meet the parameters of the disciplinary matrix; and discontinue the practice of transcribing all interviews and transcribe only those that are necessary.

Department Action: Partial corrective action taken.

The department reported that its office of civil rights implemented policy and procedures allowing for expedited investigations and that it expects to update its operations manual with the procedures by July 1, 2005. For other cases, the department is considering a centralized intake process and other procedural changes, which will facilitate implementation of our recommendation to expedite straightforward cases. The department expects to incorporate the new procedures by

August 16, 2005. Moreover, the department reported that it will implement the disciplinary matrix by March 1, 2005, and it plans to eliminate most, if not all, headquarters and regional office reviews at that time. Finally, the department stated that its office of civil rights determined that staff were transcribing fewer interviews related to its cases in response to its policy requiring staff to only transcribe those interviews that are necessary. For all other cases, an attorney will determine the necessity for transcription of interviews once the department implements its vertical advocacy model.

Finding #3: The State Personnel Board often modifies or revokes the department's adverse actions.

Annually, the State Personnel Board (board), which reviews roughly 14 percent of the department's adverse actions, revokes or modifies approximately 62 percent of those it reviews. Currently, the department does not analyze its individual and overall performance statistics concerning cases that go before the board, nor has it established any benchmarks. We believe it would be useful to the department to continually monitor these statistics to measure any improvements and to assist in identifying training needs. Improving this performance is important to ensure employee confidence in the process and in management.

We recommended that the department benchmark its individual program and overall performance statistics for cases that go before the board and continually monitor these statistics.

Department Action: Pending.

The department reported that it will benchmark and monitor cases going before the State Personnel Board once it implements its two new database systems. The department plans to include the status and timing of these efforts in its six-month response to our audit.

Finding #4: The process for handling employee misconduct allegations and discipline are not significantly different, but consistency can be improved.

Although we did not find significant issues with regard to varying processes used by institutions and regions, the department could improve its disciplinary process by eliminating some of the minor differences in its disciplinary practices and by standardizing

penalties at various institutions. For example, each institution we tested uses a combination of full-time investigators and other employees at the rank of sergeant or above who do not work solely for the Investigative Services Unit (investigative services). These “field investigators” have other duties and are called upon to handle investigations as needed. The department may want to consider conducting a workload study to determine the number of full-time investigators each institution may need and whether existing resources can be allocated for this purpose.

We also found instances in which the institutions took different adverse actions for similar offenses. However, the occurrence of assessing inconsistent penalties may be decreased when the department implements its discipline matrix, which is designed to ensure a consistent foundation and common approach regarding whether and what type of penalty to impose. However, for the matrix to be fully effective, the department will need to ensure the wardens are held accountable for their penalty decisions by requiring them to document their reasons for any deviations from the prescribed penalty range.

Moreover, although the department’s operations manual requires that the regional Office of Investigative Services (OIS) track and audit certain of its cases, we found no evidence that the auditing or review of the investigation authorization forms or completed investigative reports occurs at one OIS regional office. Finally, we found that many disciplinary case files were disorganized and had key pieces of information missing.

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

We also recommended that the department should:

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

To allow it to provide feedback and training to investigative services, the department should ensure that it monitors and enforces its requirement for its OIS to audit certain investigations.

Department Action: Partial corrective action taken.

The department stated that a team is reviewing the workload of certain investigations to determine the number of full-time investigators each institution may need and whether it can allocate existing resources for that purpose. The team will develop recommendations by January 2005 and implement them by July 2005—contingent on funding. Additionally, the department indicated that in November 2004, its office of investigative services issued the first of a series of revised manuals to standardize forms, reports, and file checklists for investigative staff. The department plans to issue additional manuals by the end of 2004 and to revise and standardize its reporting format by March 2005. The office of civil rights is also taking actions to standardize its forms and case file maintenance and expects to begin implementation in January 2005. Moreover, the department reported that it plans to implement its statewide disciplinary matrix in March 2005 and to develop management and oversight reports, by November 2005, to monitor the use of the disciplinary matrix. Finally, the department stated that its office of investigative services is developing a plan to review certain investigations.

Finding #5: Investigative and other department offices that handle employee misconduct allegations and discipline can improve their coordination and communication.

The department has had difficulty coordinating efforts and fostering effective communication among its various offices and institutions involved in employee misconduct allegations and discipline. The overall lack of interaction among the major investigative bodies is unfortunate: if communication and coordination improved, the three could coordinate policy development, learning opportunities, and related investigative work.

For example, the Office of Civil Rights has not always communicated or reported to the affected institutions when it discovers departmental policy violations or supervisory issues during its investigations. As a result, the department may have missed opportunities to take corrective or punitive action against the guilty employee.

To ensure supervisory issues or policy violations contained in reports on civil rights investigations are not missed, we recommended that the Office of Civil Rights consider sending all unsustained cases to the warden for review.

Department Action: Corrective action taken.

The department reports that its office of civil rights is currently providing written summaries of all investigations to the hiring authorities and it plans to continue to assess this process for adequacy.

Finding #6: The department is implementing a process requiring its attorneys to become more involved in employee misconduct allegations.

The department is moving forward with a plan to improve communication between legal affairs and the institutions to have its attorneys more involved with employee misconduct allegations. It will implement a “vertical advocacy” model, which it believes will ensure competent legal representation during the employee disciplinary process. Currently, legal affairs’ communication with the institutions seems to be limited. The vertical advocacy model will involve an attorney early in the investigative process and should provide additional legal guidance to the employee relations officers (EROs), as well as improve the integrity, quality, and timeliness of investigations.

We recommended that the department continue its efforts to implement a department-wide vertical advocacy model to allow for greater attorney involvement in adverse action cases, including equal employment opportunity cases.

Department Action: Pending.

The department stated that it plans to hire staff, train them, and implement its vertical advocacy model by March 1, 2005. Once implemented, the department also plans to conduct a time study to determine the appropriate staffing levels.

Finding #7: The department needs to update and follow its policies on employee misconduct allegations and discipline and consolidate its policy and process development for all types of investigations.

The department's policies and procedures for employment-related matters are outdated and in need of revision and may contribute to inconsistencies because they do not require common practices or forms. The operations manual gives no clear guidance on how any of the processes should work.

Furthermore, to better standardize institutional and regional investigation procedures, the department should centralize the oversight of its various investigatory bodies. Currently, the three investigative units of the department—the investigative services, the OIS, and the Office of Civil Rights—rarely work together and all have different processes. Centralizing policy and process development for the three types of investigations would allow the department to create and introduce more standardization into the processes, the investigative report formats, and the case files and would foster communication and coordination among investigators.

We recommended that the department consolidate policy and procedure development and monitoring for all types of adverse action investigations under one branch and continue its efforts to update its employment-related policies and procedures.

Department Action: Pending.

The department reported that its final action related to this recommendation is dependent upon a proposed reorganization. The department will share the reorganization plan once it is approved by the governor. Moreover, as previously discussed in finding numbers 2 and 4, the department is in the process of developing new employment-related policies and procedures.

Finding #8: The department can do more to resolve employee problems short of litigation and adverse actions.

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

We recommended that the department implement its own or use an outside mediation program such as the one offered by board, and make the program known and available to all programs and institutions.

Department Action: Pending.

The department told us that it has initiated contact with the board to discuss the board's mediation program and that it will be making that program known and available to all programs and institutions. Further, the department also indicated that its office of civil rights is currently developing a mediation process to assist with early resolution of complaints. The department plans to provide us a summary of its progress with its six-month response to our audit.

Finding #9: The lack of documentation and monitoring prevent the department from ensuring appropriate adverse action settlements.

An administrative bulletin discussing department policies for settling appealed adverse actions exists, and the department recently implemented training on factors to consider during settlement negotiations. Unfortunately, the policies are not completely followed, and the department does not monitor settlements. As a result, the department cannot ensure it is settling as effectively or as often as it could.

The department should follow its existing policy or design and implement a comprehensive new settlement policy, ensure all pertinent employees are aware of the policy, and monitor compliance at the headquarters level.

Department Action: Pending.

The department reported that it will include its settlement policy in the employee relations officer advocacy training in January 2005. Further, it plans to also provide training to the new vertical advocates and the hiring authorities by March 2005.

Finding #10: The department's electronic databases do not allow it to adequately monitor employee misconduct allegations and discipline.

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

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

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

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

Department Action: Partial corrective action taken.

The department is continuing its implementation of both the case management system (CMS) and its ProLaw system. The department expects CMS to be fully operational in its institutions, the office of civil rights, the employment law unit, and the office of personnel management by August 30, 2005. The department also expects the ProLaw system to be operational in the employment law unit by March 1, 2005. Finally, the department reported that by March 15, 2005, it will train staff charged with inputting information into CMS and ProLaw and that it will finalize a plan for monitoring the accuracy of data entered into these systems.

Finding #11: The department can still do more to train employees who deal with misconduct allegations and discipline.

It is important to ensure that the employees who administer the discipline process have the necessary training to do so. Training is even more important for the employees in five of these positions—the EROs, the Office of Civil Rights investigators, the equal employment opportunity coordinators, the investigative services staff, and the litigation coordinators—because the positions do not have specific state classifications, which means these employees did not need to meet minimum qualification requirements specific to these five positions. The department appears to be moving in the right direction by appropriately developing, implementing, and requiring a job-specific training course for three positions, but it should consider establishing mandatory job-specific training requirements for the other positions as well. In recognition of the need to have training requirements, the Office of Civil Rights completed a proposal in September 2004 that would make training mandatory for all new investigators and require annual training for all investigators.

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

Department Action: Pending.

According to the department, the office of civil rights plans to develop and require new investigative staff to participate in a two week investigative course along with ongoing on-the-job training. The office of civil rights also plans to require semi-annual training for all investigative staff. Moreover, the department will evaluate the need for job-specific mandatory training for litigation and equal employment opportunity coordinators as the vertical advocacy model is implemented and the roles of those entities in the disciplinary process are more specifically defined.

Finding #12: The department could save the State money by filling the employee relations officer positions with employees who are not peace officers.

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

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

Department Action: Pending.

The department reported that once it has completed implementing CMS in March 2005, it plans to explore whether it can design special reports from CMS that provide information as to the success rates for cases with representation by an attorney, an employee relations officer, and other classifications.

Finding #13: The department has been slow to implement some changes to improve its employee misconduct allegation and discipline process.

Despite several prior audits that identified weaknesses in the department's employee disciplinary practices and that made recommendations for improvements, the department has at times been slow in taking action or has not taken any action at all. This likely contributed to the ongoing problems we described throughout our audit report. One reason for implementation delays is that until May 2004, the department did not have a centralized division or unit with responsibility for ensuring that the department addresses external audit recommendations. Instead, each individual office and division maintained responsibility for responding to audit recommendations and tracking their corrective action status.

We recommended that the department ensure that its newly created division charged with tracking audit recommendations and corrective action is proactive in doing so.

Department Action: Pending.

The department reported that its final action related to this recommendation is dependent upon a proposed reorganization. The department will share the reorganization plan once it is approved by the governor.