



# Reforming Corrections

Report of the  
**Corrections Independent  
Review Panel**

Presented to

**Governor Arnold Schwarzenegger**

June 2004

# Corrections Independent Review Panel

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June 30, 2004

The Honorable Arnold Schwarzenegger  
Governor of California

Dear Governor Schwarzenegger,

I am pleased to present the Corrections Independent Review Panel's final report, "Reforming Corrections", on future directions for California's correctional system. This report details the findings and recommendations of our panel.

Although our panel had a very tight time schedule, I believe the report represents the most comprehensive analysis of the corrections system to date and I am positive that our recommendations, when implemented, will once more elevate California to a national leadership role.

Thank you for your consistent support of our activities over the past few months. We look forward to discussing this report with you, with members of your Administration and with members of the Legislature.

Most Cordially,

A handwritten signature in black ink that reads "George Deukmejian".

George Deukmejian  
35<sup>th</sup> Governor of California  
Chairman  
Corrections Independent Review Panel

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## Introduction

California's \$6 billion correctional system suffers from a multitude of problems — out-of-control costs; a recidivism rate far exceeding that of any other state; reported abuse of inmates by correctional officers; an employee disciplinary system that fails to punish wrongdoers; and the failure of correctional institutions to provide youth wards and inmates with mandated health care and other services. The result has been a succession of costly lawsuits and a threat by a U.S. District Court judge to place the state's prisons under federal receivership.

Recognizing that immediate improvements must be made, Governor Arnold Schwarzenegger appointed an independent panel to examine the entire corrections system and recommend changes. Headed by former Governor George Deukmejian, the Corrections Independent Review Panel is made up of 40 members, including Executive Director, Joseph Gunn, who also co-directed the 2000 investigation into the Ramparts scandal at the Los Angeles Police Department, and independent correctional consultants Robin Dezember and George Camp. The other members of the panel include representatives on loan from the Department of Corrections, the California Youth Authority, the Office of the Inspector General, the Board of Prison Terms, the California Highway Patrol, and the Labor and Work Force Development Agency.

Over the space of three and a half months during the spring of 2004, the panel reviewed hundreds of pages of published information pertaining to the state correctional system; sponsored and attended workshops and forums on correctional issues; and interviewed dozens of correctional experts in California and across the nation. Those interviewed include present and former members of the Governor's staff; active and retired wardens of California state prisons; present and former state legislators; employees of the Department of Corrections and the California Youth Authority; members of the Little Hoover Commission; the leadership of the California Correctional Peace Officers Association; and concerned citizens.

From that study emerged a picture of a correctional system in need of drastic and fundamental reform, beginning with its very structure. At present, the Secretary of the Youth and Adult Correctional Agency has no control over line operations. Instead, more than 30 wardens and superintendents operate the state's prisons and youth correctional facilities independently with little training for the job and no consistency in carrying it out.

The correctional system is also affected by a code of silence that punishes whistle-blowers and impedes investigation of alleged misconduct. Discipline is not uniform. Training is almost non-existent. Traditional management functions have been negotiated away in a labor agreement between the state and the correctional officers union. Lawsuit after lawsuit has been successful in challenging the way health care is provided to California inmates and youthful offenders. And inmates and youthful offenders cycle in and out of institutions with little effort made to provide education and rehabilitation services to keep them from re-offending.

In this report, the Corrections Independent Review Panel presents 237 recommendations to address those problems. The recommendations begin with a proposed reorganization of the state's correctional system. The reorganization includes a Civilian Corrections Commission to bring a public voice, accountability, and transparency to state correctional agencies. The new organizational structure will also establish central control over budget; internal affairs; personnel and training; risk management; research and planning; information technology; health care; and labor relations.

The code of silence and the need for cultural change will be addressed through rigorous selection and training and through clear sanctions for misbehavior. Discipline for misconduct will be consistent, fair, and certain. And the state's high recidivism rate will be addressed through sustained investment in education and rehabilitation services to inmates and youthful offenders while they are in custody and on parole to ensure that they do not return. The changes will require a shift in attitude toward non-violent offenders to allow them to receive community-based alternatives to incarceration. This is not about coddling criminals— this is about protecting the public by ensuring that offenders do not commit a second crime.

At one time, California's correctional system was looked upon as the national leader. Innovative and daring, California pioneered the way for standards that were adopted by other jurisdictions as a model of efficiency. Although not all of the recommendations presented in this report can be accomplished in a short period of time, they should be looked upon as a blueprint for future budgets and policy decisions that will enable California to reclaim its former excellence as a national corrections leader.

Changing the corrections system is a huge task that will require significant outlays of money, changes in law and policy, and a dramatic change in organizational culture. But in the end, the changes will not only be cost effective, they will also go a long way toward making our communities safer.

## A Reorganization Plan for Corrections

To a significant extent, the problems of California's Correctional system grow out of its structure. The Secretary of the Youth and Adult Correctional Agency, for example, has no control over line operations. Instead, the state's 32 prison wardens and eight juvenile institution superintendents each operate independently, with little consistency in procedures and minimal help from headquarters. Lines of responsibility are blurred by layers of bureaucracy between managers and functions. Accountability is conspicuously absent, as is transparency for the public into the system's inner workings. Clear, uniform policies governing the system's most vital functions — fiscal matters, personnel and training, internal affairs, information technology, and health care — are equally lacking. Boards, commissions, and other entities that have evolved over the decades perform duplicate and overlapping functions. And the system's organizational structure has not kept pace with the massive growth in inmate population or with the vast geographical spread of the institutions.

The sheer size and complexity of the correctional system, the critical nature of its mission, and the severity of the problems dictate the need for wholesale reform, and that reform should begin with the system's organizational structure. The Corrections Independent Review Panel therefore proposes that the state's correctional agencies be reorganized according to the plan described in this chapter. While the restructuring alone will not produce the necessary reforms, it will serve as the foundation for cleaning up the prison system, reining in costs, curbing misconduct, holding correctional administrators accountable for the system's performance, and making communities safer by doing more to ensure that inmates and youth wards leave custody better prepared to function in society.

### Background

The state correctional system is presently comprised of the Youth and Adult Correctional Agency and its subordinate departments, boards, and commissions, which consist of the Department of Corrections, the California Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youth Authority Board, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Commission on Correctional Peace Officer Standards and Training. The agency is organized as follows:

**The Youth and Adult Correctional Agency.** The Youth and Adult Correctional Agency was established in January 1980 with the enactment of California Government Code Sections 12850-12856. The agency is headed by the Secretary of the Youth and Adult Correctional Agency, who reports directly to the Governor and is responsible for general oversight of the agency's subordinate entities. The Secretary represents the Governor in overseeing correctional agencies and reports to the Governor on legislative, budgetary, and administrative matters affecting corrections, but has no direct operational responsibility for the subordinate departments, boards, and commissions. The Secretary is appointed by the Governor and is subject to Senate confirmation.

- **The Department of Corrections.** The Department of Corrections is responsible for managing the state’s adult prison and parole systems and is the largest entity under the Youth and Adult Correctional Agency. The department operates 32 prisons and 39 camps with approximately 162,700 inmates and supervises another 148,700 adult parolees. The department has approximately 49,300 employees, including an administrative staff of approximately 3,500.
- **The California Youth Authority.** The California Youth Authority is responsible for managing the state’s youth correctional facilities and parole system. The department operates eight youth facilities and three conservation camps housing approximately 4,200 wards and supervises another 4,200 parolees. The department has approximately 4,900 employees, including an administrative staff of approximately 370.
- **The Board of Prison Terms.** The Board of Prison Terms conducts parole hearings for inmates sentenced to life terms and conducts parole revocation hearings for all parolees alleged to have violated parole terms and conditions. The board also conducts hearings involving sexually violent predators and mentally disordered offenders. In addition, the board has the authority to review prisoners’ requests for reconsideration of denial of good-time credits, to set parole length, and to process foreign prisoner transfer requests. The board is also responsible for investigating clemency applications and for reviewing cases of inmates sentenced to life without possibility of parole. The Board of Prison Terms is comprised of nine commissioners appointed by the Governor, with the advice and consent of the Senate.
- **The Youth Authority Board.** The Youth Authority Board, which replaced the former Youthful Offender Parole Board under SB 459, effective January 1, 2004, makes parole decisions for wards committed to the California Youth Authority. The board is responsible for discharges of commitment, orders to parole and conditions, revocation or suspension of parole, and disciplinary appeals. The board is located within the California Youth Authority and is composed of six members, including the Director of the California Youth Authority, who serves as the board’s ex officio nonvoting chair. Members are appointed by the Governor with the advice and consent of the Senate.
- **The Narcotic Addict Evaluation Authority.** The Narcotic Addict Evaluation Authority determines suitability for release of individuals committed into the “civil addict” program — a civil commitment to the California Rehabilitation Center for adult offenders whom the court believes would be best served through this alternative to prison. The program currently serves approximately 1,500 civil addicts who are housed at the California Rehabilitation Center and an additional 2,200 parolees. The Narcotic Addict Evaluation Authority is composed of seven members appointed by the Governor.
- **Prison Industry Authority.** The Prison Industry Authority operates service, manufacturing, and agricultural industries at 22 of the state’s adult prisons. The authority provides

work assignments for approximately 6,000 inmates and is self-supported through the sale of its products and services. Policy for the Authority is set by the Prison Industry Board. This board is composed of eleven non-compensated members who include the Director of the Department of Corrections, the Director of the Department of General Services, and other members appointed by the Governor, the Senate and the Assembly.

- **The Board of Corrections.** The Board of Corrections is responsible for development and enforcement of standards for construction and operation of county and city jails and juvenile halls, and for standards and training of county and city corrections officers. It also administers grants and other funding programs for construction and operation of county and city corrections programs and gathers and reports information regarding county and city jails and juvenile correctional facilities. The board consists of 15 members, including the Secretary of the Youth and Adult Correctional Agency (who serves as its chairperson), the Director of the Department of Corrections, and the Director of the California Youth Authority. The other members are appointed by the Governor and include county and city corrections officials, administrators of community-based correctional programs, and members of the public.
- **The Commission on Correctional Peace Officer Standards and Training.** The Commission on Correctional Peace Officer Standards and Training establishes standards for the training of state youth and adult correctional peace officers. Training provided by the Department of Corrections and the California Youth Authority are required to conform to these standards. The commission is composed of six commissioners and six alternate commissioners. The Governor appoints three members and their alternates, the Director of the Department of Corrections appoints two members and their alternates, and the Director of the California Youth Authority appoints one member and one alternate.

**The Office of the Inspector General.** The Office of the Inspector General provides independent oversight of the Youth and Adult Correctional Agency and its subordinate agencies. The office performs audits of the state's correctional agencies, conducts investigations into alleged misconduct by correctional administrators and employees, and reviews investigations conducted by correctional agencies. The Inspector General is appointed by the Governor, reports directly to the Governor, and is subject to Senate confirmation.

## Recommendations

The Corrections Independent Review Panel recommends that the state's correctional system be restructured as described in the following pages. The proposed reorganization accomplishes the following:

- It gives the public an active voice and role in corrections by creating a Civilian Corrections Commission at the highest level of the organization and assigning the commission authority to approve policy and provide direction to the correctional administration. In so doing, it opens the operations of the correctional system to public view.

- It retains the Office of the Inspector General as the entity responsible for independent oversight of the correctional system and also situates the Office of the Inspector General as the auditing and investigative arm of the Civilian Corrections Commission.
- It restructures the Youth and Adult Correctional Agency as the Department of Correctional Services, and it merges the central management and support functions of the Department of Corrections and the Department of the Youth Authority into the new department. The Department of Correctional Services will be headed by the Secretary of Correctional Services, who will serve as a member of the Governor's cabinet.
- It opens the channels of communication from the top of the organization to the field operation levels.
- It eliminates legislative confirmation of appointments except the commissioners that direct the organization.
- It provides the Secretary of the Department of Correctional Services with the ability to effectively manage the department by giving that office the power to appoint individuals to key managerial positions.<sup>1</sup>
- It "flattens" the organization by removing layers of bureaucracy that have obscured lines of authority and accountability between top managers and the functions for which they are responsible.
- It supports the need for custody and parole operations to work in concert to prepare inmates for release into society from the moment they enter an institution.
- It improves efficiency by eliminating the Board of Prison Terms, the Narcotic Addict Evaluation Authority Board, the Youth Authority Board, and the Prison Industry Board, and the Joint Venture Policy Advisory Board, while retaining all necessary functions. The functions of the former boards will be merged into units of the Department of Correctional Services.
- It transfers the administrative support of the Prison Industry Authority, the Joint Venture Program, and the Free Venture Program to the Department of Correctional Services and assigns responsibility for operation of these programs to new Regional Directors of Operations.

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<sup>1</sup> This provision will require a constitutional amendment to allow state officers appointed by the Governor to make more than one exempt appointment.

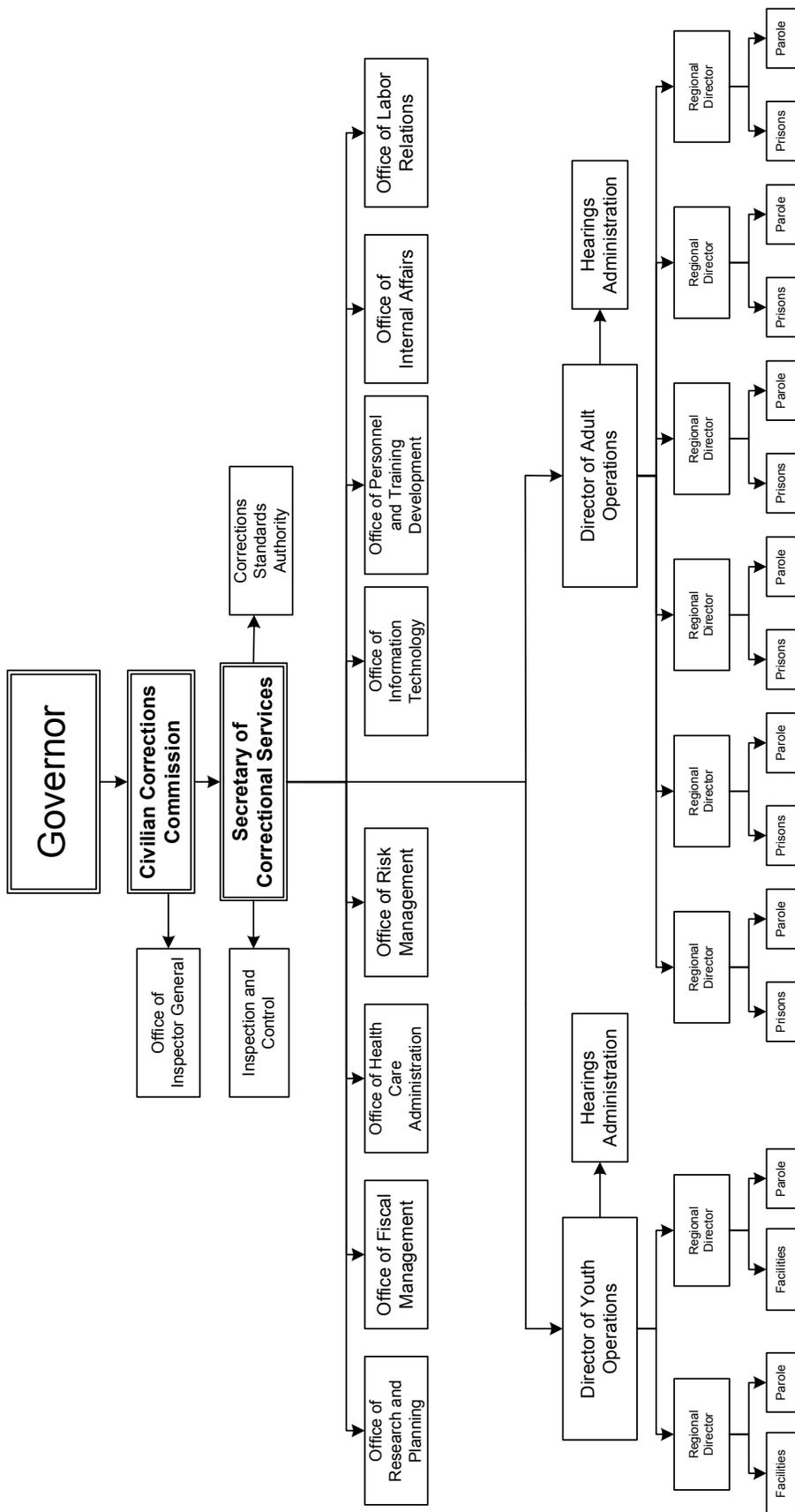
- It moves the Board of Corrections into the new Department of Correctional Services and renames it the Corrections Standards Authority. It also assigns the Corrections Standards Authority responsibility for establishing the first coordinated state and local strategic planning effort for the youth and adult correctional systems. In addition, it gives the Corrections Standards Authority responsibility for setting standards and conducting inspections of state prisons and youth facilities.
- It eliminates the Commission on Correctional Peace Officer Standards and Training and transfers the responsibilities of the commission for setting training standards for state youth and adult correctional peace officers to the new Corrections Standards Authority inside the Department of Correctional Services.
- It establishes for the first time a high-level Risk Management office to identify policies and practices that present legal and fiscal risks to the State's correctional system.
- It elevates information technology to a policy level directly under the Secretary of the Department of Correctional Services to help bring about consistency and modernization in the department's information technology system.
- It enhances the ability of the new Department of Correctional Services to manage its wide array of institution and parole responsibilities by concentrating youth and adult field operations under regional directors who will be fully responsible for all operations in designated geographic regions and who will be accountable to a common director of operations and programs.
- It closely integrates parole operations with institution programs and makes regional directors responsible for preparing inmates and wards for eventual return to the community from the moment they enter a prison or youth facility until they are released from parole.
- It enhances the effectiveness of the organization by combining common functions and centralizing authority for policy making and coordination of statewide concerns.
- It elevates the importance of personnel, training, and employee discipline and ensures uniformity and accountability by placing those functions directly under the responsibility of executive management.

The new flattened organizational structure will directly connect the top layer of management to every aspect of the organization's performance. Operations will be carried out by

key managers, whose authority and responsibilities are clearly defined. Managers and staff will be empowered to carry out assigned responsibilities and will be held accountable for performance.

Organization Chart A on the following page illustrates the main components of the new organization. Many of these recommendations are discussed in more detail in subsequent chapters in this report.

**Department of Correctional Services  
Chart A**



Key components of the proposed reorganization are described below.

### **Civilian Corrections Commission**

The Civilian Corrections Commission will bring public scrutiny and a public voice to correctional policies and operations by approving policy, bringing correctional activities into the open, and making the correctional system transparent to the public. The Civilian Corrections Commission will report directly to the Governor and will make recommendations to the Governor for the appointment of the Secretary of the new Department of Correctional Services. The commission will provide directives to the Secretary of the Department of Correctional Services and will have the power to appoint or remove the Inspector General. In addition, the commission will review and approve the proposed department budget before it is submitted to the Governor. The Commission will have five members and will be appointed by the Governor and confirmed by the Senate, with at least one commissioner selected on the basis of his or her expertise in the area of youthful offender treatment and rehabilitation. The Commissioners will serve at the pleasure of the Governor for a period not to exceed 10 years. Commissioners may not have been affiliated with the state's correctional agencies in the past and may not be otherwise affiliated with the Department of Correctional Services. The commission's policy and meeting agendas will be published and the meetings will be open to the public.

### **Office of the Inspector General**

The Office of the Inspector General will serve as the independent investigative and auditing arm of the Civilian Corrections Commission and will also be responsible for independent oversight of the correctional system. As such, the Office of the Inspector General will have authority to audit any aspect of correctional operations and to conduct investigations into alleged misconduct by correctional managers and employees. The Office of the Inspector General will also review investigations conducted by the Department of Correctional Services into alleged misconduct by correctional officers and civilian correctional employees and will monitor the department's handling of misconduct complaints. The Civilian Corrections Commission shall appoint the Inspector General, who shall serve a five-year term. The term may be renewed for one additional term of five years at the discretion of the Civilian Corrections Commission. The Civilian Corrections Commission may otherwise remove the Inspector General for incompetence, neglect of duty, or corruption at any time. All non-confidential reports of the Office of the Inspector General will be discussed by the commission in public session. To ensure the independence of the Inspector General, the commission may not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation.

### **The Department of Correctional Services**

The Youth and Adult Correctional Agency will be restructured into a new, more streamlined Department of Correctional Services headed by the Secretary of Correctional Services. The administrative and management support functions of the Youth and Adult Correctional Agency and its constituent entities will be consolidated into the new department as follows:

**Secretary of Correctional Services.** The Secretary of the Department of Correctional Services will function as the chief operational executive of the Department of Correctional Services. The Secretary will be appointed by the Governor from a pool of three candidates recommended by the Civilian Corrections Commission and will represent the commission in the Governor's cabinet. The Secretary can be removed by the Civilian Corrections Commission. The Secretary will have direct authority over and responsibility for every aspect of department operations and will carry out the directives of the Civilian Corrections Commission. The Secretary's Office includes the following (See Chart B):

- **Undersecretary for Correctional Services.** The Undersecretary acts at the direction of the Secretary and assists the Secretary in carrying out the duties and responsibilities of that office.
- **General Counsel.** The General Counsel, with a staff of attorneys, serves as the Secretary's primary legal adviser. As such, the General Counsel will coordinate the department's legal activities, provide the Secretary with legal counsel, review policy drafts, and analyze proposed legislation affecting the department.
- **External Affairs Office.** The External Affairs Office, directed by the Assistant Secretary for External Affairs, acts as the department's liaison to the news media, community groups, and other organizations.
- **Victim Services Office.** The Victim Services Office, directed by the Assistant Secretary for Victim Services, is responsible for all victim-related services previously provided by departments and boards under the Youth and Adult Correctional Agency. These responsibilities include, but are not limited to, training on victims' rights and issues, notification to victims of the release, death, or escape of an inmate or ward, notification to victims of parole consideration hearings, and collection of restitution fines from inmates and for forwarding the funds to the Victim Compensation and Government Claims Board.
- **Legislative Affairs Office.** The Legislative Affairs Office, directed by the Assistant Secretary for Legislative Affairs, responds to information requests from the Legislature, analyzes federal and state legislation affecting the department, coordinates the development of department-sponsored legislation, and monitors legislatively mandated reports required of the department.
- **Equal Employment Opportunity Office.** The Equal Employment Opportunity Office, directed by the Assistant Secretary for Equal Employment Opportunity, is responsible for developing and implementing department policy and strategies to prevent discrimination and retaliation in the workplace. The office also responds to complaints of discrimination and works cooperatively with the Equal Employment Opportunities Commission and the Department of Fair Employment and Housing.

**Office of Inspection and Control.** Directed by the Assistant Secretary for Inspection and Control, the Office of Inspection and Control will be responsible for conducting internal audits at the direction of the Secretary of Correctional Services to ensure that administrative and operational policies and directives are properly implemented. The Office of Inspection and Control gives the Secretary the ability to closely monitor the management and financial activities of the department and provides the Secretary with the information needed to implement necessary corrective action. The operations of the office should be guided by the *Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors. These standards will ensure that issues selected for audit are those that present the highest risk to the department.

**Correctional Standards Authority.** The Board of Corrections will be renamed the Correctional Standards Authority to clarify its role in the new department. In addition to assuming the functions of the Board of Corrections, the new Correctional Standards Authority will set standards for adult prisons and youthful offender facilities and will conduct inspections of the institutions. It will also set standards for training state youth and adult correctional peace officers and will develop the first coordinated state and local strategic planning effort for juvenile correctional systems.

### **Policy and Support Functions**

The policy and support functions of the Department of Correctional Services report directly to the Secretary of Correctional Services. These functions consist of the following. (See also Organization Chart C, Appendix).

**Office of Research and Planning.** Filling a critical gap in the existing correctional system, the Office of Research and Planning will provide management with the research, data analysis, evaluation, and assessment necessary for effective planning and decision making. The office will also manage an interagency agreement with one of the state universities to perform inmate and ward population projections. Directed by the Deputy Secretary for Research and Planning, the office will provide management with the ability to respond to changing conditions and is placed high in the organizational structure to emphasize the importance of this vital resource.

**Office of Fiscal Management.** The Deputy Secretary for Fiscal Management is the department's chief fiscal officer and reports directly to the Secretary of Correctional Services. The Office of Fiscal Management will be responsible for the financial accountability of department operations and for ensuring that the department adheres to its budget. As such, the office will have responsibility for contract processing and procurement; budget and accounting management; and facility planning. It will use existing financial management systems and will develop additional systems as necessary to direct the development of the budget and monitor its compliance. The Office of Fiscal Management will work with all units of the organization in carrying out its responsibilities.

**Office of Health Care Administration.** The Office of Health Care Administration, directed by the Deputy Secretary for Health Care Administration, will provide policy direction and consultation for the department's health care operations, while Regional Directors for youth facilities and adult prisons will be responsible for ensuring inmate and ward access to health care services. The Office of Health Care Administration will include professional staff responsible for oversight of mental health, medical, and dental services, inmate/ward death review policy functions, and parole outpatient services, along with special program managers for specifically assigned functions.

**Office of Risk Management.** Directed by the Deputy Secretary for Risk Management, the Office of Risk Management adds a much-needed function to the correctional system by identifying practices, policies, and conditions that represent potential legal or fiscal risks to the department. The office will carry out this function in part by reviewing and analyzing performance reports from each region and making recommendations to alleviate risk. The office will also review inmate/ward/parolee appeals and grievances to identify issues and patterns to be addressed. In addition, the office will manage policy development for the department and will include a policy compliance unit to ensure that policies are followed.

The Office of Risk Management will be responsible for litigation response and compliance, encompassing defense against individual inmate litigation, class action lawsuits, and contract litigation. To ensure continued compliance with court orders, the Office of Risk Management will include a new—and vital—litigation compliance unit comprised of staff from key units of the department.

In addition, the Deputy Secretary for Risk Management will chair a Risk Management Committee comprised of the Deputy Secretary for Internal Affairs, the Deputy Secretary for Personnel and Training; the Director of Adult Operations, and the Director of Youth Operations. The committee will be responsible for identifying employees whose conduct may indicate unfitness for duty and for identifying those in need of employee assistance services to prevent problems from worsening. The committee will also review critical incidents to identify the need for changes in policy or training.

**Office of Information Technology.** Directed by the Deputy Secretary for Information Technology, the Office of Information Technology is placed high in the organizational structure to centralize information technology policies and operations and bring about consistency and modernization in the department's information technology capabilities. This office will coordinate the department's information technology functions, including customer relations and support, project management, and the development and maintenance of computer applications. For most activities, the department will rely on contracted professional consultants under the supervision of information technology program managers.

**Office of Personnel and Training Development.** Directed by the Deputy Secretary for Personnel and Training Development, the Office of Personnel and Training Development is

responsible for staff selection, training, and personnel management. Its high placement in the organizational structure underscores the vital importance of these functions to department goals. The office is responsible for recruitment, health and safety awareness programs, pre-employment screening examinations, background checks, and other related duties. It administers a wellness program by providing behavioral science professionals to the prisons and youth facilities. The office will develop and coordinate training throughout the department, including core academies and in-service training. It will also provide management with succession planning to provide a path for employee career advancement.

**Office of Internal Affairs.** Investigations into allegations of serious misconduct by department staff will be conducted by the Office of Internal Affairs to ensure uniformity and fairness in the investigative and discipline process. Directed by the Deputy Secretary for Internal Affairs, this office will include a staff of attorneys who will report to a supervising attorney and will serve as legal advocates on behalf of the department in employee disciplinary matters. In addition, under the direction of the Office of Internal Affairs a “use-of-force investigative team” will be assigned to each of the regions in youth and adult operations to investigate serious use-of-force incidents at youth facilities and adult prisons. These teams are discussed further in the Use-of-Force chapter.

**Office of Labor Relations.** This office will be directed by the Deputy Secretary for Labor Relations and will act as the department’s representative on matters involving management authority and practices and on employee grievances related to union contracts. This includes responsibility for negotiations in all matters with employee unions except for negotiations involving compensation, which are handled by the Department of Personnel Administration.

### Operations

The operations functions of the Department of Correctional Services consist of the following (See also Organization Chart D, Appendix).

**Director of Youth Operations.** The Director of Youth Operations will be responsible for overall management of youth facilities, camps, and parole operations through two regional directors. This environment includes specialized treatment as part of a therapeutic environment for treatment of youthful offenders committed to state custody because they cannot be successfully treated in community programs. The director will be responsible for the policy development and oversight of the following functions:

- security operations including emergency operations plans;
- ward and parolee programming;
- educational services
- ensuring the delivery of health care services;
- substance abuse programs; and,
- The Free Venture Program.

Furthermore, the Director of Youth Operations will be responsible for:

- ward classification and transportation;
- coordinating gang intelligence with local law enforcement;
- maintenance of correctional case records

**Director of Adult Operations.** The Director of Adult Operations will be responsible for overall management of adult prison and parole operations through six regional directors. The director will be responsible for the policy development and oversight of the following functions:

- security operations including emergency operations plans;
- inmate and parolee programming, including education and job training;
- ensuring the delivery of health care services;
- substance abuse programs;
- community correctional facilities;
- prison industries; and,
- The Joint Venture Program.

Furthermore, the Director of Adult Operations will be responsible for:

- inmate classification and transportation;
- coordinating gang intelligence with local law enforcement;
- maintenance of correctional case records

**Regional Directors – Youth.** Each of the two Regional Directors – Youth will be responsible for the management of youth facilities, camps, and parole operations in a designated geographic region, consistent with policies generated by department management under the direction of the Secretary of Correctional Services. The Regional Directors – Youth will report to the Director of Youth Operations. Inherent in the duties of the Regional Directors will be responsibility for preparing wards for parole from the date of reception through release. The duties of the Regional Directors will include responsibility for:

- all support functions, including budgeting, accounting, training coordination, and discipline;
- administration of policies set out by the Director of Adult Operations for:
  - security operations;
  - ward and parolee programming coordination;
  - educational services;
  - delivery of health care services;
  - substance abuse programs; and,
  - the Free Venture Program;
- coordination with local law enforcement;
- coordination of community services;
- coordination of delinquency prevention services;
- development and implementation of the ombudsman program, which acts as the department's liaison to wards and family members.

**Regional Directors – Adult.** Each of the six Regional Directors – Adult will be responsible for the management of adult prisons and parole operations in a designated geographic region, consistent with policies generated by department management under the direction of the Secretary of Correctional Services. The Regional Directors – Adult will report to the Director of Adult Operations. Inherent in the duties of the Regional Directors will be responsibility for preparing inmates for parole from the date of reception through release. The duties of the Regional Directors will include responsibility for:

- all support functions, including budgeting, accounting, training coordination, and discipline;
- administration of policies set out by the Director of Adult Operations for:
  - security operations;
  - inmate and parolee programming coordination;
  - delivery of health care services;
  - substance abuse programs;
  - community correctional facilities;
  - prison industries; and,
  - the Joint Venture Program;
- coordination with local law enforcement;
- coordination of community services;
- development and implementation of the of the ombudsman program, which acts as the department’s liaison to inmates and family members.

Dividing the state’s adult prison system into six regions, each under the direction of a Regional Director will help bring management control to prisons and parole operations in a vast geographic area. Regional Directors will be similar to Directors of Corrections in smaller states. While responsive to policy direction from the Director of Adult Operations, Regional Directors will bring operational management to a level of the correctional system in a manner not previously applied and help ensure that the state’s 32 prisons, 37 camps, and 180 parole units operate within applicable policies.

**Hearings Administration.** Two Hearing Administration offices — one for adult inmates and one for youths—will report to the Director of Adult Operations and the Director of Youth Operations, respectively. The Hearing Administration office for adult inmates will assume the duties of the Board of Prison Terms, including conducting parole consideration hearings for inmates sentenced to life terms with the possibility of parole; establishing terms and conditions for inmates released on parole in California; and conducting parole revocation hearings for violation of parole terms and conditions. The Hearing Administration office for youths will assume the powers and duties of the Youth Authority Board, including conducting hearings concerning discharge of commitment; orders and conditions of parole; revocation or suspension of parole; and appeals concerning modification of early release dates.

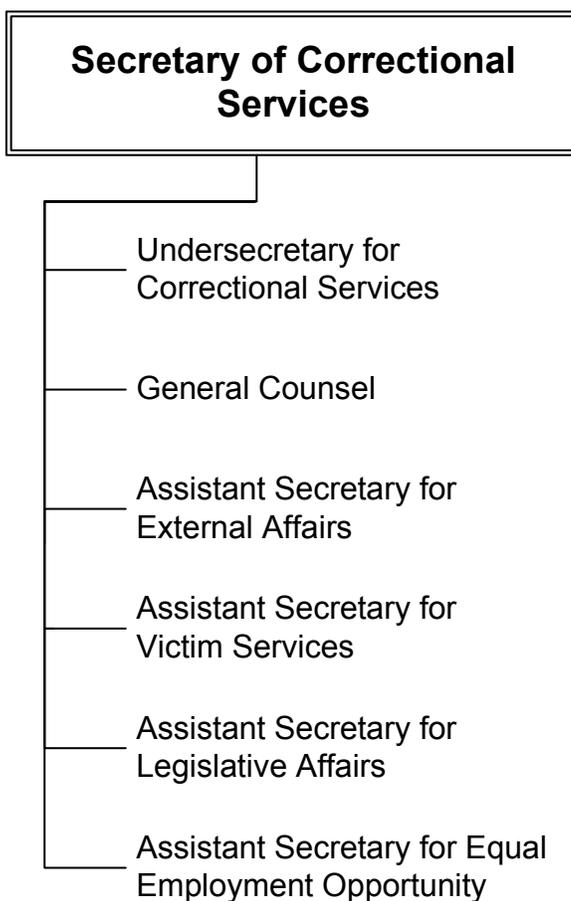
## **Fiscal Implications**

Consolidation of functions in the executive and administrative areas will result in savings through the elimination of overlapping and duplicative activities. Based on normal employee attrition in the administrative services functions, the Corrections Independent Review Panel estimates potential savings of approximately \$20 million annually within three years of implementation.

**Appendix**

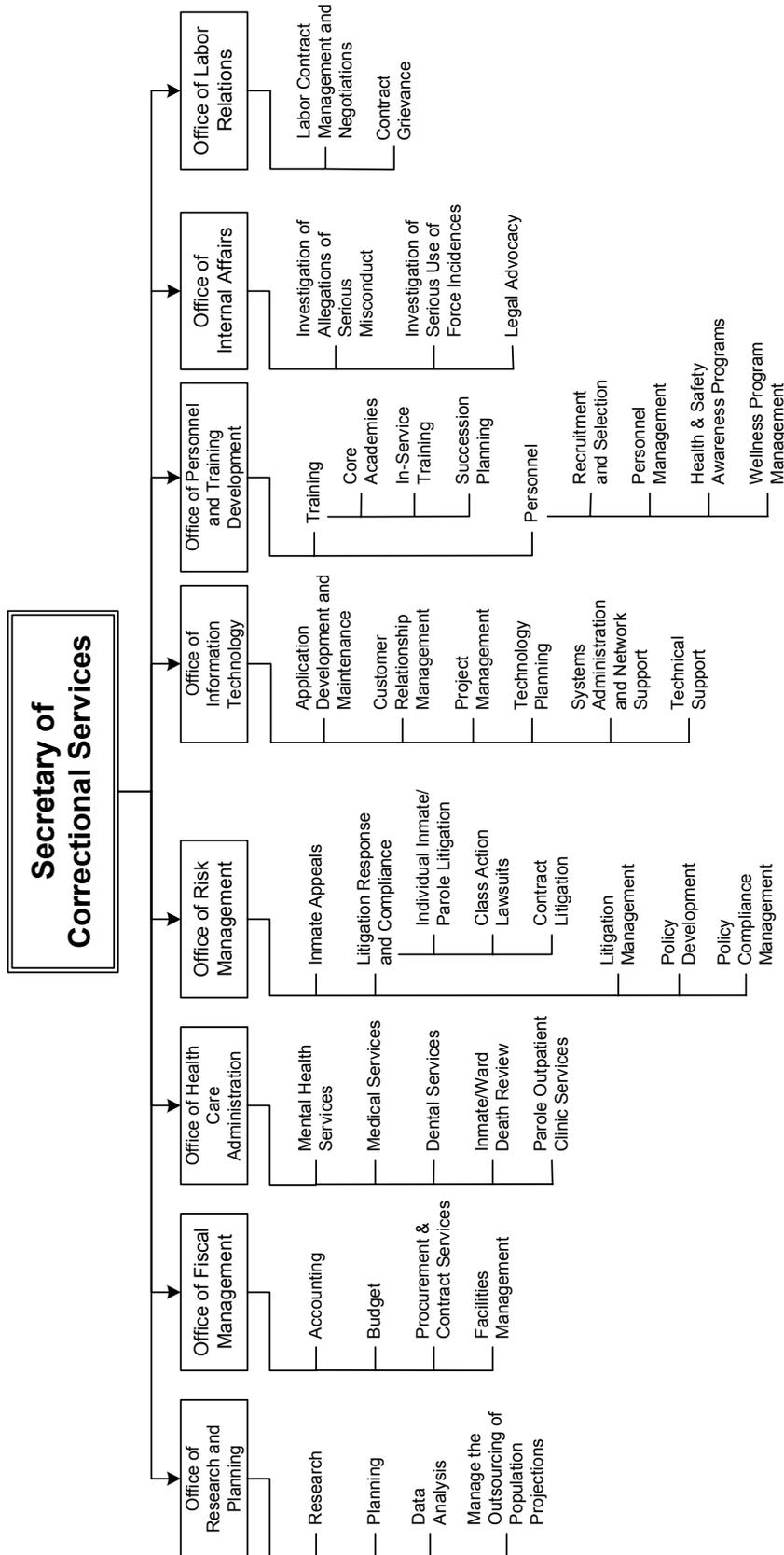
**Department of Correctional Services  
Office of the Secretary**

**Chart B**



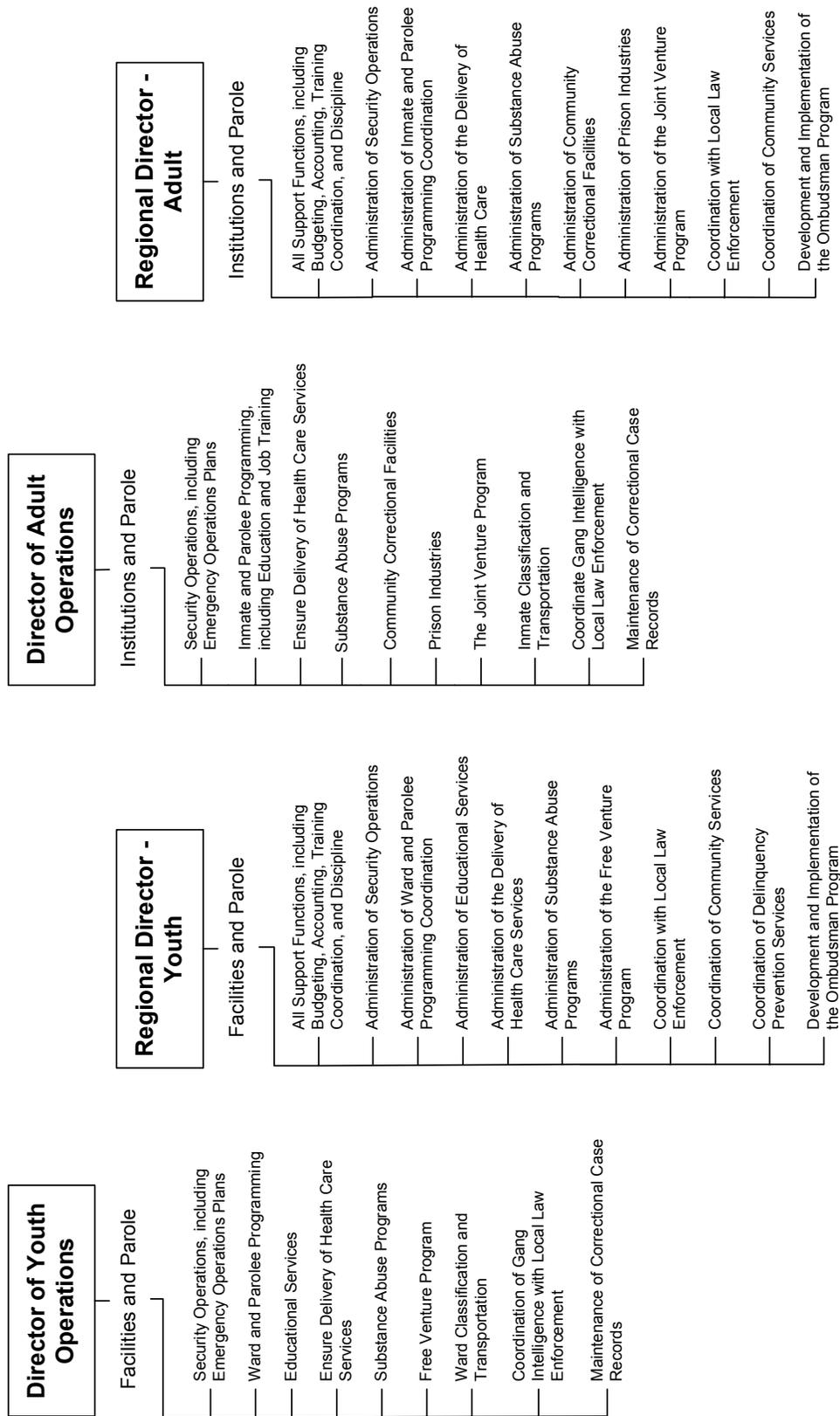
Department of Correctional Services  
Central Management

Chart C



# Department of Correctional Services Operations

Chart D



## Ethics and Culture

Recent events have brought to light an insidious “code of silence” within California’s correctional institutions. Although a reluctance to report wrongdoing by co-workers is common in any workplace, the code of silence that has taken hold in the state’s prisons and juvenile facilities is deeply destructive, profoundly unacceptable, and symptomatic of an urgent need for cultural reform in the state correctional system.

By allowing misconduct to go unreported and unpunished, the code of silence undermines the very purpose of the correctional system to safely house those committed to its custody and to help them prepare for return to the community. It also damages public safety and erodes the public trust, and demoralizes the majority of correctional officers who perform a difficult job with diligence and professionalism. No positive change can take place in the correctional system until the culture of the entire organization is reformed from the top down and the code of silence is decisively eliminated.

### Background

In wrenching testimony to the Legislature in early 2004, correctional employees described in graphic detail the harmful effects of the code of silence in the state’s correctional institutions. The department’s newly appointed director also acknowledged the code’s existence, noting: “Being with the department for 25 years, I have experienced the code of silence first hand. I think there’s no question it exists.”<sup>1</sup>

Although loyalty among teammates and coworkers who spend significant amounts of time together is natural and desirable, a code of silence that turns a blind eye to serious misbehavior and targets those who try to stop it far exceeds the bounds of tolerance. In effect, the code of silence shifts loyalties from the organizational mission to the organization’s members. The code of silence within California’s correctional system encourages unethical behavior by allowing it to operate secretly and is indicative of an organizational culture of fear and hypocrisy.

*What fosters a code of silence?* Studies have provided clues into the roots of a code of silence. A study by the National Institute of Ethics involving 3,714 peace officers and academy recruits from 42 states found codes of silence to be common in law enforcement agencies throughout the country and also showed that such a code grew out of a belief that reporting misconduct would be futile. The study reported that in one survey that asked 451 officers who had witnessed misconduct but remained silent what they thought would have happened had they reported the misbehavior; only 88 respondents said they believed that those committing the misconduct would have been disciplined. The remaining 363 ex-

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<sup>1</sup> Associated Press, “New Prisons Chief Says Corrosive ‘Code of Silence’ Must End,” NBC TV Channel 4, Los Angeles (Last visited March 23, 2004), <http://www.nbc4.tv/news/2919779/detail.html>.

pressed the belief that either they themselves would have been ostracized, or that the administration would have done nothing about the misconduct.<sup>2</sup>

Administrators may have different reasons for not acknowledging misconduct. Fearing their own termination should serious misconduct be exposed, otherwise honest administrators may choose to hide the misconduct rather than address it. But when subordinates perceive that administrators lack the will or the means to address unacceptable, unethical, and even criminal behavior, employee confidence in the organization erodes. Such an environment may lead some employees to justify their own unethical activities and cause ethical employees to remain silent out of fear of the wrongdoers, resulting in a self-perpetuating cycle of misbehavior.

Testimony at the recent legislative hearings clearly illustrated just such a model of self-perpetuating misconduct in the California Department of Corrections, leading senators to describe the department as an institution tarnished from the top down — one that punishes employees who try to do right and protecting those who do wrong.<sup>3</sup> The atmosphere at the hearings was so charged with fear of retaliation by wrongdoers that extra security was provided in the legislative chambers. Witnesses expressed fear for their safety and one senator reported receiving a death threat.<sup>4</sup>

The special master appointed by the U.S. District Court in a lawsuit against the Department of Corrections concerning misconduct by correctional officers at Pelican Bay State Prison described how the department's destructive culture eventually entangles new employees:

*The correctional officer recruits who seek employment within the CDC do so with high expectations and positive motives, consistent with other applicants who seek a career in law enforcement. The young men and women who seek CDC employment are not taking peace officer jobs to commit crimes or lie or cover-up the abuses of their co-workers. Somehow, however, the rookie correctional officers who go to work for the CDC are forced to adopt the code of silence.<sup>5</sup>*

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<sup>2</sup> National Institute of Ethics, *Police Code of Silence Facts Revealed*, by Neal Trautman <http://www.aele.org/loscode2000.html> [Last visited March 24, 2004].

<sup>3</sup> Don Thompson (Associated Press), "Prison System Blasted by Lawmakers, New Administration," *North County Times (San Diego)* (January 20, 2004) [http://www.nctimes.com/articles/2004/01/21/news/state/1\\_20\\_0422\\_21\\_25.txt](http://www.nctimes.com/articles/2004/01/21/news/state/1_20_0422_21_25.txt).

<sup>4</sup> Thompson, "Prison System Blasted by Lawmakers, New Administration," *North County Times*.

<sup>5</sup> United States District Court, Northern District of California, *Special Master's Report Re: Department of Corrections "Post Powers" Investigations and Employee Discipline*, by John Hagar, Special Master, January 15, 2004, p. 79.

*What can be done?* Transforming the culture of the Department of Corrections and the California Youth Authority into one in which personal integrity and loyalty to the department mission consistently take precedence over loyalty to co-workers suspected of wrongdoing, requires a vigorous, multi-pronged approach. The effort should be guided by quality management principles incorporating clear objectives and purpose; key performance measures; consistent monitoring; and a system of correction and reward. Quality management principles accomplish the following:

- Provide clarity of purpose in each employee's job;
- Link each person's work to the department's mission;
- Foster continual improvement;
- Bring accountability to all department levels.

Specific tools available in this effort include:

- ***A formal cultural assessment.*** An organization's official culture is embodied in its mission statement, procedures, rules and operational routines, and is communicated to its members through official training and written policies. Informal sub-cultures, on the other hand, may run counter to the official or intended culture. A formal cultural assessment, conducted by an outside entity, can identify the values, assumptions, attitudes, expectations, and practices that detract from the mission. Such an assessment can be an effective first step in aligning the informal culture with the organization's mission and helping the organization focus on strategic objectives. A number of organizations, including the National Institute of Corrections, provide cultural assessment services. The National Institute of Corrections has provided such services to at least one California prison in the past.
- ***A clear mission statement.*** A well-crafted mission statement defines a common purpose for the organization and is integral to quality management. Clear objectives are necessary in order to motivate members to fulfill an organization's mission, to prevent miscommunication, and create shared values, fairness, and an ethical model at all organizational levels. The present mission statement of the Youth and Adult Correctional Agency falls short of fulfilling that purpose. The mission statement reads:

*Our mission is to develop and implement effective and innovative correctional policy, create a coordinated correctional system which is responsive to the citizen's right to public safety and governmental accountability, and maintain a reputation for excellence and integrity.*<sup>6</sup>

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<sup>6</sup> Youth and Adult Correctional Agency, *Mission Statement*, [www.yaca.ca.gov/](http://www.yaca.ca.gov/) [last visited May 11, 2004.]

- ***Integrity at the top.*** Cultural transformation must begin at the highest levels of department management. The chief administrator must be a role model for integrity, must communicate that the department values integrity, and must require the same behavior and philosophy from all managers and supervisors. Commitment by the first-line supervisors to these principles is crucial and deserving of specific training. Such measures are crucial to restoring employee confidence in management's integrity.
- ***Recruiting and selecting employees.*** Recruiting practices should select candidates of high moral character. The selection process should include thorough and detailed background investigations conducted by specially trained investigators who are held accountable for the quality of their investigations.
- ***Training.*** Indoctrination and training should be designed to prepare recruits to positively influence the correctional environment and to insulate them from negative influences. During the first year of employment, each new academy graduate should be assigned to a field training officer specifically selected and trained for that purpose. The initial probationary employment period should be viewed as part of the recruitment process, with ethical conduct one of the primary criteria by which field training officers evaluate probationers. Field training officers should administer regular examinations to probationers, should themselves be selected for their ethical conduct, and should be rewarded through appropriate salary enhancements.

Academy ethics training should present relevant, real-life situations commonly faced by correctional officers and should specifically discuss the code of silence. A representative from the Office of the Attorney General could be invited to deliver a presentation to academy cadets on corruption in law enforcement and the consequences of observing a code of silence. Classroom ethics training should be required every two years of all employees, including management, and instructors should incorporate ethical perspectives into all of the classes they teach. Training in ethics must also reach beyond the classroom, with supervisors and trainers taking advantage of "teachable moments" presented throughout in the course of the work day to instruct employees and reinforce ethical behavior. (See Chapter 5, *Personnel and Training*, for additional discussion in this area.)

- ***A code of conduct.*** A clearly defined code of conduct to which all employees, including management, are held accountable should include language specifically requiring employees to report misconduct and a statement to be signed by each employee affirming that they have no knowledge of unreported wrongdoing and will report any misconduct they encounter in the future. The code of conduct can be supplemented by guidelines from management governing situations and circumstances employees commonly encounter. Standards for sworn employees should also define expected behavior off-duty.
- ***Disciplinary sanctions.*** Discipline must be fair, timely, and consistently administered to all employees, regardless of rank or position. The department should develop a set of

model disciplinary guidelines as a tool to ensure that similar infractions receive similar and fair disciplinary action. Disciplinary sanctions for violating the code of conduct should be clearly defined and included in the code. The department should publicize investigation results and disciplinary actions in a manner consistent with applicable statutes and rules concerning employee privacy. (See Chapter 3, *Employee Investigations and Discipline*, for additional discussion.)

- **Providing a way to report misconduct.** Management must provide a means for employees to report misconduct, anonymously if necessary, without fear of reprisal. The process must include rules to protect those who report misconduct. It must also include disciplinary action against those who fail to report misconduct and against those who retaliate against employees who do report it. To avoid discouraging employees who have failed to report misconduct in the past from coming forward, the disciplinary scale should be graduated to allow less harsh sanctions for those who failed to report immediately, but who later volunteer information about misconduct. A report by an independent review panel of an investigation into the Los Angeles Police Department Rampart scandal, noted that harsh discipline for failing to report misconduct, in some instances deterred reporting by those who might otherwise have reconsidered their initial inclination to keep quiet.<sup>7</sup>
- **Monitoring performance.** Monitoring employee performance is essential to the quality management model. Monitoring should be based on key performance measures and should include an assessment of an employee's adherence to the department's code of conduct. Measuring performance through monitoring or audit techniques provides the evidence for needed improvements and for recognition of excellence. Key performance measures incorporate desired or necessary results that can be evaluated to determine the extent to which an employee's performance meets the organization's mission. Performance indicators might include the number of disciplinary actions involving the employee, complaints from inmates or co-workers, consistency in performing prescribed tasks, involvement in use-of-force incidents, and awards or commendations received. Annual employee appraisals should include a rating of each employee's adherence to the department's code of conduct, and supervisors at all levels should be evaluated annually by employees under their direct supervision, anonymously if necessary. This assessment provides management with an important perspective by which to rate supervisor effectiveness. Having a consistently updated and accurate computer database is critical to monitoring and to evidence-based management.

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<sup>7</sup> Rampart Independent Review Panel, *Report to the Los Angeles Board of Police Commissioners Concerning the Operations, Policies and Procedures of the Los Angeles Police Department in the Wake of the Rampart Scandal*, November 16, 2000, p. 11.

- **Recognition of meritorious actions.** Recognizing and rewarding ethical behavior is just as important as disciplining unethical behavior in building a positive cultural environment. Employees who have displayed exceptional moral courage or have been influential models of ethical behavior should be publicly commended.
- **Cross-functional teams.** Using cross-functional teams to solve problems can foster a positive cultural environment by lessening territoriality, sparking creativity, motivating employee innovation, and leading to an atmosphere of continual improvement.<sup>8;9</sup> In a traditional model, when a problem arises, management assigns the task of resolving the problem to one segment of the organization, even if the problem affects the organization as a whole. In contrast, a cross-functional team, or “matrix management” model, assigns the problem to a manager whose organizational unit most closely relates to the problem. That manager then forms a cross-functional team of members from key parts of the organization and leads the team in a strategic effort to address the problem. The combined expertise of the diverse organizational units enhances the team’s capability of solving the problem and helps eliminate barriers that develop when separate divisions act independently. Cross-functional teams are a powerful vehicle for addressing problems common to the whole organization, including those involving organizational and cultural reform. They can be especially effective where the issues to be addressed lend themselves to a project orientation, such as managing specific litigation or monitoring policy compliance.
- **Structuring the organization to promote accountability.** The organizational structure must closely connect management with staff, clearly define lines of authority and accountability, and support effective communication. (Chapter 1, *A Reorganization Plan for Corrections*, presents the panel’s recommendations in this area.)

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<sup>8</sup> International Organization for Standardization, *Quality Management Principles*, [www.iso.ch/iso/en/iso9000-14000/iso9000/qmp.html#Principle3](http://www.iso.ch/iso/en/iso9000-14000/iso9000/qmp.html#Principle3) [last visited May 4, 2004.]

<sup>9</sup> Strategic Futures Consulting Group, Inc., “Cross Functional Teams,” <http://www.strategicfutures.com/crossfun.htm> [last visited May 4, 2004.]

## Recommendations

The Corrections Independent Review Panel recommends that the new Department of Correctional Services take the following actions:

- Arrange with an outside entity to conduct a cultural assessment of the state correctional system to identify issues needing reform. Arrange for a follow-up assessment every two years.
- Ensure that Department of Correctional Services managers and administrators serve as role models for integrity and that they require the same behavior from employees.
- Provide a means for employees to report misconduct, anonymously if necessary, without fear of reprisal.
- Strengthen recruiting standards to select candidates of high moral character.
- Conduct thorough and detailed background investigations of all peace officer applicants. The investigations should be performed by specially trained investigators who are held accountable for the quality of the investigations.
- Assign new academy graduates to a field training officer during the probationary period. Field training officers should be selected on the basis of proven job experience and positive ethical behavior and should be specifically trained to mentor and critique new employees.
- Require every employee to sign an official code of conduct that clearly defines cooperating in a code of silence as misconduct. Include in the code an affirmation that the employee has no knowledge of unreported wrongdoing and will report any future misconduct. Accompany the code of conduct with a list of the disciplinary sanctions to be imposed for violating the code.
- Discipline employees who fail to report misconduct or who retaliate against or harass employees who do report misconduct.
- Demand that the off-duty conduct of peace officers be identical to the high standards required on duty.
- Enhance academy training to include ethical considerations relevant to every employee's specific job.

- Require in-service training in ethics at least every two years for all employees.
- Invite the Office of the Attorney General to lecture on the “code of silence” and corruption during department training.
- Establish a system of accountability that includes performance measures by which to evaluate employees and monitor levels of achievement.
- Develop a new mission statement that succinctly expresses the department’s goals and objectives.
- Include a rating of each employee’s adherence to the code of conduct in the annual employee appraisal. Supervisors should be evaluated annually by the staff who report directly to them.
- Administer discipline fairly, timely, and consistently to all employees, regardless of rank or position.
- Establish a new commendation: the “medal of integrity,” to be publicly awarded to employees who have displayed exceptional moral courage.
- Publicize commendation and disciplinary actions at a level of detail that will not violate applicable statutes or rules.
- Employ “quality management” principles and methods, such as the use of cross-functional teams and evidence-based decision models.
- Develop an organizational structure that supports accountability at all levels.
- Select and train supervisors to display the leadership and courage necessary to reinforce the ethical principles of the department.

### **Fiscal Implications**

The cost of conducting initial cultural assessments at all California youth and adult correctional facilities and headquarters offices would total approximately \$1.6 million dollars. The cost is based on estimates from a nationally recognized expert in conducting cultural assessments at correctional facilities and assumes a cost of \$40,000 for each of California’s 32 adult facilities and \$30,000 for each of the state’s eight youth correctional facilities.

## Employee Investigations and Discipline

*The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter, or appear to falter.*

—John F. Kennedy, April 27, 1961

Ensuring that employees conduct themselves appropriately is an essential function of an employer. The most important administrative tool in achieving that goal is an expeditious and equitable internal investigation and employee discipline processes that sanctions those found guilty of misconduct and clears those wrongfully accused. In recent years, the California Department of Corrections has come under repeated and widespread criticism for failings in this regard. A series of legislative hearings in early 2004 brought to light an atmosphere of corruption and fear among Department of Corrections employees that obscures misconduct, derails internal affairs investigations, subjects whistle-blowers to retaliation, and shields those guilty of wrongdoing.<sup>1</sup> Following scrutiny of internal affairs investigations at Pelican Bay State Prison by the U.S. District Court, the Department of Corrections is under court order to correct deficiencies in its internal affairs investigation process. Revelations about these problems are not new. A special master appointed by the court noted in January 2004 that the department failed to correct deficiencies in its internal affairs process reported two years earlier by the Office of the Inspector General.<sup>2</sup>

The Department of Corrections failure to adequately address misconduct damages the reputation of its employees and undermines public confidence in the department's ability to carry out its mission. The Corrections Independent Review Panel therefore sought to identify measures the new Department of Correctional Services could take to ensure integrity in the employee investigation and discipline process in both its adult and its youth correctional systems. In that effort, the panel reviewed the employee investigation and discipline processes used by the Department of Corrections and the California Youth Authority and examined reports by Senate Select Committees on Government Oversight and the California Correctional System, the U.S. District Court, and the Office of the Inspector General. The panel also attended legislative hearings, interviewed experts in the field of investigation and employee discipline, and polled correctional agencies nationwide.

As a result of its study, the panel found a lack of standardized procedures for internal investigations and employee discipline to be a key deficiency. The panel found another deficiency to be inadequate record-keeping of misconduct complaints, use-of-force incidents, internal investigations, and employee disciplinary actions. The panel identified three

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<sup>1</sup> Briefing Paper, California State Senate, Committee on Government Oversight, *Senate Select Committees on Government Oversight and the California Correctional System*, (Sacramento, California, January 16, 2004), p. 2.

<sup>2</sup> United States District Court for the Northern District of California, *Madrid Special Master's Report Re Department of Corrections "Post Powers" Investigation and Employee Discipline*, by John Hagar (San Francisco, California, January 15, 2004), p. 69.

main elements necessary for effective change. First, complaints, use-of-force incidents, and employee investigations must be recorded, assessed, and monitored at a central location. Second, a vertical investigation team model must be implemented. Third, documents related to employee discipline also must be drafted at a central location. Elevating and reorganizing internal affairs units within the new Department of Correctional Services as described in *Chapter 1, A Reorganization Plan for Corrections*, will further help to bring integrity and accountability to the employee investigation and discipline processes.

### **Fiscal Impact**

At present, the Department of Corrections and the California Youth Authority treat employee investigations and discipline as two separate activities. Implementing the panel's recommendations will link both processes, standardize procedures, and improve quality control. According to testimony presented at a recent California State Senate hearing, the Department of Corrections paid the State Personnel Board approximately \$1.3 million in fees for discipline appeals during fiscal year 2002-03.<sup>3</sup> Although the precise savings to be realized from a more efficient and trustworthy process cannot be precisely quantified, the changes can be expected to save money by lessening the potential for employees to appeal discipline cases and pursue civil litigation.

### **Background**

In March 2002, the California Office of the Inspector General published the results of an audit that identified problems with the California Department of Corrections employee investigation and discipline practices. The audit found that needless complexity delayed the processing of cases and that several other factors impeded the department's ability to process cases swiftly and effectively.<sup>4</sup> The Office of the Inspector General reported that statutory time limits were often exceeded, which precluded the department from taking disciplinary action in 43 percent of cases.<sup>5</sup> Although internal due dates had been established to ensure that investigations are completed on time and discipline imposed before statutory time limits expire, the Office of the Inspector General noted that the department lacked an adequate system for monitoring case progress and ensuring that the due dates were met.<sup>6</sup>

The Office of the Inspector General also noted that employees involved in imposing employee discipline lacked the knowledge and skill to successfully carry out the various levels of the discipline process. Often, individuals assigned to draft proposed disciplinary actions

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<sup>3</sup> California State Senate, Committee on Government Oversight, "State Employee Discipline and the Personnel Board," Sacramento, California, March 22, 2004, p. 3; 8.

<sup>4</sup> Office of the Inspector General, "Review of the Employee Disciplinary Process, California Department of Corrections," Sacramento, California, March 2002.

<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> Office of the Inspector General, "Special Review of the Office of Investigative Services, California Department of Corrections," Sacramento, California, October 2001, p. 2.

were not attorneys, nor were they assisted by legal counsel unless specifically requested. The same untrained individuals who drafted the actions were frequently called upon to act as the department's advocate at State Personnel Board hearings.<sup>7</sup>

The Inspector General also found the department did not monitor or evaluate a number of discipline cases appealed to the State Personnel Board that were settled before the hearing. Over a three-year period, 426 of 750 cases — 57 percent of the discipline appeal cases filed with State Personnel Board by Department of Corrections employees — were either settled or withdrawn before the hearing process.<sup>8</sup>

In January 2004, a draft report by the special master appointed by the U.S. District Court, Northern District of California in the Pelican Bay State Prison case *Madrid v. Gomez* reiterated the findings of the Office of the Inspector General. That report noted in addition that high-ranking Department of Corrections officials sanctioned a “code of silence” during the prosecution of a correctional supervisor and a correctional officer, attempting to silence whistle blowers, block investigations, hide facts, and cover up staff misconduct.<sup>9</sup>

Hearings before the California State Senate on January 20 and 21, 2004 revealed allegations of unethical practices, targeting of whistle blowers, and cover-ups condoned by top California Department of Corrections officials.<sup>10</sup> The briefing paper for the Senate hearing relied on the draft report prepared by the U.S. District Court Special Master. The Department of Corrections acknowledged a need to reform its investigation and discipline processes in February 2004 and submitted a remedial plan to the federal court.<sup>11</sup>

***The need for consolidation.*** At present, the Department of Corrections and the California Youth Authority each have independent internal affairs units, and each of the internal affairs units, in turn, has separate units for conducting investigations and for processing staff discipline. Audit authorities have found the investigative and disciplinary practices of both departments to be “overly bureaucratic” — a characteristic that translates into fiscal waste, inequitable applications of staff discipline, and losses at the appeal level.<sup>12</sup>

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<sup>7</sup> Office of the Inspector General, *Review of the Employee Disciplinary Process, California Department of Corrections*, Sacramento, California, March 2002, p. 4.

<sup>8</sup> Stephen A. Jennings, Assistant Chief Counsel (Acting), Employment Law Unit, Legal Affairs Division, California Department of Corrections, memorandum to Joyce Hayhoe, Deputy Secretary (Acting), Legislation, Youth and Adult Correctional Agency, December 18, 2003.

<sup>9</sup> U. S. District Court for the Northern District of California, *Madrid Special Master's Report Re Department of Corrections "Post Powers" Investigation and Employee Discipline*, by John Hagar, San Francisco, California, January 15, 2004.

<sup>10</sup> Briefing Paper, California State Senate, Committee on Government Oversight, *Senate Select Committees on Government Oversight and the California Correctional System*, (Sacramento, California, January 16, 2004), p. 1, 2.

<sup>11</sup> California Department of Corrections, In Response to Special Master's Draft Report Regarding “Post Powers” Investigations and Employee Discipline, February 2004, p. 1.

<sup>12</sup> California State Senate, Committee on Government Oversight, *State Employee Discipline and the Personnel Board*, Sacramento, California, March 22, 2004, pp. 3, 8.

*A model for a new internal affairs office.* A more effective system would merge internal investigation and staff discipline functions for all Department of Correctional Services divisions into one full-service internal affairs office reporting directly to the Secretary. The new internal affairs office would be charged with recording public complaints; monitoring serious use-of-force incidents; conducting serious staff misconduct investigations; overseeing less-serious staff misconduct investigations; preparing documentation to be served on employees found to be involved in misconduct; and representing the department during the appeal process. (*Chapter 4, Use of Force*, presents additional information on the handling of use-of-force incidents.)

The new internal affairs office would include the following three essential components:

- A central intake unit
- Multiple vertical investigation teams
- A disciplinary drafting unit.

The internal affairs office would have a headquarters and regional offices and would include attorneys from the former Employment Law Unit of the Department of Corrections Legal Affairs Division. The central intake unit and the disciplinary drafting unit would be located in the internal affairs headquarters office, while the regional offices would be made up of multiple vertical prosecution teams. The first task for the new internal affairs office would be to create a comprehensive internal affairs policy and procedures manual and to conduct the necessary training for the internal affairs staff.

The design and functions of the central intake unit, the vertical investigation teams, and the disciplinary drafting unit would be as follows:

- ***Central intake unit.*** The central intake unit would be responsible for issuing tracking numbers and monitoring requests for investigation, serious use-of-force incidents, and complaints as required by California Penal Code Section 832.5.

A “Request for Investigation” is a formal request to investigate an allegation of staff misconduct submitted by an authorized authority. The Central Intake Unit will process all Requests for Investigation.

A “complaint” is an allegation of staff misconduct that violates a law, regulation, or policy; and if proven true, could result in adverse action and/or criminal prosecution. Complaints may be received from various sources: members of the public, employees, inmates, wards, families of inmates and wards, or government representatives. Complaints may be submitted to local facilities or offices. Not all complaints result in a request for investigation being submitted.

At present the Department of Corrections does not record requests for investigation, complaints, and serious use-of-force incidents at a central location. Instead,

when staff misconduct is alleged, each hiring authority makes an independent decision whether to investigate locally, refer the case to the regional Internal Affairs Office, or not investigate at all. The result is inconsistency and inefficiency in the handling of investigations, complaints, and use-of-force incidents.

In contrast, under the new model, the new central intake unit would administer a central database that issues consecutive tracking numbers to hiring authorities (the warden, superintendent, parole administrator, health care manager, or other individual authorized to decide personnel issues)<sup>13</sup> for all requests for investigations, complaints of alleged staff misconduct, and serious use-of-force incidents. The same number would be used to track an incident from receipt to final disposition. The automated system should be networked for statewide data entry access. (*Chapter 11, Information Technology*, discusses the need for an information technology system capable of tracking requests for investigation, serious use-of-force incidents, and complaints of employee misconduct statewide.)

The central intake unit would be responsible for monitoring the progress of the complaint throughout the process, while hiring authorities would retain responsibility for responding to and resolving complaints in their designated areas. Hiring authorities would electronically forward requests for investigation and notifications of serious use-of-force incidents to the central intake unit through the central database and would be responsible for entering information associated with complaints into the database. Complaints requiring a request for investigation would be forwarded to the central intake unit. The procedure for handling complaints is depicted in Appendix 1 to this chapter.

Serious use of force incidents reported by hiring authorities would receive a tracking number from the central intake unit and would be assigned to subject matter experts in a regional internal affairs office for review. If, upon review of the incident, it appears that an employee action violated policy, a request for investigation would be initiated.

All requests for investigation would be analyzed, classified, and assigned for investigation by the central intake unit. Investigations would be either assigned to a regional internal affairs office or returned to the hiring authority for local assignment. The central intake unit would monitor case progress regardless of where the investigation is conducted. The procedure for handling requests for investigation is depicted in Appendix 2 to this chapter.

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<sup>13</sup> California Government Code Sections 19050, 19572 and 19574; California Code of Regulations, Title 2, Division 1, Chapter 1, Subchapter 1, Article 1, Section 3.5.

Serious misconduct cases — defined as involving allegations of criminal actions, behavior jeopardizing safety and security, or negatively impacting the departments operation or reputation — would be assigned to an internal affairs investigator at the regional level.

Less-serious misconduct cases — behavior related to job performance, actions within the normal scope of supervisory functions, and behavior that does not pose a threat to safety and security — would be assigned to a supervisor at the local level, certified to conduct internal affairs investigations.

- ***Vertical investigation teams.*** The vertical prosecution model, in which an investigator and a prosecutor are assigned responsibility for a case from inception through resolution, is used by law enforcement in the investigation and prosecution of criminal cases. The coordinated effort reduces the potential for errors and increases the possibility for successful prosecution.<sup>14</sup>

The same model can be successfully applied to employee investigations. Under the vertical model, each employee investigation would be assigned to a team comprised of an attorney and an investigator. If the employee appeals a disciplinary action taken as a result of an investigation, the original case attorney would serve as the department's advocate.

When a case is assigned to a regional vertical investigation team, the attorney and the investigator would prepare an investigative plan. The investigator would be primarily responsible for conducting the investigation with support from the attorney.

When a case is assigned locally, a local investigator/supervisor and a regional team would be assigned simultaneously. The local investigator would be responsible for conducting the investigation with oversight provided by the regional team.

At the conclusion of the investigation, the attorney from the assigned regional vertical investigation team would become responsible for preparing a statement of facts — a summary of the evidence gathered during the investigation. The investigation and statement of facts would then be forwarded to the hiring authority. The hiring authority would be responsible for determining whether the evidence supports or refutes the allegations, determine the findings of the investigation, and assess discipline if necessary.

- ***Disciplinary drafting unit.*** If the hiring authority determines that the facts support the allegations and warrant discipline, he or she will assess a penalty using a

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<sup>14</sup> W. Spelman, *Repeat Offenders*. Police Executive Research Forum: Washington, D.C., 1990.

penalty matrix. The penalty matrix would specify uniform sanctions for various types of misconduct to provide a consistent method for applying staff discipline. The matrix should allow the hiring authority latitude to impose a penalty within a range, based on mitigating or aggravating factors. Any deviation from the prescribed range should require documented justification. The matrix would also serve as a tool to educate employees regarding the consequences of misconduct.

After designating the penalty using the matrix, the hiring authority would request that the disciplinary drafting unit prepare the proposed disciplinary action. The disciplinary drafting unit would prepare all documents to ensure quality control and uniformity. The drafted action would then be given to the hiring authority for service to the employee.

***The employee discipline process.*** The Office of the Inspector General found that the Department of Corrections does not monitor or evaluate disciplinary cases appealed to the State Personnel Board that are settled before hearing. Employees involved in the internal discipline system lacked the knowledge and skills necessary to navigate the Adverse Personnel Action process.<sup>15</sup> During a forum held on April 1, 2004, state prison wardens likewise told the Corrections Independent Review Panel that they had never received training in the responsibilities of hiring authorities with respect to pre-disciplinary hearings and the adverse action settlement process.

The staff disciplinary process includes the following elements:

- ***Predisciplinary hearing.*** Pursuant to *Skelly vs. State Personnel Board* (1975), employees are afforded the right to a pre-disciplinary hearing during which the employee may present information in an effort to reduce or eliminate the proposed discipline.<sup>16</sup> To improve the staff disciplinary process, the new Department of Correctional Services should establish clear policies and procedures for conducting pre-disciplinary hearings. The policy should clearly define the criteria for modifying a penalty and should require justification for any penalty modification to be thoroughly documented.<sup>17</sup>
- ***Settlement negotiations.*** Similarly, policies and procedures should be developed to ensure that settlement of staff disciplinary matters is fair and equitable. The policy should clearly define criteria for determining whether the settlement is appropriate based upon independent case factors and the application of the

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<sup>15</sup> Office of the Inspector General, "Review of the Employee Disciplinary Process, California Department of Corrections" March 2002, p. 4.

<sup>16</sup> *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194, 215, 124 Cal. Rptr. 14, 28-29.

<sup>17</sup> California Department of Corrections, Operations Manual, Section 33030.11.

penalty matrix. The department should require the hiring authority to confer with a department attorney before stipulating to a settlement.

*Employee disciplinary appeal process.* The existing employee disciplinary appeal process is costly and ineffective. Under the present process, Department of Corrections and California Youth Authority employee disciplinary actions can be appealed to the State Personnel Board for final action, where a large percentage are overturned. In fiscal year 2002-03, the Department of Corrections paid the State Personnel Board approximately \$1.3 million in appeal hearing fees.<sup>18</sup> In 2002, more than 60 percent of the Department of Corrections and California Youth Authority actions decided by the State Personnel Board were either revoked or modified.<sup>19</sup>

The inability of the Department of Corrections and the California Youth Authority to take disciplinary action against employees found to have engaged in misconduct undermines the credibility of the departments' commitment to requiring appropriate conduct and fosters the perception that misconduct is accepted.<sup>20</sup>

A more effective employee disciplinary appeal process would eliminate appeals for lower level penalties, such as short-term suspensions and letters of reprimand, and replace the State Personnel Board appeal process with an internal employee discipline appeal panel. The internal employee discipline appeal panel should consist of designated department managers and one member selected by the Civilian Corrections Commission. Panel members would be trained in the consistent application of discipline.

*Information technology.* At present, the Department of Corrections lacks a central processing and tracking system for complaints, use-of-force incidents, and investigations. As a result, the department must query multiple databases and manual records when responding to requests for information relative to complaints, serious use-of-force incidents, and investigations.

Needed is a comprehensive database to collect data associated with complaints against employees, serious use-of-force incidents, employee investigations, and staff disciplinary actions. The purpose of the data management system would be to provide a complete account of case activity from start to finish. The system should be capable of formatting information contained in the database into real-time reports for specific audiences. The data should be managed and accessed based on rules governing personnel practices. Due to

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<sup>18</sup> California State Senate, Committee on Government Oversight, *State Employee Discipline and the Personnel Board* (Sacramento, California, March 22, 2004), p. 3.

<sup>19</sup> *Ibid.*, p. 5.

<sup>20</sup> *Ibid.*, p. 8.

confidentiality requirements associated with the data, the internal affairs office should administer and monitor the database.

- ***Complaints against staff.*** As a component of the data management system, all complaints of employee misconduct would be recorded, properly assessed, and accounted for. All complaints should be tracked to final disposition to include referrals for investigation.
- ***Employee investigations.*** As a second component of the new data management system, all facets of the staff investigation and discipline process should be tracked. The system should allow real-time monitoring, statewide networking capabilities, and an early warning signal to ensure statutory time limits are met. To improve training and performance objectives and to signal the need for revision of regulations and policies, the system should include trend analysis abilities to identify areas of concern. The database should allow designated employees from all regions to electronically send requests for investigation and enter staff complaints.

In addition to general case tracking information, the system should include the following:

- Standard misconduct codes;
- Case progression dates;
- Real-time case status;
- Final case disposition and action;
- Prosecution referrals and dispositions;
- Total investigative case hours;
- Cases associated with the same incident; and
- Investigations identified as criminal or administrative.

***Website and toll-free hotline.*** The employee investigation and discipline system should include an internal affairs website to provide employees and the public with information relative to the complaint and investigative processes. The website should include the following:

- A toll-free number for reporting misconduct to the internal affairs office;
- Telephone numbers of regional offices;
- The employee code of ethics and code of conduct;
- The penalty matrix;
- Monthly summary of adverse actions; and
- Links to related sites, such as the Department of Fair Employment and Housing and the Bureau of State Audits.

***Public reports.*** The employee investigations and discipline system should include a published quarterly summary report of adverse actions taken in order to reinforce consistent

application of penalties. The transparency of the disciplinary process can also serve as a training tool to emphasize proper employee conduct and can help to restore public and employee confidence in the integrity of the system.

*Staffing and training.* Staffing for the internal affairs office would come from the internal affairs units of the Department of Corrections and the California Youth Authority and would be based upon past investigative caseload and existing resources. All employees would be trained in the causes for adverse action and related penalties. Training would occur at the academy or during initial employee orientation, with annual refresher training conducted locally.

### Recommendations

The Corrections Independent Review Panel recommends that the new Department of Correctional Services take the following actions to improve the employee investigation and discipline system:

- Merge internal investigation and staff discipline functions for all Department of Correctional Services divisions into one-full-service internal affairs office reporting directly to the Secretary.
- Establish clear policies and procedures to govern internal affairs investigations, the pre-disciplinary hearing process, settlement negotiations, and employee disciplinary appeals.
- Establish a central intake unit responsible for assessing all requests for internal investigations, complaints of staff misconduct, and serious use-of-force incidents.
- Implement a vertical investigation team model for all internal affairs investigations.
- Establish a disciplinary drafting unit responsible for developing a penalty matrix and preparing all written notices of disciplinary action.
- Provide training to hiring authorities and attorneys in procedures governing internal investigations, the *Skelly* hearing process, settlement negotiations, and the staff disciplinary appeal process.
- Replace the existing State Personnel Board appeal process with an internal employee discipline appeal panel.<sup>21</sup>

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<sup>21</sup> This recommendation would require a state constitutional amendment and is discussed further in the Appendices to this report under *Implementation, Legal Considerations and Appendices*.

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- Create a central database to record and track all allegations of staff misconduct.
  - Create a central database to record and track serious use-of-force incidents.
  - Establish a central database to track all facets of the employee investigation and discipline processes.
  - Establish an internal affairs information website and a toll-free hotline for reporting misconduct.
  - Publish quarterly adverse action summaries.
  - Provide initial and annual training to all employees in causes for adverse action and related penalties.

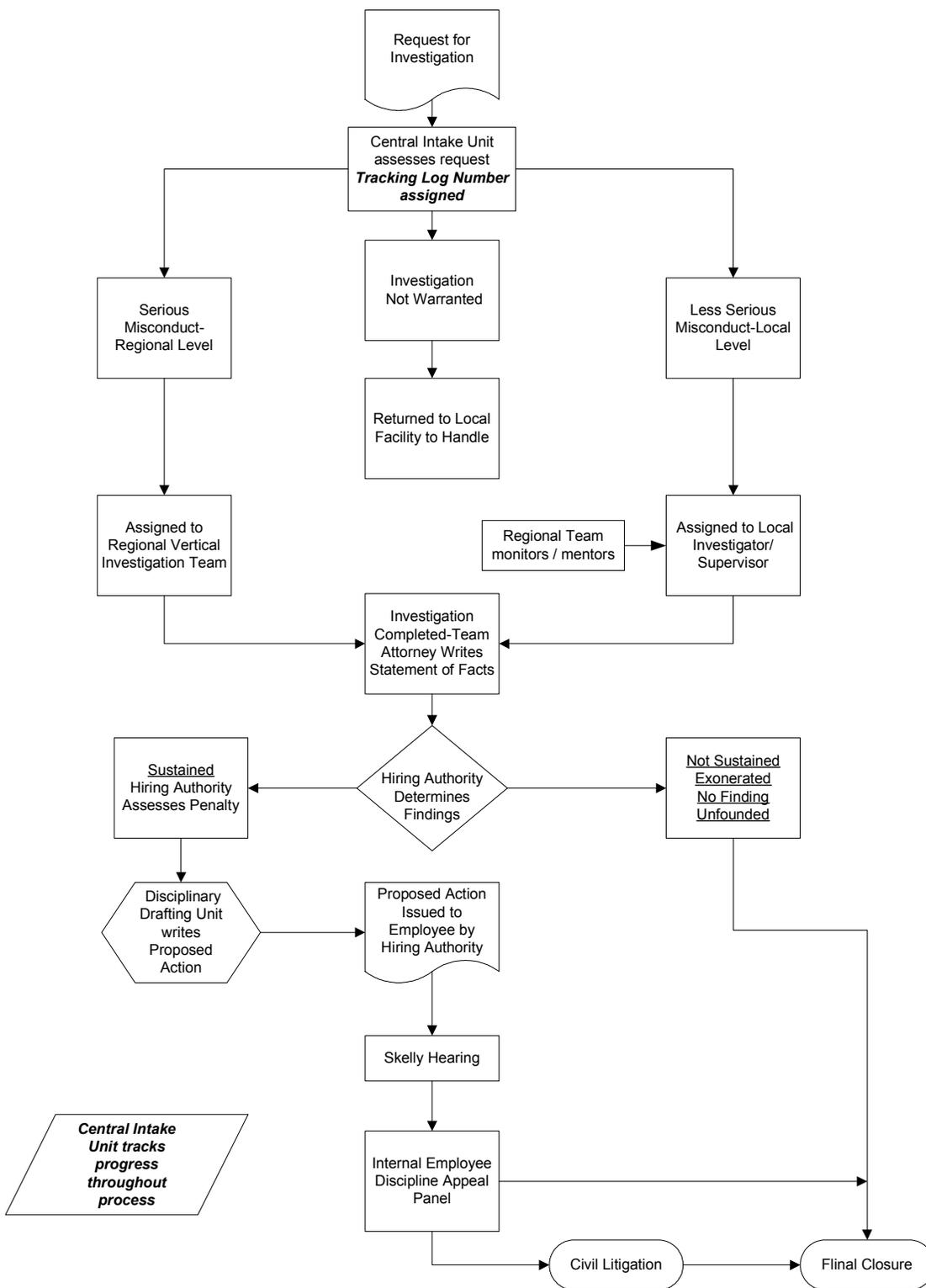
**Appendix 1**

**PROPOSED COMPLAINT PROCESS**



Appendix 2

PROPOSED INVESTIGATIVE CASE ACTIVITY FLOWCHART



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## Use of Force

Correctional employees must sometimes use force to control inmates and protect both staff and inmates. Often the need for force arises in a volatile situation requiring on-the-spot decisions. With the high potential for injury in such circumstances, clear policies governing the use of force are vital. Use-of-force policies should define when force is justified, how it may be used, and what kind of force may be applied. Equally vital is a process for monitoring the use of force throughout the correctional system and for ensuring consistent disciplinary sanctions against employees who violate use-of-force policies or where the use of force is found to have been excessive and/or unnecessary.

A successful class-action lawsuit against the state has highlighted the need for substantive change in California's correctional system use-of-force policies and practices. In this case, the court has supported plaintiffs' claims of unjustified and excessive use of force and violation of the constitutional prohibition against cruel and unusual punishment. Underlying the deficiencies is the absence of system-wide policies for managing and controlling the use of force in the state's correctional institutions.

The Corrections Independent Review Panel examined use-of-force policies employed in Department of Corrections and California Youth Authority institutions and parole operations. The panel also visited Pelican Bay State Prison, the subject of a court-ordered remedial plan governing the use of force, and reviewed the state's use-of-force training, monitoring, review, and disciplinary policies. As a result of that study, the panel recommends the new Department of Correctional Services develop a core system-wide use-of-force policy. The policy should accommodate the difference between types and conditions of force between adult and youth institutions and between institution and parole operations. As part of the core policy, the department should institute specific use-of-force training, monitoring, investigation, and discipline processes.

### Fiscal Impact

Implementation of the panel's recommendations would result in potentially significant savings that cannot presently be quantified. Savings would result from a reduction in incidents involving unjustified, excessive, or negligent use of force, which in the past have resulted in significant costs to the State for litigation and medical expenses. Costs would be incurred for implementation of recommendations calling for improved use-of-force training and development of a comprehensive use-of-force database.

### Background

State regulations and federal law provide the general framework for the use of force in correctional settings, allowing force to be used under certain conditions. Title 15 of the California Code of Regulations provides that force may be used as a last resort to gain

compliance with a lawful order.<sup>1</sup> In the federal civil action *Madrid v. Gomez*, which successfully challenged the use of force at Pelican Bay State Prison, on grounds of violation of the eighth amendment to the U.S. Constitution, the U.S. District Court also noted the necessity for the use of force:

*Perhaps the paramount responsibility of prison administrators is to maintain the safety and security of both staff and inmates.... Prison officials have the 'unenviable task of keeping dangerous men in safe custody under humane conditions.' There is no question that this demanding and often thankless undertaking will require prison staff to use force against inmates. Indeed, responsible deployment of force is not only justifiable on many occasions, but absolutely necessary to maintain the security of the institution. As one expert at trial succinctly stated, when it comes to force it is "as dangerous to use too little as it is to use too much."*<sup>2</sup>

Recent events have demonstrated, however, that use of force at California's adult prisons and youth correctional facilities have sometimes exceeded acceptable limits and better accountability within their use-of-force policies is necessary.

***The State's use-of-force policies are undergoing revision.*** As a result of the *Madrid v. Gomez* case, the U.S. District Court ordered the Department of Corrections to develop a remedial plan to address the use of force at Pelican Bay State Prison and assigned a court-appointed special master to oversee the revision of the institution's use-of-force policy. With the *Madrid* case as a guide, the Department of Corrections has also adapted the use-of-force policy and made it applicable to the other adult prisons, in parole operations, and is presently considering formal policy changes.<sup>3</sup> Following recent incidents at state youth facilities, including the videotaped beating of a ward, and litigation brought against the State concerning use of force in youth institutions, the California Youth Authority is also in the process of revising its use-of-force policies to make them consistent with the Pelican Bay *Madrid v. Gomez* remedial plan.<sup>4</sup>

The Corrections Independent Review Panel found the California Youth Authority's draft use-of-force policy to be generally consistent with the *Madrid* plan, with differences in firearm usage and fight intervention specific to youthful offender incarceration.<sup>5</sup> The panel also found, however, that the State's other efforts to bring use-of-force policies into line with the Pelican Bay remedial plan do not adequately take into account differences in

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<sup>1</sup> California Code of Regulations, Title 15, Section 3268 (a)(1).

<sup>2</sup> *Madrid v. Gomez*, Case C90-3094-THE, U.S. District Court, Northern District of California, Findings of Fact, Chief Judge Thelton E. Henderson, January 10, 1995, page 14.

<sup>3</sup> Joe McGrath, Warden, Pelican Bay State Prison, interview, Sacramento, California, May 6, 2004.

<sup>4</sup> Major Daryl Ballard, California Youth Authority, interview, Sacramento, California, March 24, 2004.

<sup>5</sup> Department of the Youth Authority Institutions and Camps Manual, Section 2080, Use of Force, page 2, draft policy, May 18, 2004.

appropriate use of force between institution and parole operations. In addition, the panel found that the proposed policies statewide fall short of the *Madrid* plan in providing for systematic review of use-of-force incidents and collection of use-of-force data.

*Use-of-force policies for parole operations do not provide for adequate review.* Department of Corrections parole agents are presently subject to the same use-of-force policies that govern correctional officers, even though the duties of parole agents differ from those of officers assigned to institutions. To accommodate those differences, in 2003 the parole division began developing a separate use-of-force policy that would be more consistent with parole field operations.<sup>6</sup> The Corrections Independent Review Panel found, however, that the parole division's proposed use-of-force policy does not meet the standards of the *Madrid* plan with respect to review of use-of-force incidents and collection of use-of-force data. The deputy director of the parole division suggested to the panel that use-of-force incidents may be under-reported.<sup>7</sup> A survey of the state's four parole regions found that parole agents performed approximately 30,000 arrests in 2003, yet only 71 use-of-force incidents were reported.<sup>8</sup> Use-of-force incidents in California Youth Authority parole operations also appear to be under-reported. A California Youth Authority staff member told the panel that the department's parole division does not report use of force and attributed the lack of reporting to the fact that parole agents operate with less direct supervision than correctional officers in institutions.<sup>9</sup>

*Development of the Pelican Bay use-of-force remedial plan.* Pelican Bay has served as a laboratory for the development of a use-of-force policy that could be applied throughout the system. A special unit at the prison, the *Madrid* Compliance Unit, is responsible for gathering use-of-force reports, reviewing use-of-force incidents for compliance with the remedial plan, and presenting use-of-force reports to the prison's Executive Review Committee, which reviews use-of-force incidents. According to the warden, acceptance and fine-tuning of the use-of-force policy occurred over a period of ten years with the guidance and approval of the U.S. District Court through the assigned special master. The warden reported that successful implementation of the new policy resulted from extensive formal and informal training, with group training and one-on-one discussions crucial to officers' full understanding.<sup>10</sup> The comprehensive training contrasts with formal use-of-force training provided to Department of Corrections line staff, which consists of an eight-hour block

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<sup>6</sup> Deputy Director Rick Rimmer, Parole and Community Services Division, Department of Corrections, interview, Sacramento, California, May 7, 2004.

<sup>7</sup> *Ibid.*

<sup>8</sup> C. Toni, Parole Agent III, California Department of Corrections Parole and Community Services Division, e-mail message, May 17, 2004.

<sup>9</sup> Mark Gantt, Assistant Director, Department of Youth Authority, Office of Professional Standards, interview, Sacramento, California, May 27, 2004.

<sup>10</sup> Joe McGrath, Warden, Pelican Bay State Prison, Interview, Sacramento, California, May 6, 2004.

of instruction at the academy with emphasis on deadly force incidents.<sup>11</sup> As a result of the training and implementation process at Pelican Bay, the warden said institution employees are highly knowledgeable about the details of the *Madrid* remedial plan and that the majority are overwhelmingly committed to the use-of-force policy.<sup>12</sup> One employee, a union representative told the Corrections Independent Review Panel, “[W]ithin the remedial plan we know what we can and cannot do, what to expect from managers and their review process, and it can even protect us from false inmate accusations down the road.”<sup>13</sup>

***A model use-of-force policy.*** The use-of-force policy developed at Pelican Bay contains key elements upon which to build a statewide use-of-force policy. Central components include an effective process for reviewing use-of-force incidents; timely and thorough investigations into incidents involving use-of-force; and collection of use-of-force data in a database. Unifying the institution and field operations of the former Youth and Adult Correctional Agency departments into the new Department of Correctional Services will allow for development and implementation of a standardized use-of-force policy covering similar functions and job requirements. Every staff member will be provided a personal copy of the policy. The following describes the components of a model use-of-force policy.

- ***Use-of-force review process.*** The review and critique process is essential for adequate monitoring of the use of force. In the *Madrid* case, the court noted: “[T]he risk that force will be misused is considerably enhanced when prison administrators fail to implement adequate systems to regulate and monitor its use.”<sup>14</sup> Under the remedial plan in effect at Pelican Bay State Prison, use-of-force incidents are reviewed by the *Madrid* Compliance Unit and the prison’s Executive Review Committee. The *Madrid* review process includes review and critique from first line supervisors up to the warden of *all* use of force incidents.

Unique in the *Madrid* process is a use-of-force analyst who represents a “common person” perspective and is responsible for conducting an in-depth analysis of the documentation of each use-of-force case.<sup>15</sup> The analyst applies specific standards identified by the U.S. Supreme Court in *Hudson v. McMillian* relating to justification for the use of force.<sup>16</sup> Those factors consist of the extent of injury suffered; the need for the application of force; the relationship between the need and the amount of force used; the threat reasonably perceived by responsible officials; and any effort made to temper the severity of a forceful response. The analyst

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<sup>11</sup> California Department of Corrections Basic Correction Officers Academy, lesson plan, Use-of-Force Policy.

<sup>12</sup> Joe McGrath, Warden, Pelican Bay State Prison, interview, Sacramento, California, May 6, 2004.

<sup>13</sup> Rick Newton, correctional officer, Pelican Bay State Prison and chapter president, Crescent City, California Correctional Peace Officers Association, conversation, April 30, 2004.

<sup>14</sup> *Madrid v. Gomez*, Findings of Fact, Page 18.

<sup>15</sup> Richard Kirkland, Chief Deputy Warden, Pelican Bay State Prison, interview, Crescent City, California, April 29, 2004.

<sup>16</sup> *Hudson v. McMillian*, 112 S. Ct. (1992).

prepares written recommendations addressing whether the force used was in compliance with policy, procedure, training, and applicable law and whether the reviews were complete. The analyst is also responsible for tracking the matter and verbally presenting the case and recommendations to the Executive Review Committee on a fixed schedule.<sup>17</sup> The success of the analyst function is dependent upon the direct support of the institutional head.<sup>18</sup>

The use of force review processes being developed or presently in use in other Department of Corrections and California Youth Authority institutions and parole regions generally draw from the *Madrid* use-of-force review process, but are not as detailed, standardized, or consistent in every institution and parole region. Some adult institutions, for example, have a use-of-force coordinator who performs a clerical compilation function, rather than the analytical function performed at Pelican Bay State Prison by the *Madrid* Compliance Unit. The Parole and Community Services Division of the Department of Corrections does not conduct the structured analytical review of use-of-force incidents, nor does the California Youth Authority.

- ***Investigation of use of force.*** A comprehensive use-of-force policy must include a process for conducting timely and comprehensive investigations of use-of-force incidents. The investigation process should include a system for identifying acts that require mandatory investigations and should include classifying use-of-force incidents that resulted in specific consequences. The policy should also include a special unit for investigating use-of-force incidents.

Categorizing the use of force by type and consequence allows for focus on those of highest risk. Labeling use-of-force incidents as either level I or II with level II the most serious, allows for prioritizing the focus of attention. Level II designation is only for those consequences that were the direct result of staff action. An incident report containing medical information identifying a qualifying injury would have to be reviewed to determine if it was caused by staff. If not caused by staff, the incident would follow the level I review process. A level II use of-force includes any of the following acts:

- Discharge of a firearm, including warning shots;
- Strikes, blows, or kicks against a handcuffed subject;
- Canine bites

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<sup>17</sup> Pelican Bay State Prison Use of Force Policy, revised July 2003, pages 45-46.

<sup>18</sup> Susan Hernandez, Associate Government Program Analyst, *Madrid* Compliance Unit, Pelican Bay State Prison, interview, Crescent City, California, April 29, 2004.

Level II use-of-force incidents also include use of force likely to have caused or that did result in death or serious bodily injury, with the latter defined as an impairment of physical condition including the following:

- Loss of consciousness;
- Concussion;
- Bone fracture;
- Protracted loss or impairment of function of a bodily member or organ;
- A wound requiring suturing, and
- Serious disfigurement<sup>19</sup>

All Level II incidents should be investigated by a specialized team as described below. The results of the investigation should be reported to the hiring authority for a determination of whether the incident was consistent with policy and training; whether proper tactics were employed; whether lesser-force alternatives were reasonable; and whether discipline is warranted. The determination of the hiring authority would be reviewed and approved at the regional level. Under the model use-of-force process, the Civilian Corrections Commission would conduct an additional review of investigations involving death or in incidents where death was likely.

All use of force incidents not classified as level II would automatically be classified as level I. Level I incidents do not trigger an automatic investigation, but if during an incident review a level I incident appears to have violated policy, the matter can be referred to the Internal Affairs Central Intake Unit, as outlined in *Chapter 3, "Employee Investigations and Discipline."*

Establishment of a specialized team from the Office of Internal Affairs designated to investigate only use-of-force incidents would ensure consistency and quality of fact gathering. In addition to the qualifications for an internal affairs assignment, team members should be specially trained. This team could be called the use-of-force investigative team. The team would be immediately notified of a level II incident and would respond to the scene. To ensure prompt response to incidents, the team should be regionally based.

If, during the incident investigation specific personnel are identified as possibly committing misconduct, a personnel investigation would be initiated by internal affairs. (See chapter three, *"Employee Investigations and Discipline."*)

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<sup>19</sup> Pelican Bay State Prison Use of Force Policy, revised July 2003, page 2.

At present, complaints from inmates and parolees of excessive use of force do not receive uniform consideration throughout the Department of Corrections.<sup>20</sup> Unless an inmate complains immediately, the complaint is not considered during the review process. Since a large number of civil actions brought against correctional institutions arise from such complaints, a mechanism for including inmate and parolee complaints in the use-of-force review process should be in place. All complaints and allegations against peace officers brought by inmates, parolees, and citizens of unnecessary or excessive use of force should be investigated pursuant to California Penal Code Section 832.5. These complaints should be reviewed at the institution level regardless of the timeliness of the complaint and matched with the use-of-force incident review package and should also be forwarded to Internal Affairs Central Intake Unit for assignment. After reviewing the use-of-force package and complaint, however, the warden or hiring authority may request that the use-of-force investigation team conduct the investigation if the complaint appears to be serious. The team will audit a percentage of the use-of-force complaint investigations completed by each parole region and institution on an annual basis.

- ***Use-of-force database:*** Without an accurate collection of data about force used against inmates or parolees, the department cannot assess what future actions should be taken to manage the use of force. Don Specter, Director of the Prison Law Office commented about the California Department of Corrections “it is too big and much too diverse; without information there is no management.”<sup>21</sup>

The *Madrid* remedial plan specifically requires a use-of-force database.

*The Use of Force Compliance Unit shall maintain a database system that will provide key information relating to the use of force at PBSP.(Pelican Bay State Prison). This data shall be maintained as a reporting tool to provide the Warden and management staff monthly and quarterly reports, as well as ad hoc reports regarding the use of force. The reports will provide a means of evaluating trends, reasons for the applications of force, and the factors involved.*<sup>22</sup>

Moreover, at present, there is no common system or methodology at the California Department of Corrections in institutions for tracking and detailing use-of-force incidents in a database. The same is true of the parole regions.<sup>23</sup>

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<sup>20</sup> Joseph McGrath, Warden, Pelican Bay State Prison, Interview, Sacramento, California, May 6, 2004.

<sup>21</sup> Don Specter, Director, Prison Law Office, forum held in Sacramento, California, April 15, 2004.

<sup>22</sup> Pelican Bay State Prison, Use-of-Force Policy, July 2, 2003, page 47.

<sup>23</sup> Rick Rimmer, Deputy Director, California Department of Corrections, Parole and Community Services Division, interview, Sacramento, California, May 7, 2004.

The proposed use-of-force policy of the California Department of Corrections, however, makes a database permissive, and the use-of-force policy of the Parole and Community Services Division does not mention the need for a database at all.<sup>24 25</sup>

The California Youth Authority also lacks a uniform system for gathering information regarding use of force. A summary report of a review of six of the California Youth Authority's fourteen facilities, conducted at the request of the California Attorney General, noted that "each institution uses different categories for reporting violent incidents or use of force... and..., as with other YA [Youth Authority] correctional issues, statistical data on use of force are scant and not consistent across facilities. Central office reviews a limited number of reports."<sup>26</sup>

The *Madrid* plan does not specify the content and specific use of the database, saying only that it is to contain "key information; be used as a reporting tool to provide the Warden and management staff monthly and quarterly as well as ad hoc reports... to evaluate trends, reasons for application of force, and factors involved."<sup>27</sup>

The draft use-of-force policy of the Department of Corrections requires only that "the use of force analyst/coordinator shall log and track all incidents."<sup>28</sup> The implication of the department's proposed policy is to establish a record of some kind but provides no specific detail or organizational purpose for the database.

In the *Madrid* remedial plan, reports were to be prepared for the warden and the U.S. District Court for the purpose of measuring management compliance with court-imposed requirements. These reports are still prepared, although there are no defined standards against which the data is compared.<sup>29</sup> Under the model use-of-force policy described here, the new Department of Correctional Services would identify critical use-of-force facts to be assembled and define how those facts are to be analyzed and for what purpose they are to be used.

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<sup>24</sup> California Department of Corrections Operations Manual, draft, Article 25, Section 52100.21, Use of Force.

<sup>25</sup> California Department of Corrections Operations Manual, draft, Chapter 8, Article 45, Parole Use-of-Force Policy.

<sup>26</sup> Barry Krisberg, Ph.D., *General Correctional Review of California Youth Authority*, December 2003, pp. 24 and 31.

<sup>27</sup> Pelican Bay State Prison, Use of Force Policy, revised July 2003, page 47.

<sup>28</sup> California Department of Corrections Operations Manual, draft Article 25, Section 52100.19.4, Use of Force.

<sup>29</sup> Joe McGrath, Warden, Pelican Bay State Prison, interview, Sacramento, California, May 6, 2004.

## Recommendations

The Corrections Independent Review Panel recommends that the new Department of Correctional Services take the following actions:

- Implement a standardized use-of-force policy applicable to all peace officers, but with elements specific to the differences among adult prisons, youth correctional facilities, and adult and youth parole operations.
- Implement an enhanced training program covering the new use-of-force policy.
- Implement the *Madrid* review and compliance unit analyst for all use-of-force incidents for adult prisons, youth correctional facilities, and adult and youth parole operations.
- Establish a regional use-of-force investigation team to investigate any staff use of force that results in serious bodily injury or death and any other serious application of force.
- Create a classification list of use-of-force consequences and acts that will mandate an investigation by the use-of-force investigation team.
- Require investigations of inmate/parolee/ward/citizen complaints regarding use of force and consider the complaint during the use of force review and critique process.
- Establish a standardized statewide network database for use-of-force incidents that defines critical facts relative to use of force.
- Define how use-of-force data will be analyzed and used.

## Fiscal Impact

Implementing the recommended standardized use-of-force policy, review procedures, investigation practices, and use-of-force database would result in an undetermined savings through an anticipated reduction in litigation related to use of force. Adopting the recommended policies derived from the guidelines already approved by the U.S. District Court would act as a deterrent against future class action suits.

At present, litigation costs resulting from use-of-force incidents are substantial. As of May 1, 2004, there were 370 non-class action inmate and parolee court cases pending

against the Department of Corrections alleging excessive use of force.<sup>30</sup> Reducing the number of use-of-force incidents would also be expected to result in fewer injuries to staff and inmates.

The state would incur additional costs in implementing a standardized use-of-force policy as follows:

- Costs would be added to training for curriculum development, academy training, in-service and specialized training for the general staff, analyst, and use-of-force investigation team.
- Additional cost would be incurred by providing each peace officer with a personal copy of the use-of-force policy as a means of providing accountability.
- The creation of a new use-of-force analyst position would entail additional cost.
- A cost would be incurred for implementing a statewide network database for collecting use-of-force data.
- Increased internal affairs staff to support the proposed use-of-force teams.

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<sup>30</sup> Jennifer Santos, California Department of Corrections, Legal Affairs Division, May 1, 2004.

## Personnel and Training

The foundation of any organization is in its personnel. In California's correctional system, this foundation amounts to more than 54,000<sup>1</sup> individuals as diverse and vibrant as the state itself. The budget for salaries and benefits comprises more than \$3,925,583,000.<sup>2</sup> This constitutes 5.6 percent of the general fund. At the state level, this significant investment in human resources supervise and control more than 308,400 inmates, wards, and parolees in order to protect California's citizens.<sup>3</sup>

The key to any successful organization is simple. Hire the best people available and train them to do their jobs with professionalism and integrity. In addition, establish a command succession plan so that the best and the brightest can be promoted through the organization into leadership positions. These activities cement the foundation.

Currently, the state's correctional departments and boards fail to meet these requirements. A hiring plan is nonexistent and background investigations for applicants are weak. The academies that instruct in the fundamental components of sworn officer jobs are under various administrators and are disjointed. There is no systematic plan to provide uniform in-service training. Supervisory and mid-management training is minimal, and command training or executive development is absent. Further, current job descriptions for most key positions are nonexistent or outdated, and no centralized office to manage personnel resources exists.

Accordingly, the Office of Personnel and Training should be established to provide accountability and uniformity in the hiring, deployment, and training of all employees. The panel also recommends that a behavior science unit be established within the Office of Personnel and Training to assist employees in coping with stress in the workplace. This effort should include providing a psychologist in every institution and youth facility.

To transform the personnel and training functions of the Department of Correctional Services into an efficient, professional operation, the following recommendations are offered:

- Organize and develop a personnel management structure that is effective and responsive to the needs of the mission and its employees; and,
- Design a continuum of training that begins with the preparation of the basic academy recruit, follows through the probationary phase, continues with in-service training and prepares for leadership positions.

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<sup>1</sup> January 2004 California Governor's Budget

<sup>2</sup> *Ibid.*

<sup>3</sup> California Department of Corrections Fact Sheet, [www.corr.ca.gov](http://www.corr.ca.gov), April 27, 2004; and California Youth Authority, [www.cya.ca.gov](http://www.cya.ca.gov), April 30, 2004

## **Fiscal Impact**

Implementing the recommendations to achieve an effective and responsive personnel management structure and redesign the training function will have an initial fiscal impact. Actual costs are estimated where possible. Most recommendations modify and re-engineer the manner in which business is being conducted, eliminate waste, and streamline bureaucracy with no extra cost. Department of Correctional Services will realize long-term substantial savings with the addition and retention of more qualified, well-trained employees which will reduce the Department's exposure to civil liability.

### **Building an Effective Personnel Management Structure**

The basic personnel management structure of the existing correctional departments and boards is flawed with waste and abuse. The classification structure is so distorted that an outsider would not realize that correctional counselors don't counsel, managers don't manage, analysts don't analyze and some parole agents perform administrative duties in institutions. The result is that state government is paying top dollar for functions that can be done by lesser paid employees.

The classic example is of positions classified, and compensated at professional levels when a substantial part of the work is clerical or technical. Upon closer review one would find that the typical position classified as associate governmental program analyst would be more appropriately classified at a lower-paid technical class due to the absence of analytical work. The same holds true for some sworn officer positions. The prevailing use of peace officers performing work that can be done by employees in other lower-paid classifications must be evaluated. For example, a position at an institution mail room may be classified as lieutenant with a top monthly salary of \$6,030, but only 40 percent of the duties may reflect lieutenant's work and the remaining 60 percent could be done by a person in an office technician position at the much lower salary of \$2,998 per month.<sup>4</sup>

At headquarters, using sworn officers to perform administrative duties has received attention in the past, but has not been permanently addressed. The matter is more complex than simply prohibiting the practice. There is a true need for the current field knowledge that sworn officers bring to headquarters, and it is desirable for headquarters staff to be abreast of the practices and concerns of the field. For example, in writing regulations and policies for parole, it is advantageous to consult with parole agents. However, when sworn officers remain at headquarters for extended periods of time, the relevance that made them valuable is gone, and the high salary and benefit package of sworn officers makes the practice expensive for California taxpayers.

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<sup>4</sup> Department of Personnel Administration, 51<sup>st</sup> Edition of the California State Civil Service Pay Scales, [www.dpa.ca.gov](http://www.dpa.ca.gov), May 14, 2004.

## Background

*Classification review.* It is essential that one of the first actions taken by the Office of Personnel and Training be that of a comprehensive classification review of all positions within the Department of Correctional Services to ensure appropriateness of classes. This clarifies the responsibilities of each job and assists in identifying the skills, knowledge, and abilities required to carry out the tasks. Rectifying the classification structure is not simply a bureaucratic exercise; it optimizes the effective use of talent and funding to carry out the mission.

If the philosophy of re-entry and subsequent recommendations in this report are adopted, it will be essential to review the duties of various classifications, particularly the correctional counselor classes on the adult side and the youth correctional officer and counselor classes within youth corrections. The philosophy of re-entry includes that on arrival to the correctional departments, the inmate or ward should be in programming designed to assist in preparation for eventual release into society. This philosophy fundamentally changes how the duties of the classifications mentioned above are carried out. Since the duties change, new competencies for the job should be delineated, and employees with the appropriate skills will need to be recruited. A classification review will help clarify the changes in these responsibilities.

After the appropriate classes are identified, job descriptions for all positions should be developed and provided to employees. This clarifies the responsibilities of each job and assists in identifying the competencies required to carry out the tasks.

*The need for an effective management information system.* The managers at the existing correctional departments and boards do not have an automated centralized system for gathering, storing, and extracting personnel and training data. Typical personnel functions such as performance evaluations often go undone. The current systems do not generate automatic reports for managers to plan, organize, and execute the personnel functions. Training may go unrecorded; a unit may keep a manual, paper-record of training, or input information into a stand-alone program that lacks system-wide connectivity.

The Department of Correctional Services should develop a management information system to accommodate personnel and training databases, provide easy access, and generate periodic reports. The proper, centralized storage and retrieval of information would facilitate the management of personnel resources and training. The system can also make possible the distribution of information to Department of Correctional Services employees through the design and implementation of an interactive system via the Internet. In the Los Angeles Unified School District, all employees have access to job information and can test and track scores of their job competencies.<sup>5</sup> The Department of Correctional Services should do the same and should extend it a step further by including a complementary system for employee evaluations and training.

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<sup>5</sup> Anita Ford, Human Resources Director, Los Angeles Unified School District, April 29, 2004.

The Internet-based employee data system would work in the following manner: Department of Correctional Services employees may enter the department web site, look up the competencies required to be an institutional correctional peace officer, a parole agent, or an information officer, and test their knowledge of the job requirements. If an area of deficiency is identified – say, in report writing – the employee could then find a community college class, in-service training session, or a departmental course that would help with the area of deficiency. Armed with this information, the employee could take positive steps to improve his/her professional skills and take control of his/her career advancement. The information could also be used by the employee to provide information to his/her supervisor regarding areas of interest and professional development.

**Performance evaluations.** Supervisors must conduct timely performance evaluations based on the duties assigned and reflected in the job description. Contrary to good business practices, at present, the correctional departments and boards do not conduct performance reviews in a timely manner. Performance evaluations help the employee focus on improved job performance. The evaluations identify strengths and weaknesses, help the supervisor and employee manage a plan for training and future advancement, and improve communication and morale among employees and supervisors.

**Salary compaction.** Currently the compaction within the correctional peace officer structure does not allow for the proper incentive to promote. It is more advantageous for a correctional officer to remain in a rank-and-file class than to promote to sergeant with the added responsibilities of supervision. The compaction continues throughout the supervisory, managerial, and executive positions. (Please refer to Appendix, Tables 1-6.) At the top executive levels, recruiting for talent becomes more difficult because the salaries are not commensurate with the responsibilities. A Federal Bureau of Prisons warden who oversees a prison of typically less than 1,500 inmates has a maximum salary of \$136,466, compared to a salary of \$118,000 for a California warden with the responsibility for prisons ranging from 2,500 to 7,000 inmates.<sup>6</sup> The directors of the correctional departments also have responsibility for large health care delivery systems for inmates and wards under their custody, yet their salary does not reflect the complexity of the responsibilities when compared to other hospital executives.<sup>7</sup> In order for Department of Correctional Services to be competitive with the rest of the correctional community, it is recommended that periodic salary reviews be conducted for proper adjustments.

**Recruitment and selection.** Much attention has been focused on the culture and public image of the state correctional system. In order to change and improve the culture and image, it is imperative to recruit and retain highly qualified individuals for all positions, with a primary focus on correctional peace officer classifications. It is also crucial to ensure

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<sup>6</sup> Federal Bureau of Prisons, Salary Table 2004-LA, GS-15.

<sup>7</sup> Hospital Executive Pay, Median Base Salary and Total Cash Compensation Table, source: 2003 Hay Hospital Compensation Survey ([www.ache.org](http://www.ache.org)).

the competitiveness of the Department of Correctional Services with other local, state, and nationwide law enforcement agencies in the recruitment and retention of qualified peace officers. The Corrections Independent Review Panel recommends a two-tiered approach to achieve these goals:

- Improve the department's ability to recruit and retain more qualified employees than the current applicants.
- Expedite the department's hiring process, while ensuring its thoroughness to ensure the department's retention of qualified applicants.

*Improve the department's ability to recruit and retain qualified employees.* To ensure that the Department of Correctional Services builds a foundation that will facilitate a positive public image and culture, it is imperative the department's highest priority be the recruitment of the best qualified individuals with a primary focus on peace officer classifications.<sup>8</sup> Historically, the California Department of Corrections and the California Department of Youth Authority have struggled to be competitive in the area of recruitment with traditional law enforcement agencies in California and the rest of the country. City police departments, county sheriff departments, and other state and federal law enforcement agencies have traditionally been the primary focus of individuals looking toward a law enforcement career.<sup>9</sup> In fact, the California Department of Corrections and the California Youth Authority have received applicants who have failed in their attempts to be hired by other agencies. Furthermore, many current employees were attracted to the California Department of Corrections and the California Youth Authority solely for the competitive salary and benefit package.<sup>10</sup> This demonstrates a severe problem in the recruitment of dedicated individuals who are attracted to the mission of either agency. The California Department of Corrections recruitment program is ineffective and the California Youth Authority recruitment program is nonexistent.<sup>11</sup> To address these problems, the new Department of Correctional Services should take the following actions:

- **Recruitment plan.** The Department of Correctional Services must develop a comprehensive annual recruitment plan that includes public relations, as well as advertising. The recruitment plan should focus on reaching all qualified individuals and attracting as many applicants as possible.<sup>12</sup> In the past, many elements of California's diverse population have been neglected in the recruitment process. Some cultures do not trust law enforcement and do not consider law enforcement a viable career option. The California Highway Patrol has successfully used the "El Protector" Program to reach out to the Hispanic community.<sup>13</sup>

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<sup>8</sup> May, 2000, Strike Team Report, page ii, California Department of the Youth Authority.

<sup>9</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

<sup>10</sup> Jeanne Woodford, Director, California Department of Corrections, April, 19, 2004.

<sup>11</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

<sup>12</sup> May, 2000, Strike Team Report, page ii, California Department of the Youth Authority.

<sup>13</sup> Ivan Tien, Recruitment Officer, California Highway Patrol, April 29, 2004.

The use of specialized recruitment and educational programs can be helpful in breaking down cultural barriers, thereby increasing the potential pool of qualified applicants. In addition to applicants from California's diverse population, the Department of Correctional Services recruitment efforts should extend beyond the borders of California.

- **Public relations plan.** The department should develop a public relations plan focused on an increased effort to positively contact the public, spread the message that the Department of Correctional Services offers meaningful careers with competitive salaries and benefits, and is a partner in the community. This can be accomplished through the development of trained departmental public relations officers who respond to requests to appear at job fairs, high schools, colleges, church groups, and any other community group that wishes to learn more about the Department of Correctional Services.

Most California Department of Corrections institutions and California Youth Authority facilities are making strides in communicating with local community leaders and participating in community service programs. A good example of this is the California Medical Facility in Vacaville, which currently participates in many community service programs that benefit the community and foster a good relationship with the local citizens and leaders. Examples of these programs are bike refurbishing for local youths, donations from inmates for the local homeless population, and holiday gifts for the local senior community.<sup>14</sup> However, this information and other success stories are not reaching the public.<sup>15</sup>

The Department of Correctional Services should also implement community service programs during academy training. The California Highway Patrol uses one eight-hour day of academy training to perform a community project. The cadets work at different hospitals, schools, and community organizations. This experience teaches the cadets the importance of teamwork and community involvement and positively influences public opinion.<sup>16</sup>

- **Advertising campaign.** As part of the recruitment plan, the Department of Correctional Services should use advertising to educate the general public about correctional peace officer roles and responsibilities. The Department of Correctional Services should also develop an automated phone message containing public education and recruitment information. The advertising campaign and phone message should focus on the many avenues of promotion available in the profession and the different job opportunities a career with the department

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<sup>14</sup> Steve Norris, Lieutenant, Administrative Assistant, California Department of Corrections, April 20, 2004.

<sup>15</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

<sup>16</sup> Alfredo Vasquez, Sergeant, California Highway Patrol Academy, May 12, 2004.

offers. Further, the campaign should focus on creating a positive public image for the department. Advertising via the Internet, television, radio, magazines, and newspapers should constitute the major components of the campaign.

- ***Incentive points.*** To attract more qualified candidates for peace officer positions, the Department of Correctional Services should offer incentive points for certain desired qualities, such as education, law enforcement experience, and prior military experience. Currently, correctional officers and youth correctional officers have minimum hiring requirements similar to most traditional law enforcement agencies.<sup>17</sup> The minimum hiring requirements for these positions are 21 years of age or older, United States citizenship, high school graduation or the equivalent, and no felony convictions.<sup>18</sup> If the Department of Correctional Services simply raises its minimum hiring requirements, potential applicants would more than likely seek employment with other law enforcement agencies. For these reasons, the use of incentive points for a college degree, law enforcement experience, or prior military experience would attract a more qualified applicant without raising minimum hiring qualifications. The incentive points would be added to the applicant's final test score, resulting in a higher score and a better likelihood of being offered employment.

Currently both California Department of Corrections and the California Youth Authority give military preference points. Specifically, applicants receive 10 points as a veteran or 15 points as a disabled veteran.<sup>19</sup> The Department of Correctional Services should continue this practice to remain competitive when pursuing applicants with a military background. Many law enforcement agencies, including California's state correctional agencies, desire applicants with military experience. Applicants with a military background tend to be more disciplined, more mature, and are accustomed to working in a regimented environment.<sup>20</sup>

The Department of Correctional Services should also offer incentive points to applicants with a college degree or 60 college units. An applicant with a college degree is desired to raise the overall education level within the department.

The Department of Correctional Services should also offer incentive points to applicants with law enforcement experience. These applicants would bring a level of experience and knowledge which would greatly benefit the Department.

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<sup>17</sup> <http://www.chp.net/stoappl.htm>, April 20, 2004; and <http://www.sacsheriff.com>, April 22, 2004.

<sup>18</sup> <http://www.corr.ca.gov/>, April 20, 2004; and <http://www.cya.ca.gov/>, April 20, 2004.

<sup>19</sup> <http://www.corr.ca.gov/>, May 12, 2004, Calleen Allen, Personnel Technician, California Youth Authority, May 12, 2004.

<sup>20</sup> Matthew Lynch, Sergeant, California Highway Patrol Academy, May 14, 2004.

- **Recruitment bonus.** To attract more qualified applicants, the Department of Correctional Services should offer an incentive or bonus to employees who successfully recruit individuals who are hired. Historically, employees are the best recruitment tool for any organization. The incentive or bonus would encourage current employees to become even more involved in the recruitment process, thus attracting more applicants. The bonus could be a monetary award or possibly extra time off. Currently, the California Highway Patrol offers an extra 8 hours of time off to employees who recruit an individual who ultimately attends the academy.<sup>21</sup>
- **Recruitment partnership with employee organizations.** The Department of Correctional Services should ensure that they establish a recruitment partnership with all employee organizations that represent their employees. This type of partnership is critical to any successful recruitment plan. The partnership will provide more recruitment resources and open more avenues to the recruitment of qualified applicants. The partnership will also demonstrate the benefits of both the department and the employee organizations that will influence potential recruits.

**Expediting the department's hiring process.** The Department of Correctional Services must shorten its hiring process while still providing thorough pre-employment background investigations to protect the department from "at risk" employees. The current hiring process for the California Department of Corrections and the California Youth Authority can take up to one year. Currently, both agencies are experiencing trouble retaining qualified candidates during the hiring process. Many applicants find employment with other law enforcement agencies while waiting to be hired by the Department of Corrections or the California Youth Authority. The Corrections Independent Review Panel is recommending all background investigations be a maximum of 60 days in length and that the practice of continuous testing be implemented to expedite the hiring process.

- **Timeliness of background investigations.** The Department of Correctional Services should keep the background investigation portion of its hiring process to a maximum of 60 days while conducting thorough professional investigations. Both the California Department of Corrections and the California Youth Authority are currently averaging 90 days per background investigation and some investigations may take several months.<sup>22</sup> In an effort to reduce the length of these investigations to 90 days with current staffing, the quality has been compromised.<sup>23</sup> This increases the potential of both agencies to hire "at risk" employees and to be exposed to civil liability. Staffing and funding must be sufficient to ensure thorough and timely investigations.

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<sup>21</sup> Matthew Lynch, Sergeant, California Highway Patrol Academy, May 14, 2004.

<sup>22</sup> Peter Inge, Background Investigator, California Youth Authority, April 22, 2004; and Rene Medina, Lieutenant, California Department of Corrections, May 12, 2004.

<sup>23</sup> Nancy Baldwin, Assistant Director, California Youth Authority, April 12, 2004.

- ***Private background investigators.*** The Department of Correctional Services should contract with private background investigators to supplement civil service staffing levels to ensure background investigations are thorough and completed on time. All investigators must also receive formal training before engaging in casework. Currently, California Department of Corrections investigators receive 40 hours of training, which must continue or be expanded.<sup>24</sup> During the 2000-01 fiscal year, the California Department of Corrections completed 4,746 background investigations for peace officer applicants. Of those investigated, 3,039, or 64 percent, were cleared for hire.<sup>25</sup> Currently the California Highway Patrol is averaging 40 hours of investigation per applicant.<sup>26</sup> The California Department of Corrections and the California Youth Authority are averaging just 11 hours.<sup>27</sup> Nearly all investigative work for the California Department of Corrections and the California Youth Authority are completed from the office without any field work. For the California Youth Authority, personal interviews of prior employers, family members, and friends are not done.<sup>28</sup> Home visits and visits to prior places of employment have been discontinued. It is clear that both the California Department of Corrections and the California Youth Authority are not staffed sufficiently to ensure that quality background investigations are conducted and completed on time. Thorough and detailed background investigations are critical and must be properly funded and staffed to establish a professional culture in any department.<sup>29</sup>
  
- ***Components of background investigations.*** The Department of Correctional Services should expand the current components of background investigations for all peace officer applicants. Background investigators must have the flexibility to properly investigate any issue revealed during the investigation. This practice will ensure that the department is protected against employees who could expose the department to civil liability. Currently the California Department of Corrections uses the following components during background investigations for all peace officer applicants:<sup>30</sup>
  - Criminal history checks with federal, state and local law enforcement agencies.
  - Employment history.
  - Military history.
  - Verification of Selective Service registration.

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<sup>24</sup> Rene Medina, Lieutenant, California Department of Corrections, May 12, 2004.

<sup>25</sup> Rene Medina, Lieutenant, California Department of Corrections, May 12, 2004.

<sup>26</sup> Dave Fedullo, Sergeant, Hiring Unit, California Highway Patrol, May 13, 2004.

<sup>27</sup> Rene Medina, Lieutenant, California Department of Corrections, May 12, 2004.

<sup>28</sup> Nancy Baldwin, Assistant Director, California Youth Authority, April 12, 2004.

<sup>29</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

<sup>30</sup> Rene Medina, Lieutenant, California Department of Corrections, May 12, 2004.

- References and landlords.
- Department of Motor Vehicles driver records.
- Verifying education and citizenship requirements for the position.
- Legal responsibly (compliance with child support, student loans etc.)
- Inmate file reviews on applicants having inmate relatives or acquaintances.
- Gang affiliations.
- Illicit drug use.

The Department of Correctional Services should continue using all of the above background investigation components and should add the following components.

- Investigate the possibility of racial bias.
- Investigate the possibility of sexual harassment.
- Investigate integrity and honesty issues.
- Conduct personal interviews with prior employers, neighbors, friends, and family.

The Department of Correctional Services should review this list on an annual basis and make any changes needed.

- ***Continuous testing.*** For the Department of Correctional Services to further shorten the hiring process, the practice of continuous testing for applicants should be implemented. Continual testing allows an applicant to file an application at anytime and be scheduled for the next available test. For all entry level peace officer positions and other classifications needing a large number of new hires, a testing cycle should be completed at least once each calendar quarter. This would create hiring lists from which new hires could be selected as needed. After a specific amount of time, possibly one or two years, the list would be abolished. This would ensure the integrity of the information gathered during the hiring process.

***Fiscal impact.*** Sufficient staffing in the areas of background investigations and applicant testing will have an initial fiscal impact. This impact can be buffered through the use of retired law enforcement officers to complete background investigations and senior volunteers to fulfill some support staff duties.<sup>31</sup> The practice of contracting out to the private sector for background investigations should be explored as a possible cost saving measure. The use of private background investigators can cost as much as \$150.00 per partial investigation; however the possibility of negotiating a lower contract

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<sup>31</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

price exists.<sup>32</sup> Additionally, the Department of Correctional Services will see future fiscal savings with the addition and retention of more qualified employees, which will reduce the department's exposure to civil liability.

**Centralized deployment.** Currently the correctional departments lack a system for manpower, or succession planning. Proper manpower planning – that is, filling vacancies with suitably qualified personnel in a timely manner – is key to the operation of any organization. The process is presently scattered and unruly. With the exception of graduates from the basic academies, vacancies are filled by management who announce, interview, and select candidates at the individual institutions and field offices throughout California. Management often does not have access to a pool of qualified candidates. In some areas with one or two-person positions, replacements may not occur for eight to nine months after vacancies occur.<sup>33</sup> The management of existing correctional departments cannot strategically deploy personnel to needed areas because the system lacks organization and has few controls in place.

It is expected that by 2006 there will be a mass exodus of qualified employees in both the Department of Corrections and the Department of Youth Authority.<sup>34</sup> With the move to a flatter organizational structure, fewer layers of middle management are available to fill upper-level roles. It is important that potential successors are identified early and given appropriate training so that when the time comes for their move to more senior roles, disruption is minimized. This cannot be done without a centralized, strategic deployment process for human resources management. Therefore, it is recommended that all assignments, transfers, and promotions are done from the central Office of Personnel and Training, where a database, or centralized pool, of the total supply of persons available and fitted for service will be kept.

**Behavioral science unit.** The correctional environment can be dangerous and volatile. On the average, nine officers are assaulted in California's state prisons every day.<sup>35</sup> Correctional officers must respond to emergencies quickly with measured and effective action. The psychological effects resulting from stressful encounters continue long after the events occur. When an officer is attacked on a tier –gassed with urine, excrement, or other bodily fluids or stabbed –everyone is affected. The awareness of ever-present danger can leave nerves on edge and cause job performance to suffer. It is a difficult job. Most police departments across the nation are aware of this and some have a psychologist in house to address results from traumatic incidents and perform critical incident debriefing. The Department

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<sup>32</sup> Bob Ford, Employment Background Investigations Inc., April 27, 2004.

<sup>33</sup> Frank E. Renwick, Deputy Director, Administrative Services Division, California Department of Corrections, May 21, 2004 telephone interview, “. . . return to work coordinator position might take eight to nine months to recruit <fill> . . .”

<sup>34</sup> Jeanne Woodford, Director, California Department of Corrections, April 18, 2004 interview; and Sylvia Garcia, Chief Deputy Director, California Youth Authority, May 28, 2004 interview.

<sup>35</sup> California Correctional Peace Officers Association website, [www.ccpoa.org](http://www.ccpoa.org), May 17, 2004.

of Correctional Services should assign a psychologist to each prison and youth facility to address the needs of employees who may be experiencing personal problems associated with work or home. Doctor-patient confidentiality should be observed and honored. The psychologist should also conduct critical incident debriefing. All psychologists should report to the chief psychologist at the behavior science unit.

### **Providing a Continuum of Training**

*Academies.* The academies of the correctional departments need to be consolidated and refined. Currently, there is little or no coordination between academies, which leads to inefficiency. The Department of Youth Authority recently conducted an academy for seven cadets. In some cases, the officers do not complete the academy before assuming the responsibilities of the position – sergeants, lieutenants, and casework specialists may start work without attending necessary training. Personnel in the high echelons of the correctional career system lack a command college to prepare them for the responsibilities of the positions. Lastly, ethics training is not embedded and interconnected to every aspect of the profession, thus neglecting to indoctrinate correctional peace officers with the fundamental values required for professional accountability. To address these problems, the Department of Correctional Services should take the following actions:

- *Consolidate academies.* The Department of Correctional Services should consolidate the basic academies for adult correctional peace officers and youth correctional peace officers. Because these academies provide the fundamental components of corrections, universal core training that flows from common competencies can be addressed in one academy. Subsequently, training for job-specific specialties for each peace officer classification can be provided separately.

One universal basic academy would facilitate lateral mobility of employees and decrease redundancies in training. It also affords opportunities for achieving improved communication and synchronization between the various Department of Correctional Services operational components. It forces coordination into the structure. The potential for achieving cost savings in terms of economies of scale (such as developing instructional materials, trainee testing instruments, selection and preparation of instructors) is significant.

- *All academies should be under one academy administrator.* Placing all academies under one academy administrator will ensure consistency among academies. It also centralizes the responsibility for the on-going evaluation to regularly update curricula and provides a repository for best practices in training. The academy administrator will be able to respond to policy changes and adjust training accordingly in a timely manner.

- ***Completion of academy before assuming responsibilities.*** Correctional peace officers carry out critical and complex responsibilities that are too significant to perform without the necessary prerequisite training. All academies should be completed before an officer assumes the responsibilities of a position. The basic academy is a must for new officers; however, the value of the subsequent academies is just as important. The sergeant and lieutenant academies are as significant as the basic academy and should be completed before the employee assumes the position. For example, upon promotion to sergeant, a correctional officer suddenly faces multiple safety, liability, credibility and professional issues involving up to 20 employees that are now his or her responsibility. At minimum, he/she now has to understand the supervisor's role in the state's disciplinary system. Sometimes, the newly appointed sergeant must supervise former colleagues and needs a new set of skills to accomplish the additional responsibility. The officer should be transferred upon promotion so that he or she does not supervise employees in the group that were his/her own peers. In the upper echelons of the correctional peace officer structure, a command college, similar to the California Commission on Peace Officer Standards and Training Law Enforcement Command College, should be developed.
- ***Training location.*** Presently, the basic academies for both youth and adult correctional peace officers are located in the northern part of the state, which results in recruitment and operational problems. The training duration for each cadet is 16 weeks. All new correctional officers are considered department employees, stay on academy grounds while in training, and receive full wages. Both the California Department of Corrections and the California Youth Authority have experienced reluctance by many applicants to commit to such a long time away from home. Some drop out of the academy before completion. Some cadets would rather attend the training close to home where they could go home at night. The duration and location are part of the reason for low recruitment, particularly from the small communities where institutions are located.

The California Community College system provides low-cost training to students who desire to pursue education and training for careers in public safety, including corrections. This system, located throughout California with 109 colleges, is already "in the business" of educating and training peace officers and can easily provide equivalent training for correctional peace officers.<sup>36</sup> Thus, it is recommended that the basic academy be shortened by accepting community college training certificates in specific areas. It is also recommended that college credits be granted for academy training. The shortened academy will be an option for those who have the community college courses; however, the full academy will continue for those cadets who have not attended the community college system.

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<sup>36</sup> California Community Colleges Chancellor's Office, [www.cccco.edu](http://www.cccco.edu), May 16, 2004.

It is further recommended that the 40-acre Richard A. McGee Correctional Training Center in Galt, California be the Department of Correctional Services main training facility with two satellite operations in the southern and central parts of the state. The satellite operations, working in conjunction with the California Community College system, will provide a training structure and access to all geographic areas within the state.

- *Preparation of academy instructors.* In the existing correctional departments, academy instructors historically have not undergone a rigorous selection process. On the contrary, in some cases academy instruction has become an assignment where individuals who have not worked well elsewhere have been placed on a temporary basis. Some instructors do not want to leave the academy, causing their field experience to become dated. This can have devastating consequences to the quality of academy instruction and the forging of cadets' character at the basic academy. The California Department of Corrections discovered that it could not grant college credits for academy instruction through San Joaquin Delta Community College because a significant number of instructors did not have the minimum qualifications for instruction at the community college level.

The Department of Correctional Services should select and train the "best and brightest" to be academy instructors. To ensure consistency and excellence in the selection of instructors, a new selection process should be developed that includes, at a minimum, a recommendation by the candidate's warden or parole administrator, an oral interview, a written assignment, and a 15-20 minute presentation before other academy instructors. All academy instructors should undergo a rigorous preparation on how to teach. Furthermore, academy instructor assignments should be limited to a minimum of two years and a maximum of four years to create a systematic rotation and keep current with the field. This should also bring new energy and enthusiasm to the classroom.

### *Elimination of Commission on Correctional Peace Officers Standards and Training.*

It is recommended that the Commission on Correctional Peace Officers Standards and Training be eliminated and the functions of setting standards for the selection and training of state correctional peace officers be moved to the new Corrections Standards Authority (formerly the Board of Corrections). Further, it is recommended that the apprenticeship program administered by the Commission on Correctional Peace Officers Standards and Training be eliminated and a training officer program be established. It is also recommended the Commission on Correctional Peace Officers Standards training budget and personnel be transferred to the Corrections Standards Authority to provide resources to the new entity. Since the Commission on Correctional Peace Officers Standards and Training has not been able to perform its tasks with the current year budget, an assessment should be accomplished to determine additional resources needed for the Corrections Standards Authority to assume the Commission on Correctional Peace Officers Standards and Training functions.

The Commission on Correctional Peace Officers Standards and Training, a regulatory commission, is currently within Youth and Adult Correctional Agency.<sup>37</sup> The Commission on Correctional Peace Officers Standards and Training is a joint management-employee panel responsible for establishing job training standards for correctional staff and monitoring compliance with those standards. The commission administers the correctional peace officer apprenticeship program. It develops, approves, and monitors selection and training standards applied by the Departments of Corrections and the Youth Authority.

The Commission on Correctional Peace Officers Standards and Training has proven to be ineffective because the structure is that of a collective bargaining table. Every issue brought before the commission is viewed as a win-lose matter instead of focused on training correctional peace officers. Members of the Commission on Correctional Peace Officers Standards and Training committees are ill-equipped to address the issues presented to them at the policy-making level, and instead focus on the mundane details. An example of this is lesson plan reviews, which are mired in too much detail and result in significant delays in approving needed training material. Further, the Commission on Correctional Peace Officers Standards and Training's budget is insufficient to recruit and develop the staff needed to fully carry out its mandate as described in the Penal Code.<sup>38</sup> The Commission on Correctional Peace Officers Standards and Training is bureaucratic in its operations, and has become a hindrance to the training of state correctional peace officers.

The Commission on Correctional Peace Officers Standards and Training was to become a department of approximately 70-80 employees, based on budgets developed in 2000. Due to budgetary restraints, however, this has not happened. On the contrary, during last fiscal year, the Commission on Correctional Peace Officers Standards and Training budget was cut in half, leaving it unable to conduct business. A verbal report was presented at the April 29, 2004, meeting on the plan to accomplish the Commission on Correctional Peace Officers Standards and Training duties with reduced personnel. The plan is for all programs that are not required by the Penal Code to be "shelved."

The purpose of the Commission on Correctional Peace Officers Standards and Training is to enhance the training and professionalism of California's state correctional peace officers to ensure the safety and security of the officers. Given its importance to the safety and security of the correctional officers and of the public that depends on them, the Commission on Correctional Peace Officers Standards and Training has the authority to monitor program compliance by the Department of Corrections and the California Youth Authority and may disapprove training courses created by the department if it is determined that the courses do not meet the Commission on Correctional Peace Officers Standards and Training prescribed standards. Management classifications are not subject to this mandate.

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<sup>37</sup> California Penal Code § 13600-13602 and 6126.1.

<sup>38</sup> *Ibid.*

To carry out its training standards task, the Commission on Correctional Peace Officers Standards and Training requires that all lesson plans developed must be approved by the Commission on Correctional Peace Officers Standards and Training prior to implementation. Some lesson plans have been disapproved numerous times (two examples were in the review process from October, 2003 until April, 2004) with new findings on the same material each time they were submitted.<sup>39</sup> After the review committee recommends approval for a lesson plan, it is forwarded to the commission. Since the commission meets monthly, it could take another month to approve the lesson plan. In the April 25, 2002 Commission on Correctional Peace Officers Standards and Training public meeting, a spokesman for the Department of Youth Authority stated:

*In light of the shallowness of the proceedings of the Curriculum Review Committee, it is the Department's firm position that the current performance of the Curriculum Review committee is detrimental to the mission of the Youth Authority, hence, detrimental to the common good of the people of this state.*<sup>40</sup>

The system is very unresponsive. Altering training due to court mandates or officer safety takes no priority and goes through the same extended process.<sup>41</sup> The extreme detail of lesson plan scrutiny and the lengthy time required to approve lesson plans is not consistent with industry best practices or procedures adopted at the Peace Officers Standards and Training (POST) or the Board of Corrections.<sup>42</sup>

**Apprenticeship program.** The apprenticeship program for correctional peace officers should be eliminated and a program establishing field training officers should be established. When the budget was cut in half last fiscal year, the commission attempted to shut down the apprenticeship program, but the California Correctional Peace Officers Association filed a petition for writ of mandate in Sacramento County Superior Court on March 4, 2004, for the Commission on Correctional Peace Officers Standards and Training to continue administering and monitoring the Apprenticeship Program. At the April 29, 2004 Commission on Correctional Peace Officers Standards and Training public meeting, the commission reported that it had reached an agreement to continue implementation of the apprenticeship program with reduced staff and funding. Oversight of the program reverted to the institutions.<sup>43</sup>

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<sup>39</sup> Rick Winistorfer, Chief Division Training Coordinator, Parole and Community Services Division, April 29, 2004 interview.

<sup>40</sup> Commission on Correctional Peace Officers Standards and Training Public Meeting, April 25, 2002, Gary Parks, Training Officer.

<sup>41</sup> Rick Winistorfer, Chief Division Training Coordinator, Parole and Community Services Division, April 29, 2004 interview.

<sup>42</sup> Interview with Assistant Executive Director Dimiceli, Assistant Executive Director Snow and Assistant Executive Director Reed, Peace Officer Standards and Training, March 29, 2004; and Thomas McConnell Executive Director, Board of Corrections, March 29, 2004.

<sup>43</sup> Commission on Correctional Peace Officers Standards and Training Public Meeting on Apprenticeship, April 29, 2004.

The apprenticeship program lost Veterans Administration certification for veteran participation because the program was not in compliance with the Veterans Administration standards.<sup>44</sup> It was also reported that there are 1800 apprentices in the database that should be removed. Some of these have been in the database since 1991, well beyond the time limits for apprentices.<sup>45</sup> Many stakeholders agree that the apprenticeship program has become a “paper shuffle nightmare,” with a much reduced value to training.<sup>46</sup>

***Field training officer positions.*** The field training officer is a proven concept in law enforcement and corrections organizations throughout the United States.<sup>47</sup> California Peace Officer Standards and Training has certified courses not only for entry-level field training officers, but also certified courses for “update” training.<sup>48</sup> California Parks and Recreation, California Highway Patrol, and most local law enforcement agencies use the field training officer concept. In all of these programs, a new officer is assigned to a field training officer for a specified length of time. The field training officer bridges a gap in training by providing immediate feedback to the officer on probation and providing an example of how to do the job correctly.

Although there are many descriptions of field training in law enforcement agencies throughout the country, all have certain common elements. The following description points to the type of program needed by the new Department of Correctional Services:

*Field Training has a significant impact on the individual new officer in terms of imprinting attitudes, style, values, and ethics in carrying out the duties of police work that will remain throughout a career. Consequentially, it is probably the most effective influence on the future direction of a department.*

*The law enforcement department head and his or her field training managers must, therefore, be certain that the field training program which introduces officers to the department not only develops the necessary technical skills but also reflects the policing philosophy of the department and the community that it serves.*

*The field training staff has the monumental responsibility of building the future of the department through the people they train. To assure success in this task, the field training*

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<sup>44</sup> Carlos Sanchez, Chief of Training, California Department of Corrections, March 30, 2004, “We lost the Veterans program in August of last year.”

<sup>45</sup> California Correctional Peace Officer Standards and Training Public Meeting on Apprenticeship, April 29, 2004.

<sup>46</sup> Lance Corcoran, California Correctional Peace Officer Association, April 12, 2004, “paper nightmare for CO’s and sergeants;” and Carlos Sanchez, Chief of Training, California Department of Corrections, March 30, 2004, “Apprenticeship program is a paper mill;” and Paul Bestolarides, Ed.D., Academy Administrator, California Department of Corrections Academy interview, March 26, 2004, “not useful;” and Pat LeSage and Richard Tatum, California correctional Supervisors Organization interview May 11, 2004, “Yes, it is a paper mill. Its time-consuming and it is worthless.”

<sup>47</sup> Montana Department of Corrections Field Training Officer Program, (<http://www.cor.state.mt.us/resources/training.asp>).

<sup>48</sup> California Peace Officer Standards and Training website ([www.post.ca.gov/catalog/2476.htm](http://www.post.ca.gov/catalog/2476.htm)).

*program must have a training philosophy that ensures that every student is given the maximum opportunity to show that he or she can do the job. In order to accomplish this, the program must create a positive environment in which learning is maximized and in which students are able to perform to the best of their ability. The approach must be fair, firm, friendly, and, above all, professional. The example set must be beyond reproach. Evaluation must be sincere and given in a straightforward manner emphasizing the positive as well as the negative aspects of performance.*

*At no time should probationary officers be demeaned or ridiculed. Even the least capable student must be treated with respect and compassion. No student should ever be treated in a way that deprives that student of his or her dignity. Every effort must be made to ensure that the stress felt by the student is caused by the job and not from the words or actions of the field trainers.<sup>49</sup>*

Field training must be standardized, not only in the training material, but also in the standards of evaluation. The program should be able to identify weaknesses in the selection standards and weaknesses in academy instruction. It should provide for remedial training when necessary and for recommendations to supervisors evaluating probation performance. The program should strive to include lessons learned in the field through experience, or best practices.

The program would have a field training officer assigned to every probationary correctional officer and parole agent for the entire length of the probation period. The probationary period should start upon graduation from the basic academy and should extend for one year. The field training officer would provide a daily evaluation to the probationary employee and a weekly evaluation to the probationary employee's supervisor.

The field training officer must be chosen for being above standard in all areas and for having a desire to teach. The field training officer must realize that training is the first priority and evaluation is secondary. Field training officers must conduct themselves in a professional manner, teach department policy and procedures, maintain the highest skill and knowledge, and set an example by appearance and attitude. Many organizations require a minimum of two to five years in the job before an officer becomes eligible for consideration as a field training officer. Field training officers of the Department of Correctional Services should attend field training officer training certified by the Correctional Standards Authority. To reward field training officers for the added field training officer responsibilities, they should receive a 5 percent incentive pay raise while fulfilling field training officer responsibilities and the position should be recognized as a positive factor for promotion. Some organizations recognize field training officers through uniform modifications. The department could consider a collar tab or pin to recognize field training officer status for uniformed personnel.

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<sup>49</sup> Bloomington Police Department Field Training Manual, page 6 (<http://www.in-nafto.org/ftomanual.pdf>).

- **Fiscal impact.** A cost would be associated with a pay raise of 5 percent for every field training officer during the time they are performing field training officer duties.

**Departmental communication.** The need to change the culture and public image of the state correctional system is critical. In order to make this change, the Department of Correctional Services must make communication from the top to the bottom of the organization a major priority. At present, this type of communication is nonexistent in the California Department of Corrections and the California Youth Authority. The current California Youth Authority Director, Walter Allen III, gave an example of this problem. He related that his holiday message to his employees took approximately three months to disseminate.<sup>50</sup> This situation will certainly hinder the ability of management to have its vision realized. Lack of communication can expose front line peace officers to safety hazards.

To address this issue, the Corrections Independent Review Panel recommends that the Department of Correctional Services provide a means for management and first-line supervisors to communicate with frontline peace officers on a daily basis. Currently, the California Department of Corrections and the California Youth Authority personnel working frontline peace officer positions and their first-line supervisors work eight-hour shifts. Both agencies primarily operate on a daily basis using three eight-hour shifts that do not overlap. This creates a situation in which pre-shift exchange of information between two frontline employees occurs only during the post relief process.<sup>51</sup> The current process does not allow for the dissemination of critical officer safety information or an expeditious avenue for management to deliver priority information. Furthermore, the present system does not provide a forum for frontline supervisors to provide training or even to contact their subordinates on a daily basis prior to shift. This practice is unacceptable and raises significant problems in officer safety, supervision effectiveness, and department communication. Following are measures to address the problems:

- **30-minute pre-shift briefing.** The Department of Correctional Services must establish a 30-minute pre-shift briefing for all frontline peace officer positions. This briefing should be proctored by an immediate supervisor or an officer in charge in the absence of a supervisor. The supervisor should be given designated information to relate to the officers and should be allowed to deliver other information at his or her own discretion. A 30-minute pre-shift briefing will also give supervisors the ability to contact subordinates prior to shift on a daily basis. This will lead to a higher degree of supervision and accountability.
- **Pre-shift briefing book.** The Department of Correctional Services must create and maintain a briefing book to be used by each unit participating in the 30-minute

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<sup>50</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004.

<sup>51</sup> Walter Allen III, Director, California Youth Authority, May 13, 2004, Roy Mabry, Lieutenant, California Department of Corrections, May 13, 2004.

pre-shift briefing. Proper maintenance of the binder is critical and should be the responsibility of a supervisor. Examples of items contained within the binder include officer safety updates, critical management information, and normal operational information such as promotional exam announcements. In addition, the binder must have the capacity to log the names and numbers of officers who received the daily information and the supervisor who delivered it.

- ***Training program for the 30-minute pre-shift briefing.*** The Department of Correctional Services should implement a training program to be accomplished during the 30-minute pre-shift briefing. There are two good examples of such programs. The California Department of Corrections uses a “Six Minute Training” at its San Quentin facility, which allows mandatory training to be delivered in short spurts on a daily basis.<sup>52</sup> The California Highway Patrol uses a program called “Solid Realistic On-going Verifiable Training,” which is designed for and used at pre-shift briefings. This program delivers supplemental training in the form of realistic scenarios on a daily basis.<sup>53</sup> Either program would allow the Department of Correctional Services to deliver training to its employees on a daily basis and in turn ensure that employees are better trained and the department is less vulnerable to civil liability.
- ***Eight and one-half hour work day.*** To facilitate the pre-shift briefing, the Department of Correctional Services frontline peace officers and their supervisors should be required to work eight and one half hour days as opposed to eight-hour days. An eight and one-half hour work day would allow all shifts to overlap by 30 minutes, thereby providing the time needed for 30-minute pre-shift briefings.

***In-service training.*** Training is the responsibility of management. Nowhere is this responsibility more visible than in the in-service training program. Department internal training is essential to maintaining safe, efficient institutions and to carrying out the department mission. A well-developed in-house program provides timely, state-of-the-art workforce instruction and also elevates the profession. It is integral to employee image outside the organization, and it boosts employee morale. Further, a robust training program has the added advantage of lateral communication among the field training managers through meetings, conferences, and periodic consultations. This cross-pollination of information can be significant in identifying best practices across institutions. Last, a well-organized in-service program can capture baseline information to be used for risk assessment and litigation avoidance. Regrettably, this is not the current state of the in-service training program in California’s correctional system.

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<sup>52</sup> Jeanne Woodford, Director, California Department of Corrections, April, 19, 2004.

<sup>53</sup> Matthew Lynch, Sergeant, California Highway Patrol, May 15, 2004.

Lack of resources, both in personnel and funding, has greatly affected in-service training programs for the last few years.<sup>54</sup> Central training offices in headquarters do not collect data on a regular basis. No database that is common to headquarters, institutions, and field parole offices exists. In fact, each institution has designed its own method of tracking in-service program compliance, yet reports are not sent to headquarters. Furthermore, the in-service training managers scattered throughout California institutions and parole offices have not had a meeting in the past two years, and rarely have the latest training information. The correctional departments do not use distance learning, computerized lessons, Internet options, or other delivery of training methods currently in widespread use by other institutions that train adults, such as technical schools, colleges and universities. At one time, the Office of Departmental Training did develop CD-ROMs for distribution, including an initial CD-ROM on training for correctional officers involved in cell-extractions. At first, the efforts of the office to capture and distribute training on various correctional procedures appeared to have very positive results. Regrettably, short-sighted planning and scarce resources did not provide for more than one person to create the CD-ROMs, and when the one person responsible for the program left the department, the program ended.<sup>55</sup>

Not only is the gathering and distribution of data absent, but mandated training is not periodically reviewed, and the basis for training is often unclear.<sup>56</sup> That is, one can find the training considered “mandated training” in department manuals, but there is no source – law, regulation or court case – for the authorization or rationale. The exception is the uniformity found in the section published in the California Department of Corrections Operations Manual covering Health Care Services.

The selection process for in-service training instructors and their preparation to teach also needs attention. Because there is no uniform mechanism throughout the system, documenting and maintaining subject-matter experts is nearly impossible. Employees attend training-for-trainers (commonly called T4T) courses in various areas, yet they are not required to teach classes, but are simply available to teach. In-service training managers have reported that it is often difficult to persuade an employee who is T4T certified to actually teach, due to conflict in schedules, vacations, or other job requirements. Some have even alluded that employees attend T4T because it looks good on the resume, not because of a sincere desire to teach. This wasteful and irrational practice has existed for the past five years.<sup>57</sup>

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<sup>54</sup> Carlos Sanchez, Chief, Office of Departmental Training, California Department of Corrections, Interview March 30, 2004.

<sup>55</sup> Carlos Sanchez, Chief, Office of Departmental Training, California Department of Corrections, Interview March 30, 2004; and, Marty Jones, Chief, Office of Departmental Training, California Department of Corrections, (Retired).

<sup>56</sup> Miki Vohryzek-Bolden, Ph.D., Peggy Giannoni, Ph.D., and Sue Cote, J.D., Ph.D. “Correctional Peace Officer Training – California Department of Corrections and California Youth Authority,” California State University, Sacramento, October 2001.

<sup>57</sup> *Ibid.*

Under the new organization plan, the Department of Correctional Services has the opportunity to build a solid in-service training program. It is recommended that the new program include a central control for quick response to changes in the law, court decisions, personnel safety, and management policy. A central control would also be used for monitoring course enrollment, validating course completion, and standardizing training requirements and presentations. All Department of Correctional Services personnel should be able to know the training requirements for their jobs, as well as for cross-training and for promotions. In-service managers should meet periodically to exchange information, remain consistent, and focus on the plan for the following year. In addition, careful consideration should be given to developing a process for selecting and training instructors. If the department invests in T4T training, the employee should sign a contract to teach a specified number of in-service classes within the next two years. A commitment further than two years could be unworkable due to normal rotation and the possibility of delivering dated training material.

In-service training planning should include incorporating technology in the delivery of training, as other states have done. This not only maximizes the ability to deliver training, but also enables employees to take responsibility for their own professional development. One of the most innovative in-service training programs can be found in the State of Oklahoma. Oklahoma has set up an interactive network of training that is based on the Internet.<sup>58</sup> The program allows personnel to see what courses are required, sign up for the course on-line, sign up for Council on Law Enforcement Education and Training, which is equivalent to California Peace Officers Standards and Training, and download some courses on-line or by e-mail. It provides the schedule, time, and location for courses that are not downloaded. It also provides locations for computer access to reach the in-service training Internet site throughout the state. Some examples of the downloadable courses are: *Corrections Report Writing*, *Inmate Rights, Privileges and Responsibilities*, and *Awareness and Prevention of Sexual Harassment*. When the on-line course is completed it is automatically entered for credit into the personnel database. The site lists annual training requirements for all positions. Thus, if an employee wishes to cross-train into another job, it is easy to access the annual training requirements for the targeted position. The quarterly training newsletter can also be found on line to inform employees of updated information on training and provide an updated list of videos that may be signed out for training classes or individual viewing.

The Department of Correctional Services should move in the direction of incorporating technology into its in-service training program. To facilitate this endeavor, it is recommended the department begin by centralizing in-service training function at the Richard A. McGee Academy in Galt. Developing videos and CD-ROMs, implementing and maintaining a training website, and modifying course materials that respond to policy changes will require a cadre of personnel with specialized information technology and instructional

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<sup>58</sup> [www.doc.state.ok.us/Training](http://www.doc.state.ok.us/Training)

material writing skills. The rotation of instructor personnel through the academy would provide the operational interface for course modification. The academy could be the central repository for instructor course materials, including video enactments for training demonstrations. Centralizing this function at the academy would provide for on-site personnel (including cadets) to participate in enactment demonstrations. This would facilitate the taping of various endings to training videos, very much like the system used at the Folsom Firing Range for scenario-based instruction.

*Supervisory/managerial/executive training.* A well-trained management team tends to meet and exceed performance expectations at a much higher level than those that are not. Due to budget concerns, the current department has had to limit training to that required by the California Department of Corrections Operations Manual, the courts, or other governing bodies. The Department of Correctional Services can develop successful supervisors, managers, and executive staff by investing in the following areas:

- Providing job-specific training for supervisors, managers, and executive staff.
- Providing clear guidance to supervisors, managers, and executive management regarding job expectations and routine evaluations of their work.

*Providing job-specific training for supervisors, managers, and executive staff.* The California Department of Corrections has experienced exceptional growth during the past 15 years. A training program for managers was originally put in place to address the needs of modern-day employee and to train managers for the challenges of running an institution. As the department grew, however, training failed to keep up with the demands. Currently, there is no training program for new managers, supervisors, or those preparing to promote. Instead, individuals must rely on unofficial on-the-job training, which may be inconsistent with the values of the department. To address the problem, the new Department of Correctional Services should take the following actions:

- *Develop and provide supervisory, managerial, and executive staff training before employees assume these positions, whether classified as custody or non-custody.* In an April 1, 2004 panel discussion, current and former Department of Corrections wardens noted that leadership, fiscal review, and personnel management training is essential to the warden's role.<sup>59</sup> Some of the wardens said they were promoted to supervisors or managers without receiving the required supervisory training. Some wardens said they received very little executive training to prepare them for the extensive responsibilities associated with serving as warden of an institution. Systems and policies not only differ among prisons; but also differ among facilities within a prison. Providing standardized training for supervisors, managers, and executive management will foster standardized processes in each institution and consistency throughout the department.

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<sup>59</sup> Warden's panel. April 1, 2004.

The Department of Corrections lacks an effective method for tracking training completed by employees. Often, supervisors, including sergeants, lieutenants, and supervising nurses, are promoted without completing the required training for several months, and they may not complete it at all. Employee training is tracked at each institution individually.<sup>60</sup> To support and mentor supervisors and managers to become leaders for the new department, appropriate training must be made available. The majority of the training for supervisors and managers could be accomplished through distance learning, through current video-conferencing techniques, or by using the California Department of Corrections Internet site. Training does have associated costs that cannot be fully projected at this time.

- ***Develop a mentorship model for supervisory, managerial, and executive staff positions.***

Successful private companies mentor in-house employees to help them develop into the supervisors and managers who have a broad base of knowledge about all aspects of the company. In a study of 300 nationwide corporations, a core group of 20 companies including Intel Corporation, Fed Ex Corporation, and General Electric Company were found to be the most successful at building leaders from inside the company because they followed well-defined strategies and offered more training than other companies.<sup>61</sup> General Electric uses training for current staff from a leadership institute dedicated to training and educating managers. Hewlett Packard spent \$325 million in 2003 on training and staff development. Many law enforcement agencies are also using and realizing success from mentorship programs. The Department of Correctional Services should train and mentor its own staff to become the supervisors, managers and leaders of the state's future correctional system.

- **Create supervisory, managerial, and executive staff training that emphasizes vision, leadership, and ethics.**

*Leadership is not a static condition. It is a constantly changing process of developing yourself and helping to develop others. - Peter Drucker*

In 2002 the California Department of Corrections sent several employees to attend the California Public Safety Leadership and Ethics Program training. This program was created by a collaborative effort of several public agencies and the Phi Theta Kappa International Honor Society and Leadership Development

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<sup>60</sup> Interview with Carlos Sanchez, Chief of Departmental Training, Sacramento, California, March 25, 2004.

<sup>61</sup> Kalb, L. "Trained to Supervise; Many companies stress in-house programs". Sacramento Bee, Business. March 16, 2004.

Program.<sup>62</sup> This six-week training brought together firefighters, correctional officers, wardens, sheriffs, and other public safety employees to learn skills in developing a personal philosophy of leadership, leadership of others, organizational leadership and the ethics and challenges of leadership. One of the aims of this program was to train trainers, who would then take the training out to other employees. Approximately 60 people from the California Department of Corrections, including current director, Jeanne Woodford (who is an avid supporter of this program), were trained as trainers. Yet, due to funding and overtime issues, the program did not continue, nor has there been any substantial training performed by these trainers.<sup>63</sup> This training is an example of training that could ensure that the Department of Correctional Services stays current in the areas of leadership and ethics. This type of training is essential and must be properly funded.

**Providing managers with routine evaluations and clear guidance on job expectation.**

The Department of Correctional Services must provide supervisors, managers, and executive management every possible opportunity to succeed. These individuals must be given a clear understanding of the responsibilities of their positions. They must also receive performance evaluations to ensure that they grow in their positions and know how to improve their performance. To accomplish that purpose, the Department of Correctional Services should take the following actions:

- *Develop specific job objectives in the job description for all managers, and executives, and rate job performance by these objectives at least annually.*

The specific job objectives and method of rating job performance must be standardized to ensure consistency. The National Institute of Corrections provides an example of a program that provides standardization. The institute contends that the basics of management are (1) clear policy, (2) training based on that policy, (3) supervision to enforce policy, (4) inspection to validate that staff follow policy, and (5) correction of deviation from policy. This self-correcting loop then begins again. In most National Institute of Corrections training programs, participants develop individual action plans or initiate projects to implement in their agencies. After the training, they may be requested to provide information about implementation to help the National Institute of Corrections assess the impact of its training on their agencies. In some cases, technical assistance is available to help them implement their action plans.<sup>64</sup>

These basic management steps must be incorporated into the performance evaluations of each manager and evaluated at least annually. Clear standards lead to

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<sup>62</sup> California Public Safety Leadership and Ethics Program, Personal Leadership Development Journal and Plan, April 2002.

<sup>63</sup> Interview with Jeanne Woodford, Director, Department of Corrections, April 19, 2004.

<sup>64</sup> National Institute of Corrections Website. <http://nicic.org/Services/TrainingServices.aspx>

better accountability of employee actions and help identify employees who need further training or mentorship.

- *Establish an internet-based human resources information center for career progression, training and to reduce the isolation of individual institutions.*

This system should be available to all Department of Correctional Services employees. The system should provide information regarding promotional requirements, a self-test component to determine strengths and weaknesses, and a way to communicate throughout the department. This would not only improve the quality of all employees, it would encourage more employees to make promotion a goal.

### **Recommendations**

The following is a summary of recommendations for developing a personnel management structure that is effective and responsive to the department's mission and its employees:

- Establish an Office of Personnel and Training reporting directly to the Secretary.
- Conduct classification evaluation of all positions within the Department of Correctional Services to ensure appropriateness of classes and to promote efficient use of human resources.
- Develop job descriptions for all positions, including executives.
- Establish a management information system to accommodate personnel and training data bases, provide easy access, and generate periodic reports.
- Establish a web-based human resources information center for career progression.
- Adjust salaries to be commensurate with responsibility and conduct periodic salary adjustment studies.
- Conduct timely performance evaluations based on job competencies.
- Develop an annual recruitment plan to ensure the recruitment and retention of qualified employees.
- Create an annual advertising campaign within the annual recruitment plan designed to attract qualified employees and build a positive public image.
- Develop an annual public affairs plan within the annual recruitment plan designed to attract qualified employees and build a positive public image.

- Award hiring preference points for peace officer applicants with college credits, law enforcement experience, and/or military experience.
- Complete all pre-employment background investigations within 60 days.
- Contract with private background investigators to supplement staffing levels to ensure that background investigations are thorough and completed on time.
- Ensure that all pre-employment background investigations are thorough and contain mandatory components to ensure that the Department is protected from “at risk” applicants.
- Use continual testing to reduce the length of the current hiring process for all entry-level peace officer positions and other classifications needing a large number of new hires.
- Complete all assignments, transfers, and promotions from the central Office of Personnel and Training, where a data base, or centralized pool, of the total supply of persons available and groomed for service will be kept.
- Establish a behavioral science unit within the Office of Personnel and Training and the position of chief psychologist to direct it.
- Assign a trained psychologist to each youth and adult institution to address the needs of employees, assist with critical incident debriefing, and report to the chief psychologist within the behavioral science unit.
- Offer an incentive or bonus to employees who successfully recruit individuals who are hired.
- Establish a recruitment partnership with all employee organizations that represents their employees.

The following is a summary of recommendations needed to redesign a continuum of training that begins with the preparation of the basic academy recruit, follows through the probationary phase, continues with in-service training and prepares for leadership positions:

- Consolidate the basic academies for youth and adult correctional peace officers.
- Centralize academies under one academy administrator.
- Ensure that officers complete core academies before assuming the responsibilities of the position.

- Develop a command college for the upper echelons of the correctional peace officer career ladder.
- Transfer officers upon acceptance of promotion so that they do not supervise employees who were peers before promotion.
- Shorten the basic academy by accepting community college training certificates in specific areas.
- Award college credits for academy training.
- Designate the Richard A. McGee Correctional Training Center in Galt, California the Department of Correctional Services main training facility, and develop two satellite training operations in the southern and central part of the state.
- Centralize the in-service training program at the Richard A. McGee Correctional Academy at Galt, CA.
- Select and train the “best and brightest” to be academy instructors.
- Develop a new selection process for academy instructors that includes a recommendation by the candidate’s warden or parole administrator, an oral interview, a written assignment, and a 15-20 minute presentation before other academy instructors.
- Limit academy instructor assignments to create a systematic rotation.
- Eliminate the Commission on Correctional Peace Officers Standards and Training.
- Eliminate the Correctional Peace Officer apprenticeship program for entry-level state correctional peace officer classes.
- Move the responsibility and resources for setting standards for training of state correctional peace officers to the new Corrections Standards Authority.
- Move the responsibility and resources for setting selection standards for entry-level state correctional peace officers to the Corrections Standards Authority.
- Move the responsibility and resources for developing, approving, and monitoring standards for advanced rank-and-file and supervisory state correctional peace officers to the Corrections Standards Authority.

- Establish in the Corrections Standards Authority, the responsibility and resources for developing, approving and monitoring selection standards and training standards for correctional training officers.
- Establish a field training officer program with appropriate selection criteria and training.
- Develop, approve, and monitor standards for a newly designated field training officer.
- Begin the probationary period for correctional peace officers upon graduation from the basic academy. The probationary period should be one year.
- Implement a 30 minute pre-shift briefing for all Department of Correctional Services frontline peace officer positions and their supervisors.
- Require all units participating in pre-shift briefings to maintain a briefing book containing information to be disseminated at briefings.
- Implement a training program to be utilized during the 30 minute pre-shift briefing.
- Establish an eight and one half hour workday for all Department of Correctional Services frontline peace officer positions and their first-line supervisors.
- Develop and provide supervisory, managerial, and executive staff training before employees assume these positions, whether classified as custody or non-custody.
- Develop and provide a mentorship model for supervisory, managerial, and executive staff positions.
- Create supervisory, managerial, and executive staff training that emphasizes vision, leadership and ethics.
- Develop specific job objectives in the job description for all managers and executives, and rate job performance by these objectives at least annually.
- Establish a web-based human resources information center for career progression and training and to reduce the isolation of individual institutions.

**Appendix**

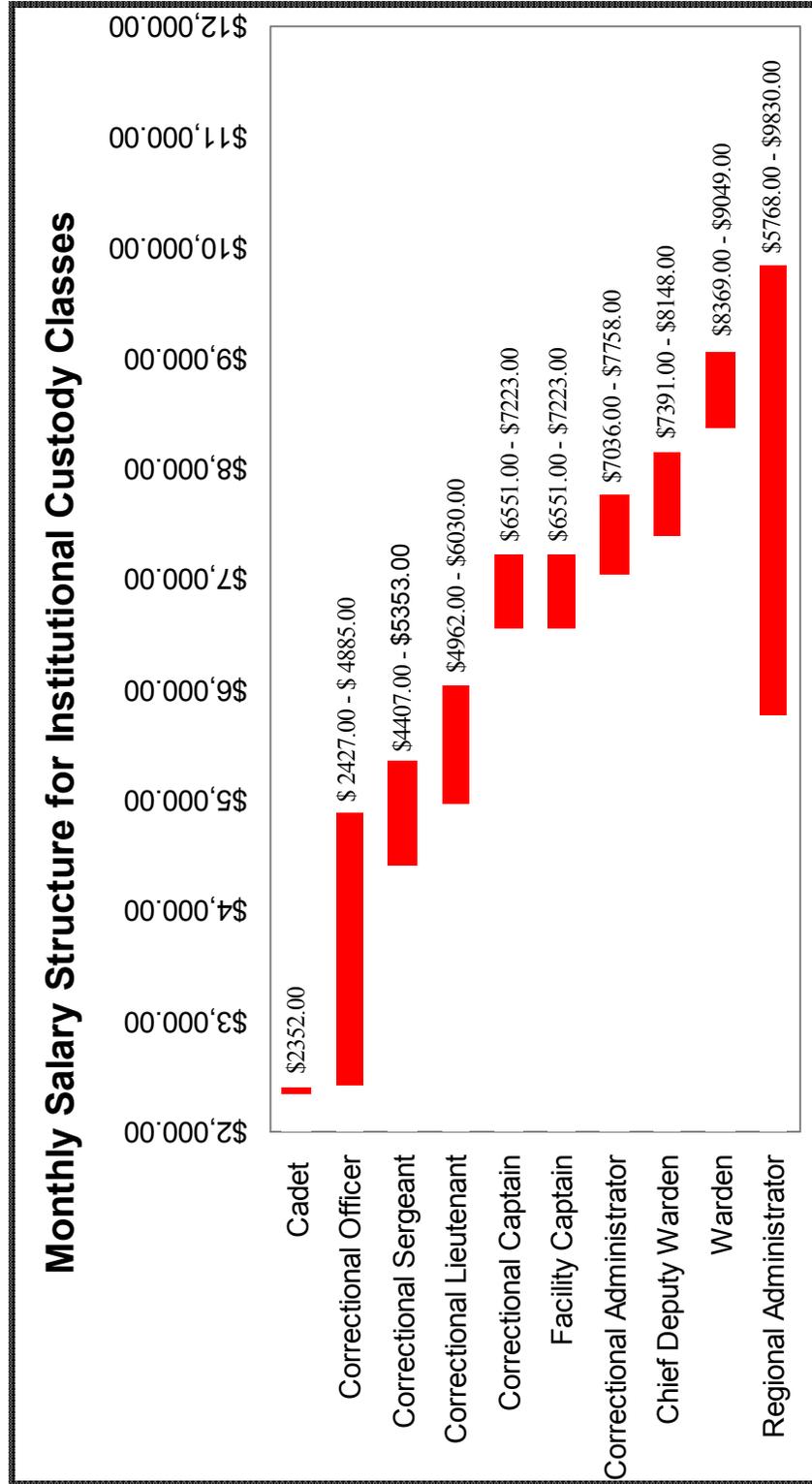
**TABLE 1**  
**Annual Salary and Scope of Responsibilities for Top Corrections Administrative Officials**

State	Maximum Annual Salary	Total Offender Population	Total Staff
<b>California</b>	\$131,412	308,485	54,036
Federal Bureau of Prisons	\$136,000	176,500	34,500
New Jersey	\$123,070	27,000	9,500
New York	\$136,000	113,000	43,000
Texas	\$150,000	226,045	39,780

**Annual Salary & Scope of Responsibilities for Corrections Wardens**

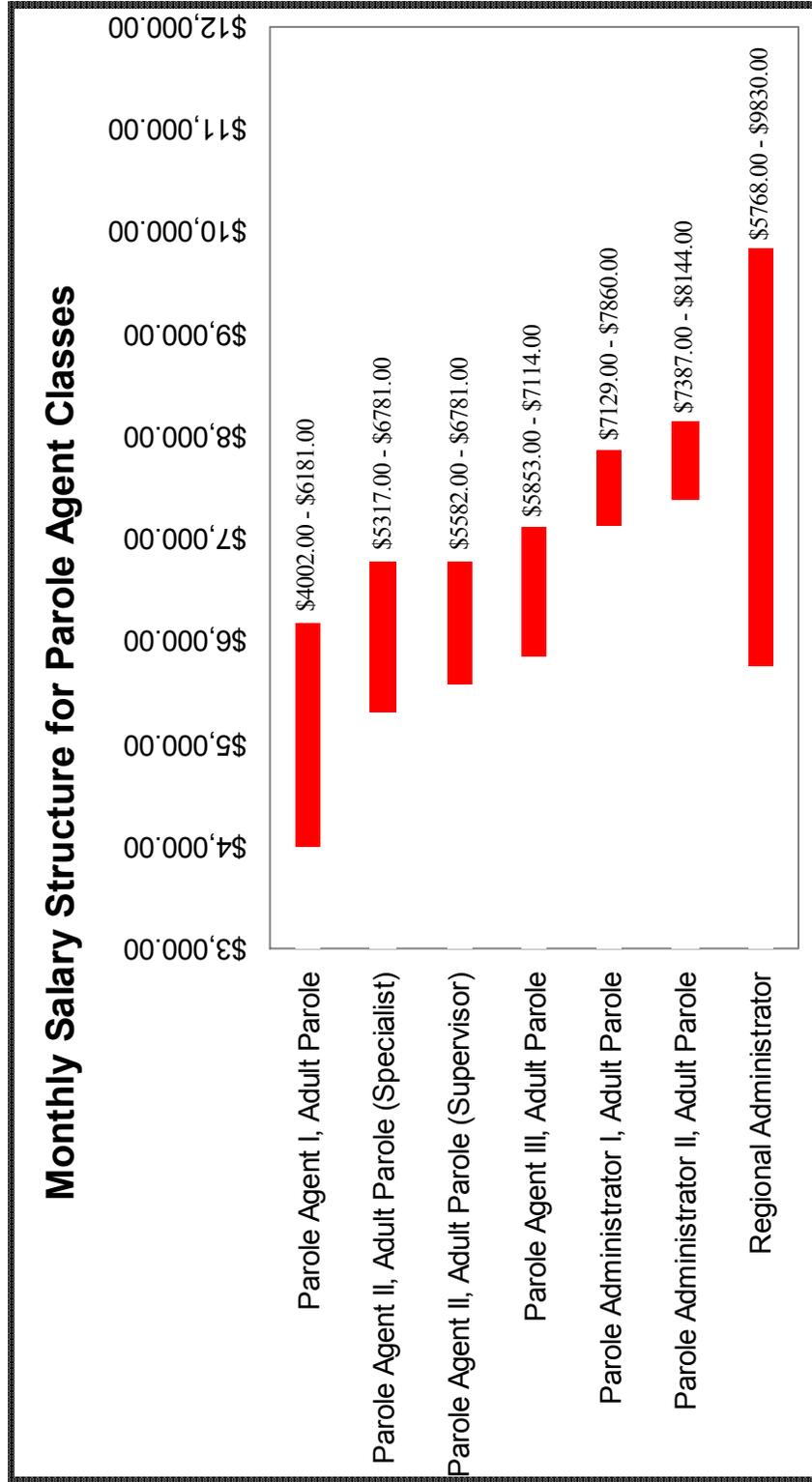
State	Maximum Annual Salary	Average Offender Population	Average Staff
<b>California</b>	\$108,588	4,761	1,258
Federal Bureau of Prisons	136,900	1,675	321
New Jersey	117,205	1,929	679
New York	124,583	1,855	464
Texas	63,819	1,310	349

TABLE 2



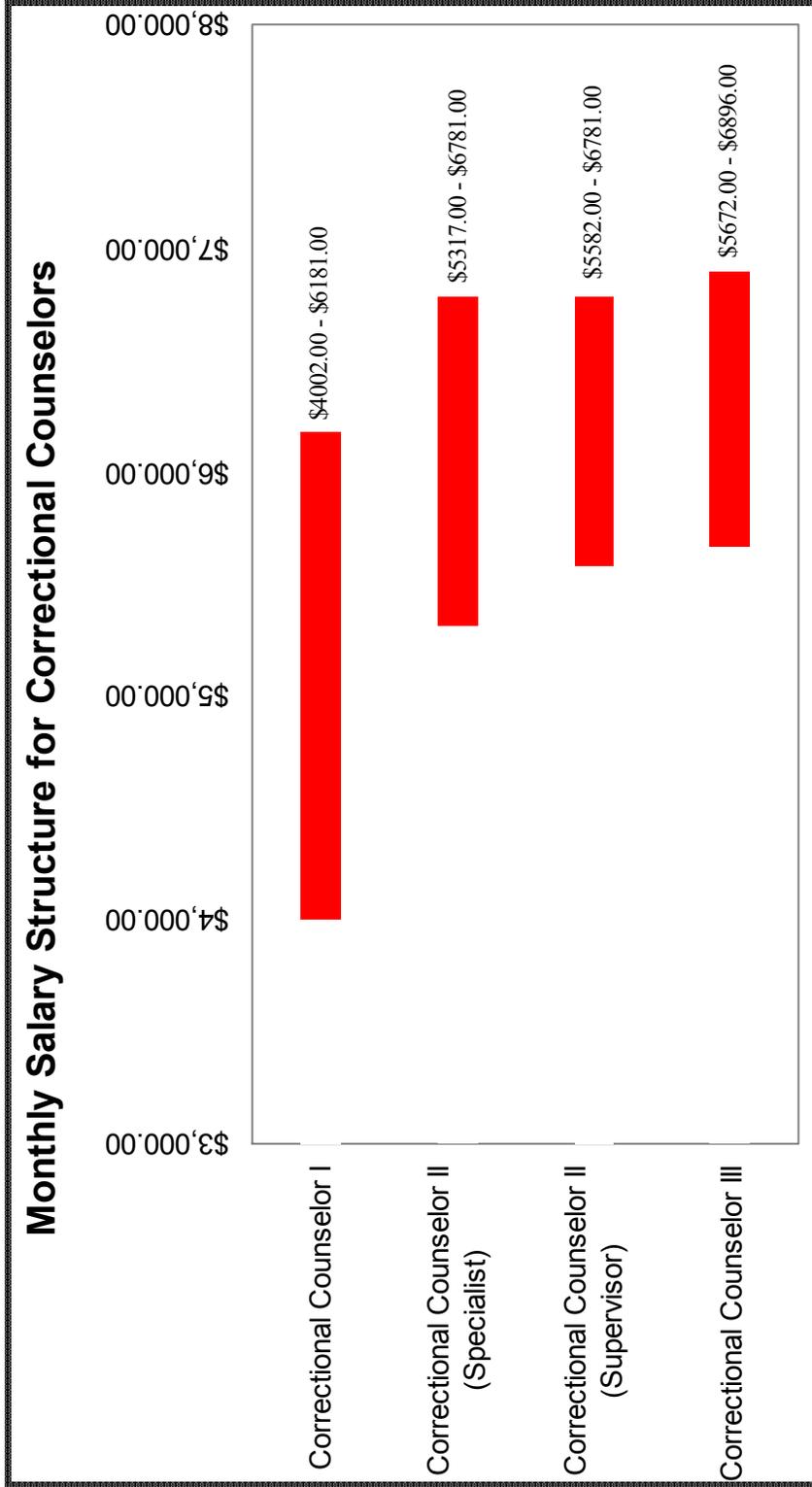
Source: California Department of Corrections

**TABLE 3**



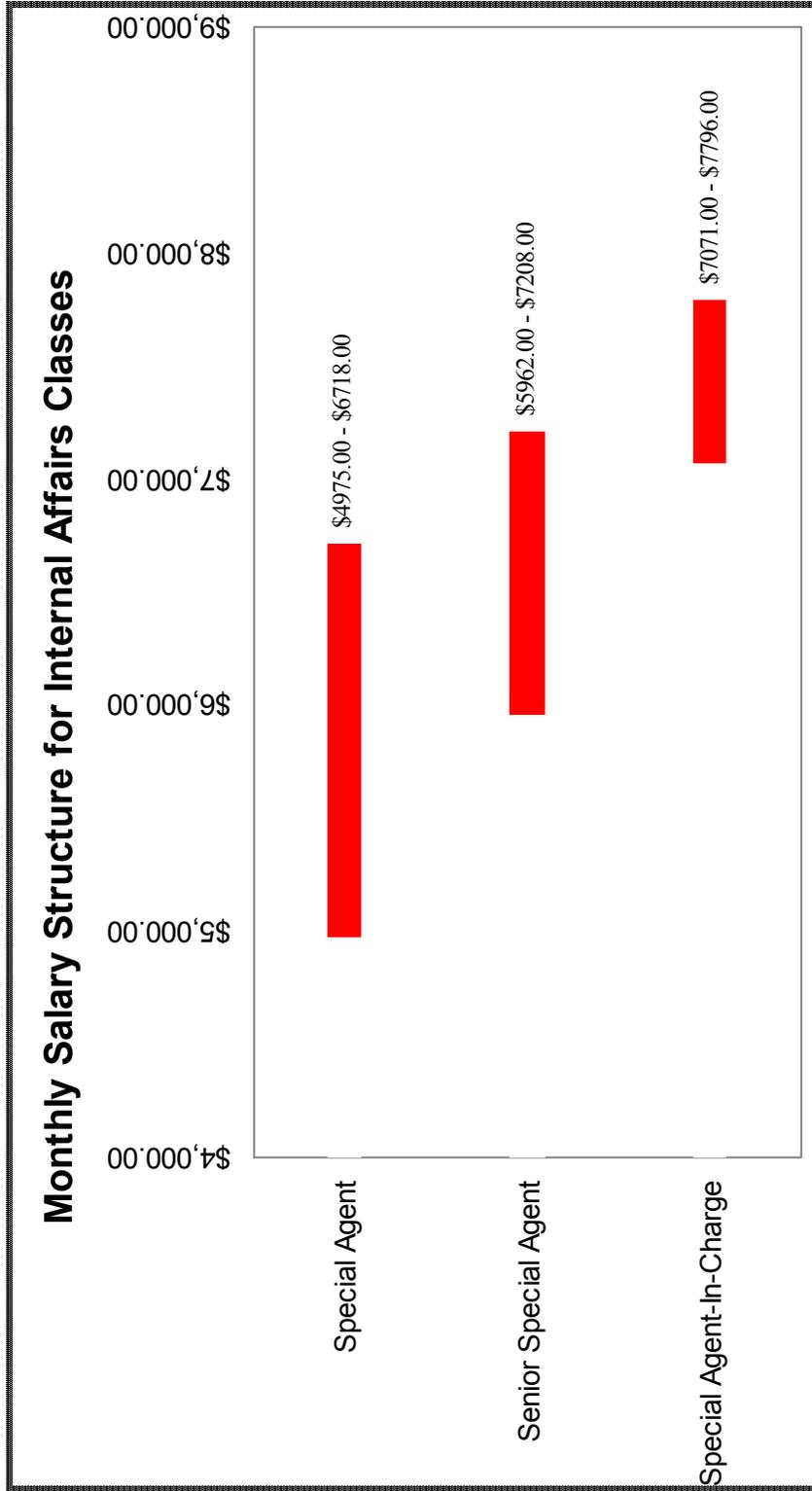
Source: California Department of Corrections

TABLE 4



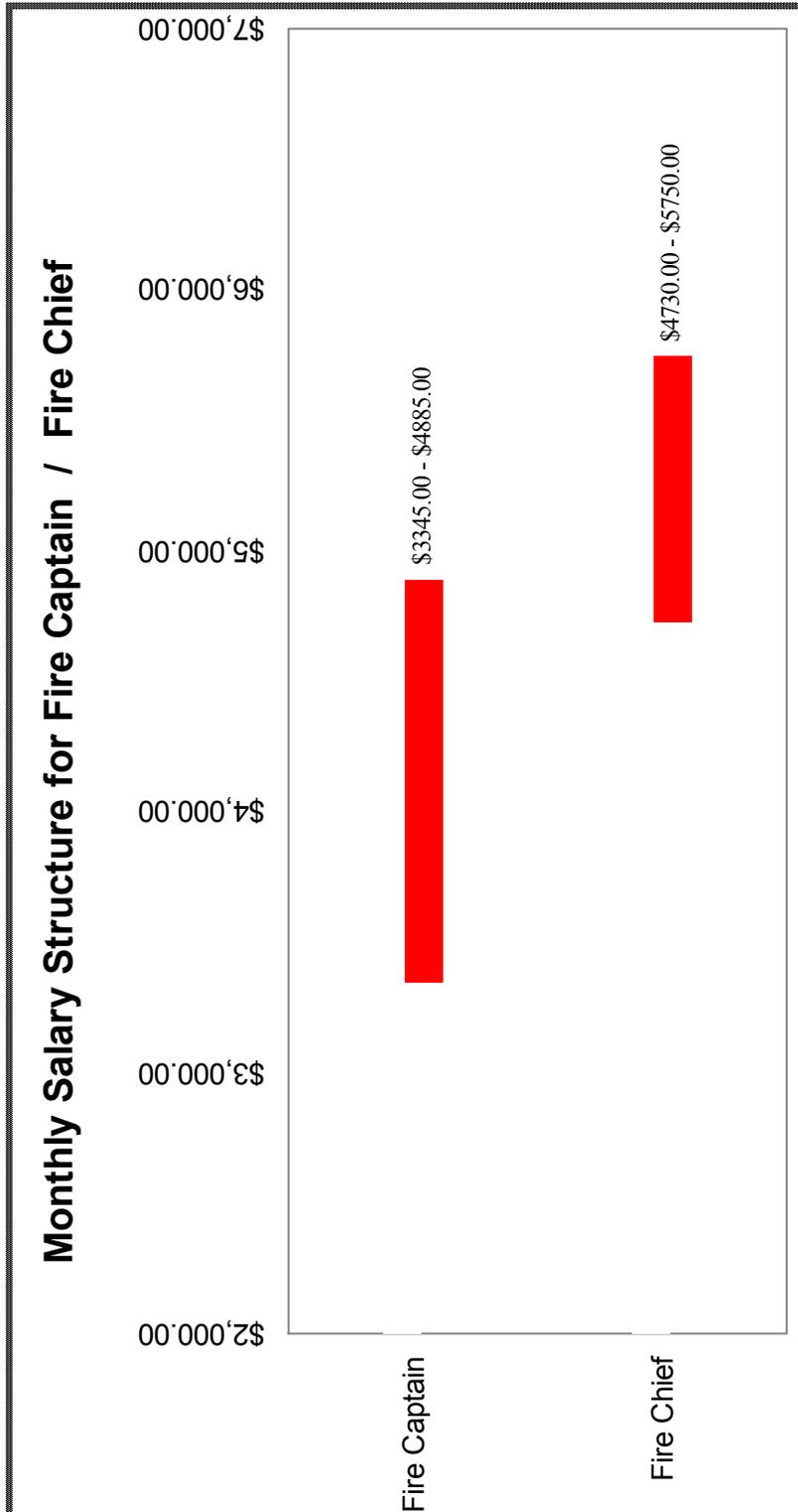
Source: California Department of Correction

**TABLE 5**



Source: California Department of Corrections

TABLE 6



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## Risk Management and Health Care

Operating an adult and youth prison system exposes the state to many risks. It must protect the safety of its employees – most of whom work in high-risk and often dangerous environments where inmates and wards may attack. Simultaneously, it must provide humane housing and care for tens of thousands of inmates and wards. When poorly managed or ignored, the risks translate into injured employees, inmates, or wards and sometimes result in costly lawsuits or court settlements.

Effectively managing risk requires a risk management system that identifies, controls, and lessens the impact of potential events. It requires a decision-making structure that constantly assesses safety, resources, services, legal responsibilities, and policies, and it requires vigilant planning, checking, and adjustment of business practices to address and reduce risk.

To assess the effectiveness of risk management in the state correctional system, the Corrections Independent Review Panel reviewed the risk management practices at the Department of Corrections, the California Youth Authority, and other law enforcement agencies in the state. As a result of that review, the panel recommends significant changes to the state's current practices. Specifically the panel recommends that the new Department of Correctional Services adopt a "top-down" approach to risk management. The panel also recommends that the Department of Correctional Services include an Office of Risk Management that reports directly to the Secretary of Correctional Services. That office should have responsibility for overall planning and implementation of the risk management program. A cornerstone of the new Office of Risk Management would be an "early warning" system that combines effective communication between levels of the organization, careful trend analysis in inmate complaints, and rigorous self-audit to ensure compliance with policy and corrective actions. This system, in turn, will contribute to greater accountability at all levels of the organization.

At present, significant risk in the state correctional system is in its system for providing health care services to inmates and wards, which has frequently been criticized for poor management and quality of care. Health care also represents the largest litigation expense for the department. After reviewing the health care delivery models of several other states, the panel recommends that the new Department of Correctional Services create an Office of Health Care Administration to administer health care services for inmates and wards. In addition, the new department should explore entering into an agreement with the University of California to explore ways to improve the efficiency and efficacy of health care services. The panel also recommends the new Department of Correctional Services increase its use of contracted health care services.

## **The Office of Risk Management**

The Department of Corrections and the California Youth Authority presently lack a risk management system that effectively coordinates critical risk management functions such as communication, litigation support, self-audit, analysis, and policy development. Numerous oversight entities, including the Bureau of State Audits, the Office of the Inspector General, the Senate Advisory Commission, the National Institute of Corrections, the Little Hoover Commission, the Board of Corrections, medical experts, consultants and the California Legislative Analyst Office have identified deficiencies in both of these departments that can be attributed either directly or indirectly to ineffective risk management and poor accountability for managing risk.

To remedy the problem, the Corrections Independent Review Panel recommends that the new Department of Correctional Services create an Office of Risk Management to coordinate and implement a department-wide risk management strategy. Critical to this strategy will be improved communication between levels of the organization, an effective “early warning” system to identify and mitigate risks, and coordination of litigation activities both internally and with the Office of the Attorney General. The Office of Risk Management should also assume responsibility for and streamline the process used to create and revise department regulations.

### **Fiscal Impact**

In fiscal year 2002-03, costs incurred by the Department of Corrections for plaintiffs’ attorney fees and federal court monitors in five major class action lawsuits totaled \$5.9 million<sup>1</sup>. Implementing the risk management system recommended here could reduce future litigation and settlement costs and lower expenditures for employee resources now spent to carry out court-imposed sanctions.<sup>2</sup> In addition to reducing the number of lawsuits and adverse court rulings, implementing the recommendations would improve operations and thereby reduce the number of inmate appeals. It is not anticipated that staff resources would be eliminated as a result of the panel’s recommendations.

### **Background**

The lack of a monitoring, correcting, and accountability process that feeds into a review and revision of regulations, procedures, and training, has resulted in numerous class action lawsuits against the Department of Corrections and millions of dollars in costs for settlement expenses, court monitoring, and plaintiff’s attorney fees. The same problems with self-auditing, correcting, and staff accountability exist at the California Youth Authority.

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<sup>1</sup> The five major class action lawsuits are: *Coleman v. Wilson*; *Plata v. Davis*; *Madrid v. Wilson*; *Armstrong v. Wilson*; and *Clark v. Davis*.

<sup>2</sup> The Department of Corrections Legal Affairs Division estimates total payments of approximately \$5,952,000 in fiscal year 2002-03 for plaintiffs’ attorney’s fees and special master fees alone in the *Armstrong*, *Clark*, *Coleman*, *Madrid*, and *Plata* cases. That amount does not include the millions of dollars that must be set aside to implement court mandates resulting from the class action lawsuits.

The California Youth Authority has been the subject of numerous reviews by outside experts that found significant systemic problems.<sup>3</sup> The Board of Corrections spearheaded an effort in 2000 to improve the institutional operations of the California Youth Authority. After a thorough review, the board's recommendations included improving communication among superintendents, strengthening media activities, improving health care services, implementing a computerized maintenance tracking system, restructuring the ward discipline policy, assessing Americans with Disabilities Act compliance, implementing efforts to support and further the department's rehabilitative mission, and strengthening the department's present and future leadership.<sup>4</sup>

The California Youth Authority is now under federal court scrutiny as a result of the class action lawsuit *Farrell v. Harper*, filed by the Prison Law Office.<sup>5</sup> A settlement agreement has been written and is currently being reviewed for approval by the California Youth Authority administration. Implementing an effective risk management system is critical to enabling the new Department of Correctional Services to resolve present litigation, reduce future litigation costs, and help ensure effective use of state dollars.

***Risk management must be coordinated from the highest levels of the organization.*** To establish an effective risk management program, the new Department of Correctional Services should establish an Office of Risk Management headed by a Deputy Secretary of Risk Management who will report directly to the Secretary of Correctional Services. The office will consolidate divisions, units, and existing staff from the current Department of Corrections and California Youth Authority.

The new Office of Risk Management will add a necessary function to the new department by identifying practices, policies, and conditions that represent potential legal or fiscal risks. Centralizing this function allows formerly piece-meal efforts to identify risks—which have often been treated as low priority—to be scrutinized and systematically tracked and to lead to the development and implementation of statewide risk management plans.

After evaluating the department's current practices and speaking with experts from across the country, the panel identified five critical areas on which the new Office of Risk Management should focus:

- Organization structure and communication
- Litigation support and coordination
- Development of an “early warning” system
- Assuming control over and streamline the regulation process
- Increasing accountability throughout the department

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<sup>3</sup> Jerry Thomas Consulting, “Evaluation of sex offender programs,” September 2003, p. 2;

Michael Puisis and M. LaMarre, “Review of Health Care Services in the CYA,” August 2003, p. 6.

<sup>4</sup> Board of Corrections, “Institutions Operations Quality Assurance Project”, California Youth Authority, October 2000.

<sup>5</sup> *Farrell v. Harper*, Superior Court for the State of California, County of Alameda.

## **Organization Structure and Communication**

The new Office of Risk Management will take responsibility for a department-wide risk management strategy. To effectively integrate the current structure of individual groups focused on discrete risks and processes, the Office of Risk Management will create a new organizational structure and ensure clear communication across the department's operating units.

***Executive risk management committee.*** The new Office of Risk Management will use a committee approach to manage risk. At the first level will be the executive risk management committee, chaired by the Deputy Secretary of Risk Management, and comprised of other deputy secretaries within the new department. The executive risk management committee will report directly to the Secretary of Correctional Services. By virtue of its placement, this headquarters executive-level committee will have a "birds-eye" view of the department's risks and can map strategies and policy to mitigate the risks. The primary function of the executive risk management committee will be to advise the Secretary on risk management issues and to develop an overall risk management strategy. This committee must also establish the risk management methodologies and reporting standards used throughout the organization, and empower the regional risk management committees to monitor risk in their regions and report their results to the executive committee. The committee will also oversee the internal audit function that ensures compliance with the risk management strategies. Special areas of focus could include training, personnel assignment changes or counseling, and developing and recommending regulation and procedure changes to the Secretary.

***Regional risk management committees.*** The second-level risk management committee will be a sub-committee to the executive level and will operate in each of the department's eight regions – six adult regions and two youth regions. The eight regional risk management committees will be chaired by their respective regional directors and will include wardens, superintendents, regional parole managers, and the risk management coordinators from that region. This committee will make reports to the executive-level risk management committee and will develop implementation and training plans for recommendations made by the executive-level committee.

Each institution should have an assigned risk management coordinator, who will report to the warden or superintendent and serve as a coordinator for risk management implementation and training at the institutional level. This coordinator will also be a permanent member of the local institution's existing quality management committee and will identify risk management issues and facilitate communication between the institution and the regional risk management committee.

***Communication is key.*** The Secretary of Correctional Services will conduct regular meetings and receive risk assessment reports from the Directors of Youth and Adult Operations—whose participation on the executive risk management committee will keep them apprised of risk management matters. Similarly, the regional risk management committees

must meet regularly to assess risk management issues within their respective regions and to communicate information from the executive risk management committee to the local institutions.

The importance of communication was expressed by a risk management expert from the California Highway Patrol, who told the Corrections Independent Review Panel that the strategic function of executive management is to review field and staff operations and provide counseling, assistance, and guidance. Effective risk management techniques and procedures should be recognized by executive management in its meetings, and input should be provided to the Secretary of Correctional Services for consideration of new regulations and procedures, and statewide application.<sup>6</sup>

Similar comments were made during a correctional forum organized by the panel in April 2004 that assembled correctional experts from across the country. During the forum discussions, Secretary Joseph Lehman, Secretary of the Washington State Department of Corrections, commented on the importance of presenting evidence-based policies and procedures to positively maintain working relationships with the legislature:

*What changed our dialogue with the Washington State Legislature is that we approached our requests based on applied risk management principles and evidence-based practices (a direct result of applying audit recommendations and industry standards in risk management). What we can argue effectively is evidence-based practices.<sup>7</sup>*

Successful management planning requires the participation of each employee. Administrators should ensure that members of their divisions have an opportunity to contribute to the process of proposing strategies and goals and to the development of associated action plans. Encouraging participation from employees at all levels acknowledges that every member has an important part in the development and implementation of an effective management plan.<sup>8</sup> It also imparts the message that risk management is the responsibility of all employees in the department.

The new organizational structure for the Office of Risk Management should facilitate good communication and more effective assessment and mitigation of risk. But beyond the new structure, the department must develop a strong sense of accountability through all levels of the organization.

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<sup>6</sup> Interview with Assistant Chief Ed Fincel, California Highway Patrol, Risk Management Expert, May 5, 2004.

<sup>7</sup> Remarks by Joseph Lehman, Secretary of the Washington State Department of Corrections, Correctional Forum panel discussion, April 27, 2004.

<sup>8</sup> California Highway Patrol "Command Management Planning Manual," page 1-2.

## Accountability

*The Inspector General has found that the department lacks accountability.* The Office of the Inspector General has conducted approximately 45 separate audits of Department of Corrections procedures, systems, and management practices. In each instance, the Office of the Inspector General identified systemic problems of ineffective operational procedures, lack of accountability, and the absence of an effective process for correcting known problems. One significant example is an October 2002 report of the Office of the Inspector General, titled, "Management Review of the Audit Functions of the California Department of Corrections Office of Compliance."<sup>9</sup> The report states:

*...that the Office of Compliance does not follow appropriate professional standards in performing its audit functions and that audit activity is inadequately coordinated with the needs of executive management and is not targeted towards issues posing the highest risk to the department. The review also revealed a fragmented internal audit organization in which ineffective planning and monitoring of audit assignments has led to a significant backlog of reports.*

*Accountability begins with an annual risk management plan.* Guided by the recommendations from the executive risk management committee, the Secretary of the new Department of Correctional Services should develop an annual risk management plan. The function of risk management planning, leading to accountability, is one of selecting organizational objectives and the policies, programs and procedures for achieving those objectives. An effective risk management program requires (1) identification of risks, (2) minimization of risks, (3) monitoring risk management program results, and (4) management accountability. Above all, there must be a strong commitment to the program at all levels in the department.<sup>10</sup>

*"If you can predict it, you can prevent it."* The primary purpose of risk management planning is to design and maintain a system that will eliminate or minimize risks and enhance organizational accountability.<sup>11</sup> A periodic planning and review process should be conducted in sufficient depth to properly evaluate the effectiveness of the new department's risk management practices. A sound system of internal auditing, accounting, and administrative control provides the tools for use by management to continuously evaluate and, as necessary, improve operations.<sup>12</sup>

<sup>9</sup> Office of the Inspector General, "Management Review of the Audit Functions of the California Department of Corrections Office of Compliance," October 2002, p. 1.

<sup>10</sup> "Report of the Rampart Investigation" (a division of the Los Angeles Police Department), Independent Review Panel, Executive Summary, November 16, 2000, p. 136.

<sup>11</sup> Assistant Chief Ed Fintel, California Highway Patrol, Risk Management Expert, interview, May 5, 2004.

<sup>12</sup> Commander Stuart Maislin, Los Angeles Police Department, Risk Management Group, interview, May 5, 2004.

*Accountability also requires periodic assessment and measurement of performance.* The Office of Risk Management must ensure command-level accountability for risk management throughout the new department. According to a former director of California Department of Corrections, staff accountability and responsibility in large and complex agencies require the practice of eight management principles: (1) leadership, (2) setting goals and objectives, (3) clear role definition, (4) administering consequences, (5) standardization, (6) walk-the-talk, (7) systems and data, and (8) provide feedback.<sup>13</sup>

Managers at all department levels must be held accountable for employee performance and excessively risky conduct that occurs within their operations. All levels of management must be committed to controlling risk by implementing appropriate systems for preventing and controlling predictable trends that have an adverse impact to the organization.<sup>14</sup> Regular reviews should be conducted by the Directors of Youth and Adult Operations to ensure that risk management plans are effectively implemented. In turn, performance evaluations for these administrators should depend on how well they successfully, or unsuccessfully, implemented their plans and fulfilled the department's risk management expectations. When exceptions are found during these evaluations – whether positive or negative – the deviation from the established norm should be evaluated and shared with the department's Risk Management Committee.

As shown in Table 1, many law enforcement agencies use a results-based performance measurement system. One popular management accountability model was implemented by the New York City Correction Department in 1994, and was later used by the Los Angeles Police Department in the late 1990s. The accountability model used by New York City Correction Department asserts that every unit within the department affects how the agency performs its mission as a whole. Managers must be agency-focused, not narrowly unit-oriented, and they must be aware of and participate together in realizing the agency's goals and objectives. Monthly accountability meetings, involving all managers are held to discuss facility conditions, identify problem areas, and develop strategies for achieving objectives. The staff reporting during these meetings is judged solely on their knowledge of their commands and their skills at problem solving, not on their public speaking abilities or how well they recite numbers. Those unable to grasp the program are replaced. Conversely, those who embrace the concept of accountability and its results are promoted through the ranks.<sup>15 16</sup> Similarly, the Operations Chief of the Los Angeles Police Depart-

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<sup>13</sup> James H. Gomez, President and Chief Executive Officer of the California Association of Health Facilities and former Director of the California Department of Corrections from April 1991 through January 1997, speaking at a Correctional Forum panel discussion on April 27, 2004.

<sup>14</sup> Gary L. Johnson, Executive Director of the Texas Department of Criminal Justice, remarks during a Correctional Forum panel discussion on April 27, 2004.

<sup>15</sup> Thomas McCarthy, "TEAMS Turns Around the New York City Correction Department," *Large Jail Network Bulletin* (1999)

<sup>16</sup> Deputy Commissioner Thomas Antenen, Office of Public Information, New York City Department of Corrections, interview, April 30, 2004.

ment conducts a formal monthly performance evaluation of commanders from various department commands. Commanders are not admonished for having problems in their commands, but for not having action plans to resolve the problems experienced by their commands.<sup>17</sup>

To provide a model for exceptional performance by wardens Secretary Lehman of the Washington State Department of Corrections noted:

*There are five questions to ask top performing wardens to find out how effectively they deal with an issue: (1) What alternatives or options were considered? (2) What were the expected results? (3) What data was tracked? (4) What barriers were encountered? (5) What actions were taken to improve the problem?*<sup>18</sup>

***There must be consequences for poor performance.*** Monthly meetings are not only a good means of evaluating staff performance, but also an opportunity to help staff understand expectations and consequences. During a meeting with several correctional experts, in Sacramento on April 27, 2004, former Director of Corrections, James H. Gomez and Secretary of Washington State Department of Corrections, Joseph Lehman, shared a perspective on the topic of accountability,

*If you want people to be accountable and responsible, there must be clear consequences and that means firing them when they are no longer productive to the organization. It is also important to help them understand the 'why' when issuing policy. You need to make sure your people understand policy so they can be more accountable.*<sup>19</sup>

Secretary Lehman added, *"When they do not understand the 'why' of a policy, you will only get compliance and not commitment."*<sup>20</sup>

### **Litigation Support and Coordination**

The Office of Risk Management must support and coordinate all litigation within the new department, including class action, individual inmate lawsuits, and contract-related litigation, and must also supervise compliance with court orders. To accomplish this function, the Office of Risk Management must develop a strong relationship with the Office of the Attorney General, effectively use the department's own attorneys, and use a team strategy when monitoring compliance or defending the department.

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<sup>17</sup> Detective Jeff Godown, Office of Operations, Los Angeles Police Department Detective, interview, May 3, 2004.

<sup>18</sup> Joseph Lehman, Secretary of the Washington State Department of Corrections, remarks during a Correctional Forum panel discussion on April 27, 2004.

<sup>19</sup> James H. Gomez, President and Chief Executive Officer of the California Association of Health Facilities, and former Director of the California Department of Corrections from April 1991 through January 1997, remarks during a Correctional Forum panel discussion, April 27, 2004.

<sup>20</sup> Joseph Lehman, Secretary of the Washington State Department of Corrections, during a Correctional Forum panel discussion, April 27, 2004.

*A strong and clear relationship with the Office of the Attorney General is critical.* An important component of any risk management program is a strong litigation function that works effectively with all stakeholders to meet litigation challenges. Lawsuits expose the departments to millions of dollars of risk. Whether or not cases are high profile, all litigation requires effective representation by litigators and their support staff. At present the departments use the legal services of the Office of the Attorney General pursuant to Government Code Section 12511, for the defense of civil litigation brought against them. Litigation services cannot be provided in-house unless there is a conflict of interest declared by the Office of the Attorney General and approved by the Department of Finance.<sup>21</sup> A team approach between the new department and the Office of the Attorney General will advance the efforts to reduce the number and fiscal impact of civil cases.<sup>22</sup>

To ensure that the Office of Risk Management obtains satisfactory legal services from the Office of the Attorney General, it must identify reasonable performance measures to ensure that the legal services are being adequately provided. This is especially important if the department is to be held accountable for losses that occur in litigation arising from employee performance. An equitable way to create those performance measures is to require the Office of the Attorney General and the new Department of Correctional Services to enter into a memorandum of understanding regarding the scope and terms of the representation.<sup>23</sup> A memorandum of understanding would allow all parties to articulate their concerns at the outset, negotiate mutually acceptable terms and limitations, set measurable standards for service and, most importantly, provide recourse to the parties for breach of the memorandum of understanding.

In addition to developing clear performance measures, the Office of Risk Management should hold regular meetings with the Office of the Attorney General to discuss case strategy and resolution, including which cases to settle. Further, at the end of each case, the Office of Risk Management should conduct a case assessment to improve its risk management policies, employee training programs, internal procedures, and litigation protocols with the staff members of the Office of the Attorney General.

*Litigation response will also include teams of in-house attorneys.* These attorneys will work with the Office of the Attorney General staff to provide departmental supervision, participate in case defense and strategy, monitor conflicting counsel contracts, and develop and report on the fiscal impact of proposed and actual settlements and judgments. A team of legal processing staff will also provide assistance with discovery, processing of subpoenas, and training on litigation-related matters. By working together, these litigation re-

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<sup>21</sup> Government Code Section 12511 provides that the **Attorney General** has charge, as **attorney**, of all legal matters in which the State is interested, except the business of The Regents of the University of California and of such other boards or officers as are by law authorized to employ attorneys.

<sup>22</sup> Interview with Chief Counsels of the Youth Authority, Debra Ashbrook, the Department of Corrections, Kathleen Keeshen, the Bureau of Prison Terms, Terry Farmer, and the Prison Industry Authority, David Beales, April 20, 2004.

<sup>23</sup> See proposed legislation in the appendices to this report.

spense components would perform litigation trend analysis, and identify areas of risk requiring department-wide change.

*Cross-functional teams are especially effective for litigation compliance.* The use of interdisciplinary—or cross-functional teams—enables the Office of Risk Management to efficiently solve department-wide problems. Headed by a risk management project manager, a cross-functional compliance management team will be responsible for initial planning and continued compliance with major litigation or other risk management issues. These compliance teams will be comprised of staff from key organizational units throughout the department. The staff on these teams report directly to risk management project managers from the Office of Risk Management for the duration of the project despite being officially assigned to other organizational units of the new department.

### **Developing an “Early Warning” System**

A key component of an effective risk management strategy is developing a method to pinpoint risks that exceed acceptable levels. Part of this strategy is accomplished by creating a sound organizational and communication structure, but this new structure must also identify useful data and measure and monitor the data for “early warning” signals of risk. One of the first challenges for the executive and regional risk management committees will be to identify the top 10 or 20 potential risks within the department and recommend a strategic plan.

*Inmate appeals should be used as an early warning indicator.* The Department of Corrections has an established inmate/parolee appeal system that is designed to ensure that every inmate/parolee has an avenue to file a complaint regarding “any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare”. The ability of inmates to address real concerns and issues in a timely manner is an important management tool for administrators.<sup>24,25</sup> The new department must review these appeals to see if there are any trends, similarities, common errors by staff, or lack of clarity in a regulation or procedure. This analysis will determine whether there is a problem and what needs to be addressed to prevent the problem in the future. This type of analysis and corrective action is the cornerstone of an effective risk management function in the new department. Before any effective analysis of the inmate/parolee appeals can occur, however, serious deficiencies within the existing process must be remedied.

*First, the inmate appeal process must be fixed.* The Office of the Inspector General conducted a formal review of the Inmate Appeals Branch, as well as reviews of specific institutions, and found that the inmate appeals system is seriously flawed.<sup>26</sup> In a February 2001

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<sup>24</sup> California Code of Regulations, Title 15, Division, Article 8 Section 3084 Inmate Appeals

<sup>25</sup> Department of Corrections Operations Manual, Section 54100.1, Inmate/Parolee Appeals

<sup>26</sup> Office of the Inspector General, “Review of Inmate Appeals Branch,” February 2001; Office of the Inspector General audits at Salinas Valley State Prison, March 2000; California Rehabilitation Center, August 2000 California Substance Abuse Treatment Facility at Corcoran, February 2001; Salinas Valley State Prison, September 2003

report, the Inspector General noted that the appeals process was deficient in quality, untimely, and inadequate in substance and accuracy. Further, in its review of the Inmate Appeals Branch and four institutions, the Office of the Inspector General identified lack of training and standardization as significant impediments to an effective appeals system.<sup>27</sup>

Based on the known deficiencies in the department's inmate/parolee appeal process, as articulated in various Inspector General reports, the Corrections Independent Review Panel concluded that the appeal process should be streamlined. Currently, there are too many steps in the appeal process, there is no statewide analysis of appeal statistics, and there is lack of detail in the appeals data. As an example, at the first level of review, inmate discipline is the most appealed issue within the department. However, the department does not know what specific issues or concerns are being raised by inmates and parolees about the inmate disciplinary process because the department statistics do not adequately reflect the details of the complaints. The complaints are simply categorized as "discipline." Further study should be conducted to determine whether the problem is a training issue or a poorly written regulation. At the California Youth Authority, ward grievances are tracked in a similar manner.<sup>28, 29</sup>

Similarly, inmates frequently appeal medical issues, yet the highest level of review does not involve a medical staff person. This lack of medical staff at the highest appeal level is a potential liability for the department.

The current appeal process for the Department of Corrections consists of one informal level of review and three formal levels. The current system requires the informal, first, and second level of appeal review be conducted at the local level. Each appeal must be reviewed by the appeals office, given a category, logged into the stand-alone database, and forwarded to the appropriate supervisor or manager. The inmate is interviewed at either the first or second level of appeal review in order to ensure that the issue is thoroughly understood. The third level of review is conducted at the Director of Corrections level by the Inmate Appeals Branch.

*Some appeals should be stopped after the first denial.* Some appeal issues do not warrant being carried through all levels of review. For example, if an inmate appeals not receiving half-time credit reduction while on a work assignment waiting list, the appeal response (answer) would deny the inmate's request because under California law, half-time credit is not allowed unless the inmate actually has a work assignment. In this situation, the initial answer should end the process because the appeal response will not change at a higher level. Yet, under the current system the inmate is allowed to continue to appeal the decision all the way to the department director level. This is a waste of staff time and resources. The

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<sup>27</sup> *Ibid.*

<sup>28</sup> California Code of Regulations, Title 15, Division, Article 5, Ward Grievance Procedures

<sup>29</sup> Department of Youth Authority, "Institutions & Camps Operations Procedures," Section 7000-7140

Office of Risk Management should consider revising the regulations to streamline the appeals process. This should include limiting the type of appeals that can be appealed to the highest levels of the department.

*Better analysis of appeal statistics is needed.* Each institution and regional parole office maintains an inmate appeal tracking system, but these stand-alone databases are not linked to the current Inmate Appeals Branch appeal tracking database, which is responsible for the third level of appeal review. Moreover, the lack of a centralized, system-wide database makes it impossible to complete any thoughtful analysis of appeals to identify any potential risk management issues or trends. Instead, only basic raw data is compiled. As shown in Tables 2 and 3, the Department of Corrections tracks the number of appeals completed and granted at the first, second, and third levels of appeal.<sup>30</sup> Also, it categorizes appeals into 18 broad categories, which is useful for identifying the prevalence of appeals by category, such as property, medical, or discipline. Yet, because it only has raw data, the department can not “drill down” into the data and understand the possible causes of appeals and, in turn, determine where improvements in regulations, procedures, or training could be addressed as a risk management function. The current appeal data system must be enhanced into a state-wide database that serves the risk management needs both at an institutional and statewide level.

*Best practices and “lessons learned” can be found in many places.* As noted above, the appeals process has no system in place to capture lessons learned from completed and granted appeals at the three levels of appeal review. The Office of Risk Management must develop systems and processes that will identify problems and best practices throughout the Department of Correctional Services.

Litigation and court filings are another area where careful analysis might reveal lessons learned. However, currently the Department of Corrections and the California Youth Authority both lack a coordinated system that would make it possible to review court filings in order to resolve litigation early on and to revise regulations, procedures, or training to eliminate or reduce the potential for another case on the same issue. Also, because there is no system to pass lessons learned from litigation to the field, there is no proactive action or motivation to take steps to reduce future loss.<sup>31</sup> To solve this gap in communication, the executive risk management committee should recommend to the Secretary a system for disseminating the information of lessons learned from litigation and critical incidents at the institutions and facilities.

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<sup>30</sup> The Inmate Appeals Branch does not capture the total number of appeals filed, only the number of appeals that have been completed, (*i.e.*, responded to).

<sup>31</sup> Interview with Chief Counsels of the Youth Authority, Debra Ashbrook, the Department of Corrections, Kathleen Keeshen, the Bureau of Prison Terms, Terry Farmer, and the Prison Industry Authority, David Beales, April 20, 2004..

A similar point was made during two separate interviews conducted by the panel with Donald Specter, Director of the Prison Law Office,<sup>32</sup> and the Chief Counsels of the California Youth Authority, the Department of Corrections, the Board of Prison Terms, and the Prison Industry Authority,<sup>33</sup> who expressed a need for the department to document and communicate the lessons learned from civil cases against the departments resolved via trial, judgment, or settlement. The preparation of assessment reports on civil cases that have been resolved should include detailed procedures for reducing the reoccurrence and costs of similar lawsuits. Information from resolved cases should be incorporated into employee training programs and used to improve department policies and procedures on an ongoing basis.

Lastly, a comprehensive risk management system includes the ability to identify patterns of at-risk performance by individual employees and groups of employees that, when analyzed, would be an early warning for management. Managers can make informed decisions about employees or monitor at-risk employees with an automated computer system that systematically identifies critical risk factors such as patterns of use of force, critical incidents, overtime, sick leave, employee injuries, total personnel strength, appeals, grievances, active/new court filings, and other factors relevant to risk management as determined appropriate by the Secretary.<sup>34</sup>

### **Streamlining Policy Practices**

At present, the Department of Corrections and the California Youth Authority use an unnecessarily cumbersome and time-consuming internal process to create and revise regulations and procedures that govern their respective operations. The process is made even more complex by a requirement that once regulations and procedures are approved internally they must be further approved by another government agency, the Office of Administrative Law. The panel recommends that this slow and archaic process be streamlined by having the Civilian Corrections Commission approve department regulations and procedures.

*The current process of changing internal regulations and procedures is too cumbersome.*

The current Department of Corrections internal process requires that any policy or regulation change be first described in a policy concept statement, which is then routed through the chain of command for review and approval by each one of the department's deputy directors and the department director. If the policy concept is approved, the next step requires that draft language be developed with input from both internal and external stakeholders. The draft language is then circulated to all deputy directors for review and

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<sup>32</sup> Donald Specter, Prison Law Office, interview, April 15, 2004.

<sup>33</sup> Interview with Chief Counsels of California Youth Authority, Debra Ashbrook, California Department of Corrections, Kathleen Keeshen, Bureau of Prison Terms, Terry Farmer, and Prison Industry Authority, David Beales, April 20, 2004.

<sup>34</sup> Commander Stuart Maislin, Los Angeles Police Department, interview, May 5, 2004.

approval. If the various deputy directors have suggested changes, the new language must once again be routed to all other deputy directors for review and approval. Once all deputy directors have approved the draft language, it is presented to the director of the Department of Corrections for final approval.

The California Youth Authority has a similar process, but after internal review of existing regulations and policies, it “works around” the formal process by publishing new or revised policies in the form of manuals so as to implement operational changes before revising the affected regulation.

A Department of Corrections project to revise inmate property regulations and procedures clearly illustrates the cumbersome and time-consuming nature of the existing policy revision process. This project has been “in process” for more than fifteen years. To further illustrate the impact of this convoluted policy approval process, in fiscal year 2000-01, 10,291 appeals were filed regarding inmate property. The staff time required in each case to interview the inmate, investigate the allegation, and respond to the appeal would have been reduced if the department had implemented a new inmate property regulation and procedure years ago, instead of being restricted by the current practices and regulations.

*Regulations must also be approved by the Office of Administrative Law.* Under the Administrative Procedures Act (Government Code, Sections 11340 through 11359) the Office of Administrative Law must approve the department’s regulations. This requirement adds further delay and complexity when policies or regulations need changing. The Office of Administrative Law has summarized its requirements in a 25-page document titled “How to Participate in the Rulemaking Process.” First, an initial statement of reasons for the proposed change must be prepared along with the data relied upon to support the proposed change, alternatives considered, and impact on jobs within the state.<sup>35</sup> The department must then publish the proposed changes, send a copy to any person who has requested one, hold public hearings on the proposed changes, and post the proposed changes on its website.<sup>36</sup> The department must then “consider all relevant matter presented to it before adopting, amending, or repealing any regulation” and the department must respond to any written comment received in the final statement of reasons.<sup>37</sup>

Not all agencies, however, are required to follow the Administrative Procedures Act. According to the Government Code, Section 11340.9, certain functions of the Franchise Tax Board and the State Board of Equalization are exempt from the Act.

*The new Civilian Corrections Commission could approve new or revised regulations.* Effective management of the new Department of Correctional Services will require new

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<sup>35</sup> California Government Code, Sections 11346.2 and 11346.3

<sup>36</sup> California Government Code, Section 11346.4

<sup>37</sup> California Government Code, Sections 11346.8 and 11346.9

regulations and revisions to old regulations. The new department can accomplish this more quickly and still provide public input by using the Civilian Corrections Commission to approve regulations. As discussed in more detail in Chapter 1 of this report, *A Reorganization Plan for Corrections*, the Commission will hold periodic public meetings at which appropriate consideration and public comments will be accepted regarding any proposed changes to the internal management of the Department of Correctional Services. This new process will allow the department to revise regulations in a timely manner in adherence to the evolving standards of conditions of confinement and relevant court orders. (See the appendix to this report for proposed statutory changes in this regard.)

## Recommendations

The Corrections Independent Review Panel recommends the following actions be taken:

- Establish an Office of Risk Management in the new Department of Correctional Services
- Establish a position for the Deputy Secretary of this office.
- Establish an executive-level Risk Management Committee.
- Establish a Risk Management sub-committee in each region.
- Establish a Risk Management Coordinator position at each institution.
- The Secretary of the Department of Correctional Services should develop an annual risk management plan that will provide specific risk management objectives for the department during the next year.
- The Office of Risk Management should approve the type of standardized risk management statistical data collection that is compiled and evaluated monthly by the Regional Directors.
- The executive level Risk Management Committee should meet regularly to evaluate risk factors of employee performance and institutional operations.
- The executive level Risk Management Committee should recommend to the Secretary a system for disseminating “lessons learned” that could play a significant role in the department’s risk management efforts.
- The Secretary of Correctional Services should receive quarterly risk assessment reports from the Directors of Youth and Adult Operations to assist with planning and strategy development to prevent adverse fiscal impact to the department.
- The Directors of Youth and Adult Operations should convene monthly meetings

with their respective Regional Directors to discuss performance issues and risk prevention measures.

- The Regional Directors should review the monthly operational performance of their respective subordinate administrators based on department risk management statistical data and provide direction and guidance to subordinate managers.
- Youth superintendents, regional parole managers, and prison wardens should conduct monthly meetings with their respective staffs to discuss performance issues and risk prevention strategies.
- The new department should establish an operational memorandum of understanding with the Office of the Attorney General.
- The Deputy Secretary of Risk Management and the Chief Assistant of the Attorney General's Office should meet monthly to discuss the status of litigation cases.
- The new department should revise the California Code of Regulations to identify specific types or issues of appeals that can and cannot be filed at the next level after an appeal is denied.

The Office of Risk Management should do the following:

- Develop clear and concise regulations that require wardens, parole administrators and executive staff to be interactive in the appeals/grievance process as a risk management function.
- Develop a training program that provides guidance to Inmate Appeals Branch examiners and Institution/Regional Parole Appeals Coordinator in how to appropriately and accurately respond to inmate and ward appeals.
- Revise regulations and policy to mandate that inmate/parole appeals related to medical/dental/mental health care and treatment be responded to by licensed medical staff at each level of appeal review.
- Develop a networked system-wide appeals database via improved information technology.
- Propose legislative changes to the California Government Code to eliminate the applicability of the Administrative Procedures Act to the new Department of Correctional Services.
- Revise the California Department of Corrections Operations Manual, Section 12010 to streamline the internal regulation and procedure revision process.

## Improving Health Care Services

The administration of health care for state prison inmates has been criticized in recent years for providing inadequate health care, not complying with and resolving ongoing federal litigation, and not managing its budget. As a result, instead of improving and optimizing its health care system on its own, the Department of Corrections has been forced to act via multiple federal court orders.<sup>38</sup> Meanwhile, the department's annual health care budget has rapidly escalated to \$1 billion in the past five years. Effective plans to address or control the federal court's concerns about quality and accessible care and the rising costs remain elusive. In the words of one critic, "*there is no evidence that a health care system exists.*"<sup>39</sup> Similar concerns have been expressed about the health care services provided to wards at the California Youth Authority.<sup>40 41</sup> Litigation against the California Youth Authority, *Farrell v. Harper*, also concerns health care services. A settlement in that case is pending and is expected to include extensive requirements for the reform of health care and other services in California Youth Authority institutions.

The Corrections Independent Review Panel recommends that the new Department of Correctional Services create an Office of Health Care Administration that will oversee an orderly transition from the current health care system to one that is largely operated by contracted health care providers. Because this transition would take place in phases over several years, the panel recommends that the new Department of Correctional Services initiate discussions with the University of California for the development of a pilot project to improve correctional health care delivery and determine the potential for a single source health care provider. In addition, the new Office of Health Care Administration should initiate interim contracts with other private health care providers. Lastly, the panel recommends that the new department obtain accreditation for its health care programs, take steps to resolve a chronic nursing shortage, improve pharmacy services, and delegate responsibility for seriously mentally ill inmates and wards to the Department of Mental Health.

### Fiscal Impact

Following implementation of the panel's recommendations, the budget from the Health Care Services Division would be combined with the Youth Authority's health care budget to form the total health care budget for the new Department of Correctional Services. This combined budget must remain in place to support the panel's transitional and long-term recommendations and allow the recommendations to be fully implemented. As efficiencies generate cost savings, the savings should be invested in information technology infrastructure, electronic medical records, telemedicine capabilities, contracts with community providers and personnel training and education.

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<sup>38</sup> *Armstrong, Coleman, Clark, Madrid, and Plata*

<sup>39</sup> Dr. Louis Vismara, Consultant to the Senate Rules Committee, interview May 4, 2004.

<sup>40</sup> Patterson and Trupin, "Report of Findings of Mental Health and Substance Abuse Treatment Services to Youth in CYA," December 2003, pgs. 10, 13-16,

<sup>41</sup> PUISIS & LaMARRE, "Review of Health Care Services in the California Youth Authority (CYA)," August 22, 2003. Pgs 42-58.

## Background

The provision of health care in the Department of Corrections by its current method has resulted in cost increases from \$566 million in fiscal year 1999-00 to \$879 million in fiscal year 2002-03.<sup>42</sup> The per inmate per year cost for health care provision has escalated from \$3,521<sup>43 44</sup> in fiscal year 1999-00 to \$5,461 per year or \$14.96 per day in fiscal year 2002-03.<sup>45</sup>

*Health care services are provided to inmates and wards by a variety of staff.* Doctors, nurses, psychiatric technicians, psychiatrists, social workers, psychologists, dentists, dental assistants, laboratory technicians, radiological technicians, and medical technical assistants are the primary providers of health care. Inmate medical care that cannot be provided in one of the four prison hospitals or sixteen correctional treatment centers (step-down facilities) is provided by local community hospitals, usually under a negotiated contract rate. Specialty medical services such as dermatology and orthopedics, when not available within the department are also contracted with local providers. As oversight to this, the current Department of Corrections Health Care Services Division provides direction on policy and clinical operations to each prison. The Health Care Services Division is also responsible for contract management, utilization of services, and all clinical aspects of litigation compliance.

A similar system exists in the California Youth Authority. The Youth Authority is gradually evolving towards a health care service delivery system comprised of correctional treatment centers, intermediate care facilities, intensive treatment programs, specialized behavior treatment programs, specialized counseling programs, sex offender programs and outpatient housing units.

*Class action lawsuits.* The Department of Corrections is currently involved in multiple class-action lawsuits, the two most prominent of which are *Coleman v. Wilson* and *Plata v. Davis*. The *Coleman* case went to trial and the federal court ruled that the department was “deliberately indifferent” to the mental health needs of seriously mentally ill inmates. The department in this case has been under federal court monitoring by a special master since 1995. The *Plata* class action case alleged constitutional violations in the provision of medical care to all inmates. This case was resolved with a settlement agreement that requires the department to establish and implement system-wide standards of medical care on an eight-year implementation schedule that began in 2003. Reaching compliance with the results of these primary cases promises to be a long and costly effort.

*Costs for contracted health care and pharmacy services are out of control.* The Health Care Services Division is responsible for medical contracts with community hospitals and pro-

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<sup>42</sup> Department of Corrections, Health Care Services Division report provided by Lindsay Grater, April 26, 2004.

<sup>43</sup> *Ibid.*

<sup>44</sup> Population data from <http://www.corr.ca.gov/OffenderInfoServices/Reports/Projections/S00Pub.pdf>

<sup>45</sup> Population data from <http://www.corr.ca.gov/OffenderInfoServices/Reports/Projections/F03pub.pdf>

viders for health care that is not provided by the department. An April 2004 Bureau of State Audits report stated that the department does not negotiate for the best rates, that staff is untrained in contract negotiation, and that medical contract costs are rising.<sup>46</sup>

Similarly, pharmacy costs have been rising. In July 2003, the Office of Inspector General conducted a survey of the pharmaceutical expenditures of the department. The survey revealed that despite a two percent decrease in the inmate population between fiscal years 1999-00 and 2002-03, the department's pharmaceutical expenditures increased 111 percent, from \$63 million in 1999-00 to \$133 million in 2002-03. During the same period, the national consumer price index for pharmaceutical drugs increased only 22 percent. California's prison population is comparable in size to those of the Federal Bureau of Prisons and the Texas state prison system, yet costs have increased at a much faster rate.<sup>47</sup> In Texas, pharmacy costs were approximately \$39.9 million in 2001 and decreased in 2002 to approximately \$36.2 million.<sup>48</sup>

### **The Office of Health Care Administration**

The Corrections Independent Review Panel recommends that the new Department of Correctional Services create an Office of Health Care Administration to replace the extensive organization currently in place in the Department of Corrections. This new office will include a headquarters office, comprised of several senior project or program managers experienced in health care, to manage a series of individual provider contracts. The panel recommends a similar management structure in each of the eight regions (six adult and two youth) to provide local health care contract management. These regional managers would participate in the development of a statewide contract management plan with the headquarters staff and would receive contract management training prior to assuming duties in their assigned regions. The Office of Health Care Administration would become primarily a policy and management oversight organization under the direction of an experienced health care administrator and would rely on other parts of the new department, such as fiscal and risk management, for support.

In addition to administering and managing the individual provider contracts, the Office of Health Care Administration will develop major policies concerning the primary programs of medical, mental health, public health, dental, and quality management. Also, it will oversee the implementation of these policies by the specific program and contract managers in each of the eight regional offices of the new department. Each local manager would be assigned responsibility for one of these primary programs in their region. The administration of policy in the primary programs may be carried out through a committee structure in the central office and in the regional offices.

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<sup>46</sup> California Bureau of State Audits, "CDC: Needs to Better Ensure that it Obtains Medical Services Contracts that are in the State's Best Interest and its Payments are only for Valid Medical Claims," April 6, 2004.

<sup>47</sup> Office of the Inspector General, "Survey of Pharmaceutical Expenditures," p. 3, July 2003.

<sup>48</sup> PowerPoint presentation provided by E.J. Pedersen, President, University of Texas Medical Branch, Texas Department of Criminal Justice, "What is Correctional Managed Care?," May 26, 2004.

The new Office of Health Care Administration will eventually replace the existing Health Care Services Division. Many of the Health Care Services Division's current functions will be shifted to other units of the new department and to the various contracted service providers. (See Table 4)

*Experienced, qualified managers will likely require higher salaries.* One problem the new office will face is obtaining managers with the necessary skills and experience to effectively administer service provider contracts. A survey of salaries will be necessary to determine the level of pay necessary to acquire the managers needed to operate the new system of health care. These managers will work at all levels: central office, regional offices, and local institutions. If the recommendations made by the panel are to be successful, the new department must attract project managers who are well-versed in health care issues, contract negotiation, and managing contractors across a state as large as California.

In addition to being challenged to obtain experienced and qualified managers, the new Department of Correctional Services must also address employee recruitment and retention problems within its existing health care system. Even though the panel's recommendations may eventually lead to private or university-managed health care services, it may be several years before the recommendations are fully implemented. Meanwhile, there are many types of health care practitioners that the department has difficulty retaining. These include nurses, physicians, psychiatrists, psychologists, and pharmacists.

It is currently so difficult for the department to recruit and retain individuals from many of these professions that it frequently uses registries – a form of “temporary” employment agency for health professionals – to fill vacant positions. This is a costly solution for two reasons. First, because the registries charge “market” rates plus an overhead fee for these practitioners, the hourly rate is much higher than what the department currently pays its employees. Second, registry staff is unfamiliar with the department's practices and procedures, may prescribe more costly treatment and therefore require greater supervision. To remedy this problem, the new department should also conduct a survey of salaries for these professions and seek appropriate salary adjustments where justified.

*Establish a correctional health care advisory group.* This group will provide consultation on policy and direction to the Office of Health Care Administration for the development of an integrated system of health care. The state of Florida has instituted a group of advisors that provide independent oversight and review of all health care operations.<sup>49</sup> The new department should endeavor to establish a similar advisory group. This group will provide objective data and opinion on correctional health care, educating both internal and external staff regarding the trends in the correctional health care specialty. This group will make recommendations to the Secretary of Correctional Services for all aspects of health care in

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<sup>49</sup> Florida Corrections Commission, 1995 Final Report retrieved online from <http://www.fcc.state.fl.us/fcc/reports/final95/health.html>

the new department. In addition, the inclusion within this advisory group of the primary clinical directors of the health services and mental health departments can serve to assist in addressing public health needs and mental health treatment.

To fully implement the panel's recommendations, the Office of Health Care Administration will need to use a phased approach – a series of simultaneous activities designed to complete the overall management structure for the new system of health care. These tasks together form a three-phase plan where each phase is in transition until all health care is provided by a single-source contractor. The first phase involves creating the new organizational structure for the Office of Health Care Administration. The second phase transitions the current health care provision by state employees into one in which certain health care services are contracted with several different providers. During this transitional period, certain improvements will be necessary because they cannot wait until the final phase is fully implemented. This includes obtaining accreditation for the medical facilities, reducing pharmacy costs, improving mental health services, and recruiting more nurses. In the third phase, the panel recommends that the new Department of Correctional Services develop a relationship with the University of California to address various options, including management or provision of health services within current department institutions.

This entire three-phase implementation will be overseen by the central office staff and the local program managers within the Office of Health Care Administration and will be managed simultaneously. (Note: program managers must be experienced managers who may be but are not expected to be clinicians.)

### **An Interagency Agreement with the University of California**

The panel looked at the best practices from other state correctional departments as possible solutions. A few states have contracted with their state universities to provide all health care for their correctional departments. Other states have contracts with private companies to provide management only or management and staffing for inmate health care. Still others have a combination of both contracts with private companies and a contract with state universities. As recommended earlier, the Department of Correctional Services must develop both an immediate plan and a long-term plan to streamline and improve the delivery of health care. The panel recommends developing an interagency agreement with the University of California that would include addressing the goal of producing the long-term solution.

*Explore an interagency agreement with the University of California.* The panel discussed with University of California officials the concept of developing an interagency agreement for certain aspects of health care services throughout the prisons and youth institutions.<sup>50</sup> The initial task for the new Department of Correctional Services is to enter into discussions

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<sup>50</sup> Meeting with Dr. Michael Drake, Vice President of Health Affairs, University of California, Oakland, California, May 3, 2004,

with the university about the university's ability to provide advice and consultation on approaches to improve the efficiency and efficacy of health care. University officials expressed willingness to meet with the new department to discuss potential levels of university participation.

These levels of participation may include one or more of the following:

- On-going advice and consultation by university faculty experts.
- Membership of university officials on committees or panels pertaining to correctional health care services and policies.
- Contracting with university campuses to provide specialty services (such as telemedicine).
- University faculty or staff providing a range of health care services at the institutions of the new Department of Correctional Services.
- Establishment of a pilot project to provide health services involving one or more institutions with potential expansion of the pilot project in future years.

*Other states are using contracts with universities and private providers.* For example, the Texas Department of Criminal Justice improved access to care, improved chronic care compliance, and saved dollars by contracting with the University of Texas Medical Branch.<sup>51</sup> In 1993, the 73<sup>rd</sup> Texas Legislature established a committee called the Correctional Managed Health Care Committee to develop a managed health care plan for the entire Texas Department of Criminal Justice system. The committee developed and implemented plans leading to the university system assuming responsibility for all health care for inmates. The Texas State Comptroller has estimated that this program has produced an overall cost savings of \$125 million in the first five years despite the fact that the prison population has doubled during that same period.<sup>52</sup>

In addition to Texas, the Ohio Department of Corrections reports decreased costs and increased quality through its contractual agreement with Ohio State University. Before contracting with the university, corrections contracted with local hospitals and had little success negotiating best rates. Now Ohio gets Medicaid rates for inpatient hospitalizations and Medicare rates for specialty services from the university.<sup>53</sup> This has led to major cost savings for the department.

In total, thirty-eight state corrections departments have employed some form of privatization of healthcare.<sup>54</sup> In addition to Texas and Ohio, Arizona, Iowa, Massachusetts,

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<sup>51</sup> University of Texas Medical Branch, Ben Raimer, MD, "Correctional Health Care in the Texas Department of Criminal Justice", 2002, p. 1

<sup>52</sup> Government West, "Correctional Health Care In the Texas Department Of Criminal Justice", online [http://www.govwest.com/correctional\\_hear.asp](http://www.govwest.com/correctional_hear.asp)

<sup>53</sup> Telephone interview with Kay Northrup, Deputy Director of Health Care, Ohio Department of Corrections, Columbus, Ohio, April 16<sup>th</sup>, 2004.

<sup>54</sup> National Institute of Corrections, "Corrections Agency Collaborations with Public Health", p.2-3. September 2003.

and Connecticut have formed contracts with university providers to provide much or all of the inmate health care services. Other states may have a partial contract with a university hospital or a private vendor. A contract with university systems and/or private contractors allows the correctional staff to focus on what they know best, custody operations, and allows health care experts to provide health care.

***Support for university-provided health care to inmates and wards.*** There is support in the community and the literature for university-provided health care to inmates and wards. In 2001 the California Policy Research Center sponsored a research by University of California, Santa Cruz, Professor Nancy Stoller, to look at access to care issues for women prisoners in California. Dr. Stoller found that the primary problems in the four women's prisons centered on access to care, inadequate management, dependence on medical technical assistants who have a dual and sometimes conflicting role of custody and medical care, and lack of accreditation for the health care programs.<sup>55</sup> The report of that research recommends that clinical services be provided by an independent, non-profit agency, such as the Department of Health Services or the University of California. Dr. Stoller concluded that the advantages of using a university are improved access to care, prestige for the services provided, increased inmate confidence in health care providers, in-depth experience, opportunities to teach interns and residents from the medical school about inmate care, medical ethics and increased opportunity for current on-going education for staff,<sup>56,57</sup> but notes there are some potential problems that statewide provision of services would present for the University of California.<sup>58</sup>

Donald Specter, Director of the Prison Law Office in San Francisco, who has brought several health care-related cases against the department, also suggests the idea of contracting health care services from the University of California.<sup>59</sup>

***Key logistical issues require further study.*** An accurate assessment of the costs of operation for the institutions in a potential University of California "pilot region" is essential in order to establish a cost base for the agreement, along with a clear delineation of the scope of services to be provided. In order to facilitate an interagency agreement, a specific description of needed expertise, consultation, or any other potential assistance should be established by a special task force of health care, custody, financial and other managers (potentially including university managers). This would serve as a basis to discuss a pilot project that would be of benefit to both parties.

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<sup>55</sup> Stoller, Nancy, "Improving Access to Health Care for California's Women Prisoners" California Program on Access to Care, (Santa Cruz, 2001) The views and recommendations in this report are those of the author and do not necessarily represent those of the California Policy Research Center or the Regents of UC.

<sup>56</sup> *Ibid.*

<sup>57</sup> Telephone interview with Nancy Stoller, Professor of Community Studies, UC Santa Cruz, Santa Cruz, California, May 7, 2004.

<sup>58</sup> *Ibid.*

<sup>59</sup> Interview with Donald Specter, Prison Law Office, Sacramento, California, April 16, 2004.

*Upon full implementation, the Office of Health Care Administration's functions change.*

The evolving relationship between the department and the contracted health care is expected to require eventually only policy, liaison, and oversight functions to be carried out by the Office of Health Care Administration. In summary, the restructuring of correctional health care results in a relatively small central office headed by an experienced health care administrator, supported by a group of program managers providing policy, oversight, and contract management of a full range of private provider health care services. The system of care that is to be developed would be in transition for a period of up to five years, in which time the pilot project of the University of California could expand. Litigation management is retained within the department pending the dismissal of the lawsuits during this period.

During this transition period, there are several improvements – discussed in the next section – to the health care system that the Office of Health Care Administration must address. These cannot wait until the university pilot project is fully implemented.

### **Interim Contracts and Other Improvements**

While the new Office of Health Care Administration pursues the panel's primary recommendation for a university-managed health care system, it must simultaneously develop contracts for health care services elsewhere in the state. In addition, the department's health care system will continue to need improvements in mental health services, pharmacy services, accreditation of treatment facilities, and nursing recruitment.

*Contracted health care services.* Simultaneous with a pilot project developed in conjunction with the university, the new office of Health Care Administration must also develop contract management and direct provision of health care services for regions of institutions that are not included in the initial pilot project. The office should develop these contracts with active consultation with university representatives, who could assist in selecting providers and scopes of service as a means of preparing a foundation for expansion of the university pilot program into other regions. Necessary contracts should be developed as independent, related functions and would include: mental health services, medical primary care, medical specialty care, community in-patient care, pharmacy (procurement, inventory management, prescriptions and dispensing management), dental care, utilization management, invoice review and approval, ancillary services, clinical registries and a re-emphasis of the responsibility of the Department of Mental Health for mental health services for adult inmates and wards.

The use of contracted health care providers is intended to address deficiencies in health care services identified by the courts in the *Coleman* and *Plata* cases rather than asserting that specific cost savings may be obtained through this method. However, it is clear from these two cases that the management of health care and the qualifications of many of the clinicians providing it need improvement. Experts in both of these cases have expressed major concern and frustration over the inability of the current medical and psychiatric staff

to comply successfully with the established policies and the court's orders.<sup>60</sup> Under proper, qualified management, use of private providers of discrete sets of services has the potential to improve this situation. Moreover, the use of contracted providers is recommended as a transitional strategy pending the development and outcomes of the initial pilot project.

***Mental health services.*** In part because of litigation, the need for mental health services has rapidly increased within the Department of Corrections over the past few years. Mental Health Services are provided to approximately 17 percent of the current inmate population. Despite the *Coleman* litigation, which required the department to meet its constitutional obligation and seven years of monitoring by a court-appointed special master, the department has not been able to resolve this case. As a result of the *Coleman* litigation, the department established a decentralized system of mental health care.

Similar mental health service problems exist within the California Youth Authority, which has been described as having a patchwork of specialized mental health programs unique to their respective institutions with differences in staffing, operating procedures, and physical resources.<sup>61</sup> A December of 2003 report of findings of mental health treatment services in youth facilities, conducted by two subject matter experts, was highly critical of the department's programs and services. The report found that:

*Mental health care provided by the CYA is not adequate and does not conform to community standards or to the professional standards identified....and that....the vast majority of youths who have mental health needs are made worse instead of improved by the CYA correctional environment.*<sup>62</sup>

One possible solution to the gap in mental health services is to clarify the role of the Department of Mental Health, which is mandated by law to provide for the needs of the mentally ill population within California. For the prison population, the Department of Corrections is required to negotiate agreements with the Department of Mental Health to provide mental health services for inmates on a limited and contractual basis. The Department of Mental Health acts as a "gate keeper" and determines which inmates it accepts into Department of Mental Health facilities based on various inmate characteristics and behaviors. Additionally, the Department of Mental Health has the authority to return any inmate it believes is a danger to its staff.

Because the Department of Mental Health is the unquestioned state expert in providing care for seriously mentally ill patients, the panel recommends that it not be allowed the

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<sup>60</sup> Dr. Jeffrey Metzner, court appointed expert in *Coleman*; and Dr. Ronald Shansky, medical expert in *Plata*, April 2004.

<sup>61</sup> California Youth Authority, Statewide Health Care Program, Kip Lowe, Deputy Director, Health Care Services, April 2004.

<sup>62</sup> Report of Findings of Mental Health and Substance Services to Youth in (CYA) facilities, Eric Trubin, Ph.D and Raymond Patterson, M.D., December 2003.

option of rejecting inmates referred by the new Department of Correctional Services. Instead, the Department of Mental Health should be designated by statute to provide mental health services for state prison inmates at the “enhanced outpatient” and “inpatient” levels of care. (Enhanced outpatient care refers to inmates who require a structured housing unit and weekly clinical staff contact in order to function within the prison setting. Inpatient care refers to those inmates who are a danger to themselves or others because of a mental illness and need inpatient care with 24-hour nursing support.) The budget of the Department of Correctional Services can be adjusted to delegate funds to the Department of Mental Health for this care.

*Pharmacy services.* Although the panel recommends that the department negotiate an agreement with the University of California under which the university would eventually provide or oversee the provision of pharmacy services, there are several improvements that the new department should initiate immediately. The department should change the pharmacy program structure from a decentralized system with pharmacies in each institution to a system with two or three regional pharmacies or one large central pharmacy, consistent with the model used in other states.<sup>63</sup> During the period that it takes for the transition plan, the new department will need to contract with a professional pharmacy benefits manager to provide consistent pharmacy management services throughout the state. According to a report by Fox Systems Inc., a consulting firm retained by the Department of Corrections in 2001, that change would provide the following benefits:

- Allow more efficient operations and possibly the use of automated dispensing machines.
- Increase buying power of pharmaceuticals to negotiate for best price.
- Increase standardization of operations and prescribing practices.
- Reduce the impact of staff turnover and vacancies in rural areas where pharmacist recruitment is difficult.
- Reduce prescription errors.<sup>64</sup>

In addition to a centralized pharmacy, the new department must develop new pharmacy software to streamline the procurement and dispensing process. Currently, each institution maintains its own independent pharmacy database using the Pharmacy Prescription Tracking System, a badly outdated 20-year old information system that lacks the capability to perform functions needed to control costs, prevent drug waste, fraud and abuse and is not linked with other institution pharmacies.<sup>65</sup>

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<sup>63</sup> Fox Systems, Inc. Health Care Services Division Pharmacy Services; Current Pharmacy Services Process. November 6, 2001.

<sup>64</sup> Fox Systems, Inc. Health Care Services Division Pharmacy Services; Alternatives for Improvement December 20, 2001.

<sup>65</sup> Office of the Inspector General. “Survey of California Department of Corrections Pharmaceutical Expenditures,” July 2003.

***Better coordination in transporting inmates who require medical services.*** The department incurs significant overtime costs to transport inmates to medical services. In addition, delays in accessing medical services are attributable to transportation problems. A general inability to make these transfers on a timely basis is one of the major ongoing concerns of the *Coleman* special master. To mitigate these problems, the department should develop a training process for non-clinical institution staff that educates them about the requirements for access to care within the institutions and the custody administration's responsibilities for this function. A "health care transport team" would assure prompt and efficient transportation of inmates and wards to necessary health care appointments or admissions outside of the institutions. This team would be responsible for health care transports only.

***Statutory changes required.*** Changes in state law are needed to support the application of the recommended contracting process. Current California law has specific guidelines for civil service employees and contract employees. In order to provide authority for the contracts that are required in this recommendation, contract language needs to conform with the exceptions to the civil service requirements for use of state employees. One or more of these exceptions can be utilized in the transitional organization, especially the one permitting temporary pilot projects: all private provider contracts need to be so characterized, or the exception for costs savings. Additional authority should not be needed for contracting with the university. (See the appendix to this report for recommended statutory changes.)

***Nursing recruitment and retention.*** Similar to the proposed improvements to the pharmacy services, certain nursing problems need correcting. The nursing shortage in California and the nation are reaching all-time highs.<sup>66</sup> This has severely affected the Department of Corrections. Currently the department has 244 vacant registered nurse positions, which is a 22 percent vacancy rate statewide. Some institutions with a large medical mission have up to a 50 percent vacancy rate.<sup>67</sup> One idea is to link graduating nursing students with a correctional nursing clinical experience. This would move the eligible candidates closer to the actual vacancies and increase the success of filling vacant positions.

Another method the department could use to reduce its nursing shortage would be to develop a nursing student sponsorship "20/20" program, similar to one that has been successfully used in the Department of Mental Health. (In that program, the Napa State Hospital and Napa Community College have a cooperative agreement.) In the 20/20 program, nursing students are hired into a full-time job and would work 20 hours for the new Department of Correctional Services while attending college in an accredited nursing program. The students would be required to sign an agreement to work full-time for the department following completion of the nursing program for the same period of time that

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<sup>66</sup> Keating, S. & Sechrist, K. "The Nursing Shortage in California: The Public Policy Role Of The California Strategic Planning Committee For Nursing". Online at [http://www.nursingworld.org/ojin/topic14/tpc14\\_2.htm](http://www.nursingworld.org/ojin/topic14/tpc14_2.htm)

<sup>67</sup> California Department of Corrections, Director's Monthly Report, April 2004, provided by Richard Curtis, R. N. Recruiter, Selections and Standards Division, Sacramento, California.

they were sponsored. This becomes a training/internship program for future civil service nurses, creating a nursing “pipeline.”

One possible source for the nursing students in a 20/20 program would be medical technical assistants or psychiatric technicians currently working for the Department of Corrections or the California Youth Authority who apply for and are accepted into an accredited registered nursing program. Nursing students who do not currently work for the department could also apply for sponsorship. Positions for these sponsorship nurses could come from existing registered nurse vacancies.

The 20/20 sponsorship program would assist the department in meeting the nursing shortages by providing a means of achieving career goals of qualified employees and supplying a future pool of nurses.

**Registry services.** The various nursing registries with which the Department of Corrections presently contracts are not meeting all of the department’s needs. In fiscal year 2000-01 the department spent approximately \$6.1 million for approximately 48,600 nursing hours needed to fill staff vacancies. Registry nurses may work one day for the department or several months filling in for staff vacancies, medical leave, and sick days. The state currently contracts with several different registries. The registries charge differing rates and may have different levels of expectations for the nurses they hire, resulting in inconsistent services to the department. To resolve this problem, the Office of Health Care Administration should develop a regionalized approach to registry services. One possibility for help in developing a nursing registry would be to partner with the Foundation for California Community Colleges, a non-profit corporation that is an official auxiliary organization of the Board of Governors of the Community Colleges. The foundation provides management services that bring together cost-effective solutions for government agencies and ongoing benefit for the community college system.

**Accreditation for health care programs.** As has been discussed elsewhere in this report, the Department of Corrections is involved in a class action lawsuit, *Coleman v. Wilson*. In that case, the court concluded that there were system-wide deficiencies that demonstrated the prison’s “deliberate indifference” to inmate mental health needs. The court concluded its findings by ordering the Department of Corrections to implement various forms, policies, standards, consulting experts, procedures and regulations to improve the situation.<sup>68</sup> In order to prevent the implication of deliberate indifference, a department must know what the problems in the department are and take action to correct them. To accomplish this, many correctional departments across the United States seek outside recommendations as an additional means of monitoring their health care programs, keeping up to date on best practices, and getting an independent look at their health care operations. This type of scrutiny is provided by seeking accreditation for each institution.

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<sup>68</sup> *Coleman v. Wilson*, U.S. District Court, Eastern District of California.

Accredited institutions have a stronger defense against litigation because seeking accreditation indicates an interest in problem identification and improving the practices of the health care program. Accreditation also assists an institution in identifying processes that are working well. It also improves staff morale, as staff feel a sense of professionalism when their institution is given accreditation and deemed “among the best” in the nation.<sup>69</sup> Accreditation also gives the institution a set of industry standards from which to coordinate internal processes and policies. Finally, accreditation would link California with many other states to identify and share best practices.

Accreditation also makes good sense from a risk management perspective. Accreditation standards have helped the nation’s correctional facilities improve the health of their inmates, provide efficient, effective care, improve program effectiveness, and reduce the risk of litigation and inmate complaints. There are several options available for seeking accreditation.

The California Medical Association has been providing accreditation to detention facilities since 1979. The program is operated through the association’s Institute for Medical Quality branch.<sup>70</sup>

The National Commission on Correctional Health Care and the American Correctional Association has published national standards for accreditation of institutions. Both are respected entities, experienced in corrections. The commission focuses solely on health care in prisons and has developed extensive experience with prison health care programs.<sup>71</sup>

The new Department of Correctional Services should seek accreditation after the implementation of the new contracted medical services.

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<sup>69</sup> Interview Ronald Shansky, MD., Board Member National Commission on Correctional Healthcare and California Department of Corrections consultant for Plata settlement, March 15, 2004.

<sup>70</sup> California Medical Association, Website, [www.cmanet.org](http://www.cmanet.org) accessed May 12, 2004.

<sup>71</sup> Stoller, Nancy “Improving Access to Health Care for California’s Women Prisoners” California Program on Access to Care, Santa Cruz, 2001. p. 12.

## Recommendations

The new Department of Correctional Services should take the following actions:

- Establish an Office of Health Care Administration.
- The objective of the new Office of Health Care Administration should be to establish a new system of health care based on managed care practices.
- Establish a top level health care administrator to manage the Office of Health Care Administration, and support this position with experienced program managers, resulting in a new, streamlined central office function.
- Establish program managers at the regional level to manage local health care service delivery.
- Conduct a salary survey to demonstrate the salary levels required in order to obtain the experienced managers needed to manage this complex process.
- Utilize the Litigation Management section of the Risk Management Unit of the new department to provide monitoring and implementation of court-ordered requirements.
- Establish an agreement with the University of California for the development and operation of a pilot project at a defined group of institutions. This project needs to be managed strategically with the goal of expanding it to the entire health care system of the new department.
- Provide a transitional organization that will establish contracted health care services at the regional and local level in areas where the university pilot project is not yet operational.
- Establish a management group with members from the new department with university involvement to plan and implement the transition from current operations to the new planned health care provision.

The new Office of Health Care Administration should take the following actions:

- Utilize private health care providers for management and provision of all health care direct services by clinical specialty: one contractor to provide for mental health services, medical primary care, medical specialty care, community hospital in-patient care, pharmacy, dental services, utilization management, invoice control, laboratory and x-ray, and necessary clinical staff registries.

- Purchase and implement a statewide pharmacy database system .
- Transfer responsibility to the Department of Mental Health for mental health care of seriously mentally ill inmates and wards.
- Ensure that the private health care provider contracts are managed specifically by designated, experienced program managers in the regions, overseen by program managers in the new central office.
- Provide specialized training for custody administration on their responsibilities for assuring inmate and ward access to health care within the institutions. This is an especially critical component when contracted entities will provide direct services.
- Establish dedicated “health care transportation teams” to transport inmates and wards who require higher levels of care provided outside of the institutions.
- Establish a Correctional Health Care Policy Advisory Committee that includes representation from the University of California, the health care community, and state health officials.
- Develop a relationship with the Foundation for California Community Colleges and community college registered nursing programs to facilitate recruitment of nurses into the new Department of Correctional Services.
- Develop an interagency agreement with the Foundation for California Community Colleges to provide services for developing and operating a sponsorship program or “20/20” program at several institutions to sponsor nursing students in these community colleges.
- Utilize the institutions as clinical sites for local community college nursing programs.
- Contract with the Foundation for California Community Colleges to develop a regional registry of nursing services through a Foundation for California Community Colleges “cooperative purchase contract” with a qualified vendor(s).
- Require health care programs at each institution to achieve and maintain accreditation by a nationally recognized correctional entity.

**Appendix**

**TABLE 1  
Accountability Models Used by Various Organizations**

<b>Organization</b>	<b>Accountability Model</b>	<b>Total Employees</b>	<b>Inmate Population</b>	<b>Prisons/ Jails</b>
Federal Bureau of Prisons	*Results-Based	33,000	130,000	100
Texas Department of Criminal Justice	*Results-Based Success Through Active and Responsible Supervision (STARS)	25,000	144,500	60
Florida Department of Corrections	Results-Based Environmental Health & Safety Manual	25,000	80,000	54
Los Angeles County Sheriff's Department	Results-Based Sheriff's Critical Issues Forum (SCIF)	12,000 (7,000 sworn)	19,000	8
Washington State Department of Corrections	*Results-Based	9,100	15,000	13
New York City Corrections Department	Results-Based **TEAMS	11,000	14,000	15
Los Angeles Police Department	Results-Based **COMSTAT (Computer Statistics)	13,000 (9,100 sworn)	Not applicable	12
California Highway Patrol	***Results-Based Command Assessment Program	10,000 (7,000 sworn)	Not applicable	0

\*Source: Correctional Forum Panelists (John Vanyur, Federal Bureau of Prisons, Gary Johnson, Texas, Joseph Lehman, Washington State), April 27, 2004.

\*\*LAPD's Computer Statistics (COMSTAT) was inspired by New York City Department of Correction's Total Efficiency Accountability Management System (TEAMS).

\*\*\*Interview with Assistant Chief Ed Fincel, California Highway Patrol, May 5, 2004.

**TABLE 2**  
**Summary of appeals completed and granted by fiscal year**  
**for each level of appeal review**

Fiscal year	1 <sup>st</sup> Level			2 <sup>nd</sup> Level			3 <sup>rd</sup> Level		
	Completes	Granted	%	Completes	Granted	%	Completes	Granted	%
1998-1999	51717	21924	42.4	28346	9221	32.5	9214	677	7.3
1999-2000	59852	26577	44.4	30012	10780	35.9	7108	688	9.7
2000-2001	65496	29518	45.1	34951	12503	35.8	10628	769	7.2
2001-2002	66885	30548	45.7	36054	13601	37.7	19846	707	3.6
2002-2003	66126	30549	46.2	36643	13877	37.9	14104	511	3.6

**TABLE 3**  
**Summary of top three categories of appeals and the percentage**  
**it represents of the total number of appeals completed**  
**at each level of appeal review by fiscal year**

Fiscal year	1 <sup>st</sup> Level			2 <sup>nd</sup> Level			3 <sup>rd</sup> Level		
	Category	Number	% of total	Category	Number	% of total	Category	Number	% of total
1998   1999	Property	8690	16.8	Discipline	7800	27.5	Discipline	2378	25.8
	Staff	7520	14.5	Staff	3272	11.5	Staff	1170	12.7
	Medical	7246	14.0	Medical	3047	10.7	Medical	962	10.4
1999   2000	Property	8990	15.0	Discipline	7300	24.3	Discipline	1493	21.0
	Medical	8289	13.8	Medical	3554	11.8	Staff	1102	15.5
	Staff	8039	13.4	Staff	3407	11.4	Medical	805	11.3
2000   2001	Property	10291	15.7	Discipline	8395	24.0	Discipline	2108	19.8
	Medical	8952	13.7	Medical	4361	12.5	Staff	1219	11.5
	Staff	8709	13.3	Staff	3902	11.2	Medical	1139	10.7
2001   2002	Property	9632	14.4	Discipline	8092	22.4	Discipline	3759	18.9
	Medical	9176	13.7	Medical	4412	12.2	Staff	3119	15.7
	ADA	7835	11.7	Staff	3981	11.0	Medical	2581	13.0
2002   2003	Medicine	10226	15.5	Discipline	8021	21.9	Discipline	2300	16.3
	Property	9228	14.0	Medical	5122	14.0	Staff	2092	14.8
	ADA	8510	12.9	Staff	4008	10.9	Medical	1975	14.0

**TABLE 4  
Current Health Care Services Division functions that will move  
to the new Department of Correctional Services**

<b>Current functions</b>	<b>Transfers to the New Department of Correctional Services:</b>
Information Systems	Office of Information Technology
Policy and Planning Coordination	Policy Unit, Office of Risk Management
Training and Education Unit	Office of Personnel and Training
Clinical Program Support and Evaluation Unit	Office of Risk Management
Medical Appeals Analyst <ul style="list-style-type: none"> <li>• 32 Analysts one in each prison</li> </ul>	Appeals Unit, Office of Risk Management
Field Management Section <ul style="list-style-type: none"> <li>• Regional Administrators (3)</li> </ul>	Eliminate
Field Management Section <ul style="list-style-type: none"> <li>• Quality Management Assistance Teams</li> </ul>	Compliance Unit, Office of Risk Management
Contracts Unit	Eliminate