



# 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.

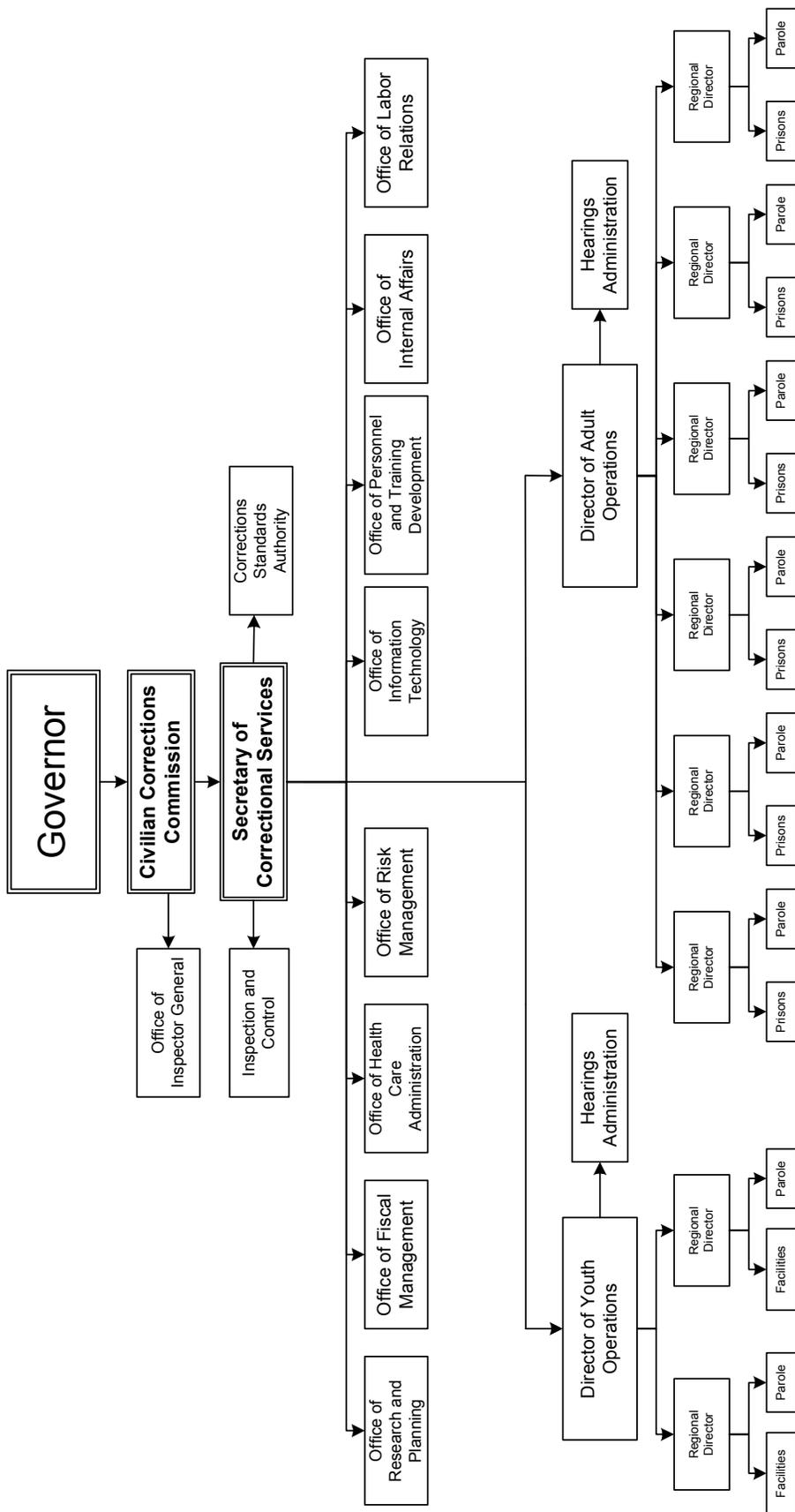
- It moves the Board of Corrections into the new Department of Correctional Services and renames it the Corrections Standards Authority. It also assigns the Corrections Standards Authority responsibility for establishing the first coordinated state and local strategic planning effort for the youth and 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.

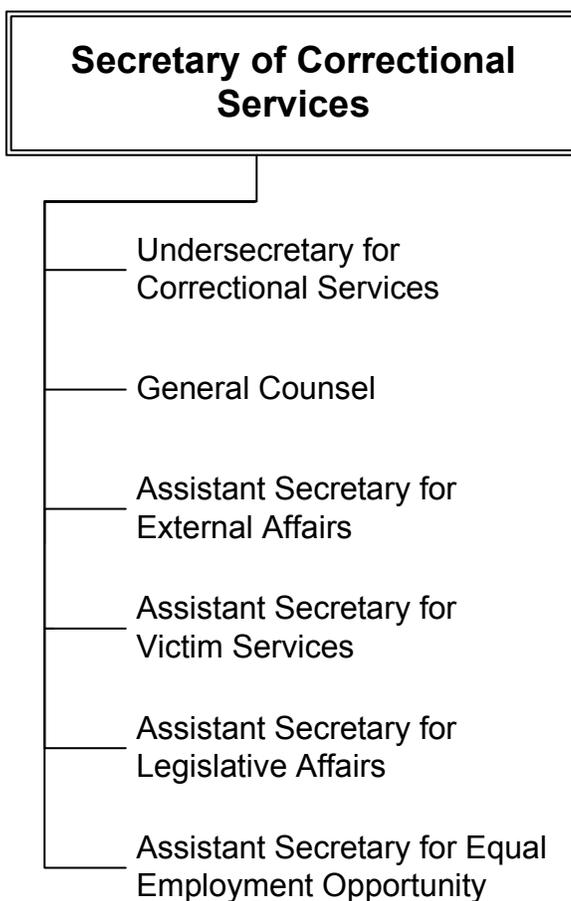
## **Fiscal Implications**

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**

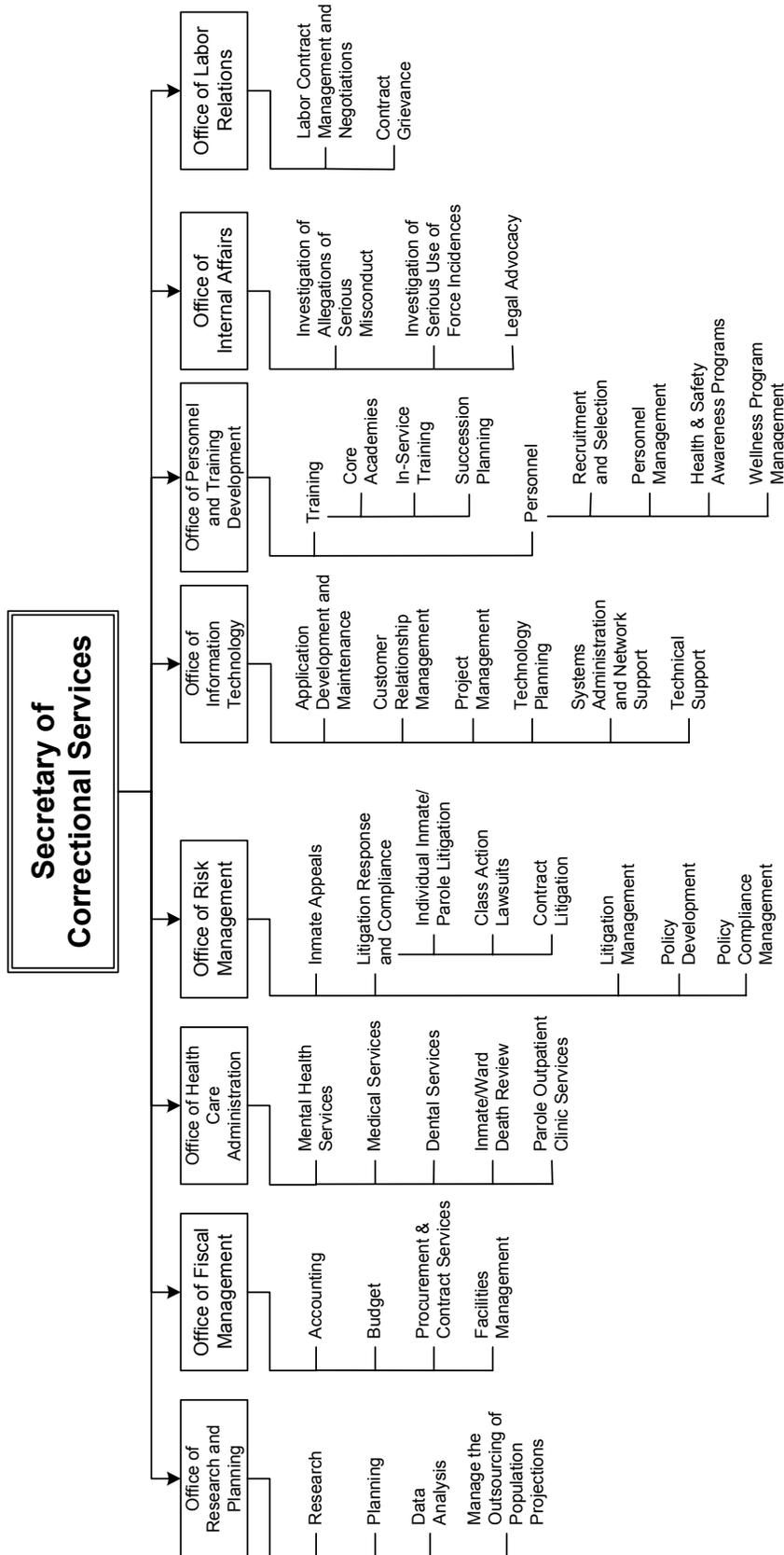
**Department of Correctional Services  
Office of the Secretary**

**Chart B**



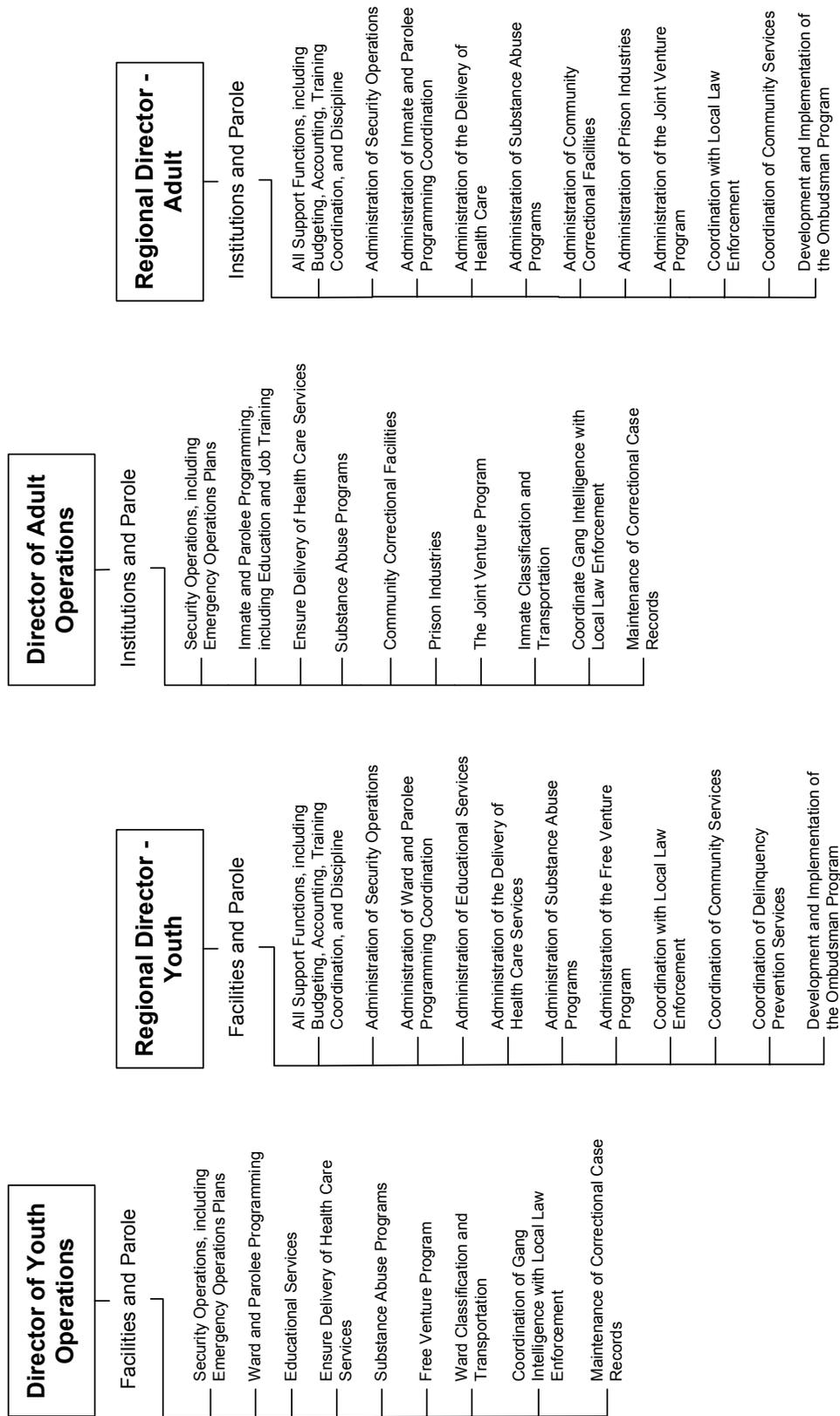
Department of Correctional Services  
Central Management

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*.

- 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.

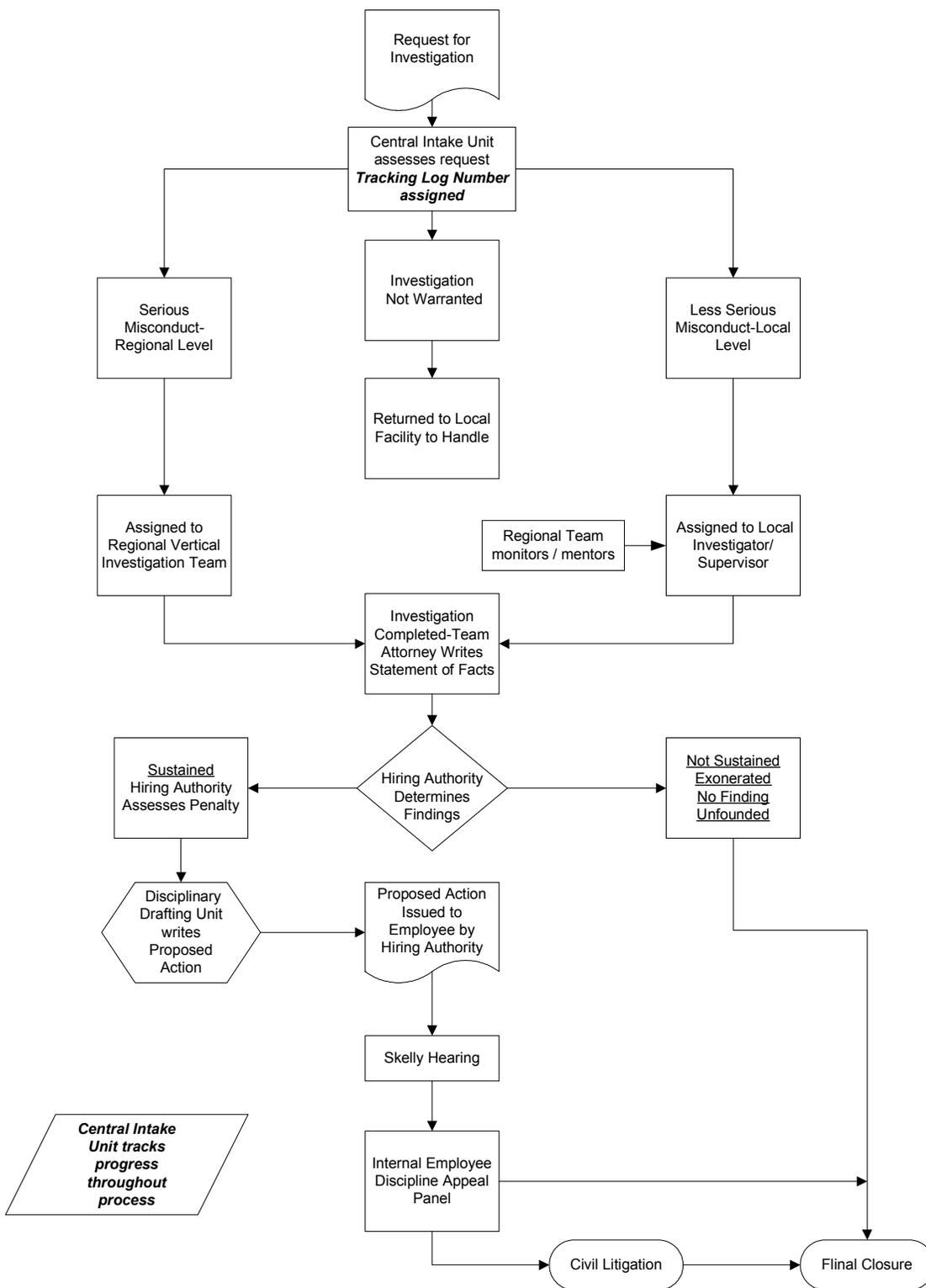
**Appendix 1**

**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**

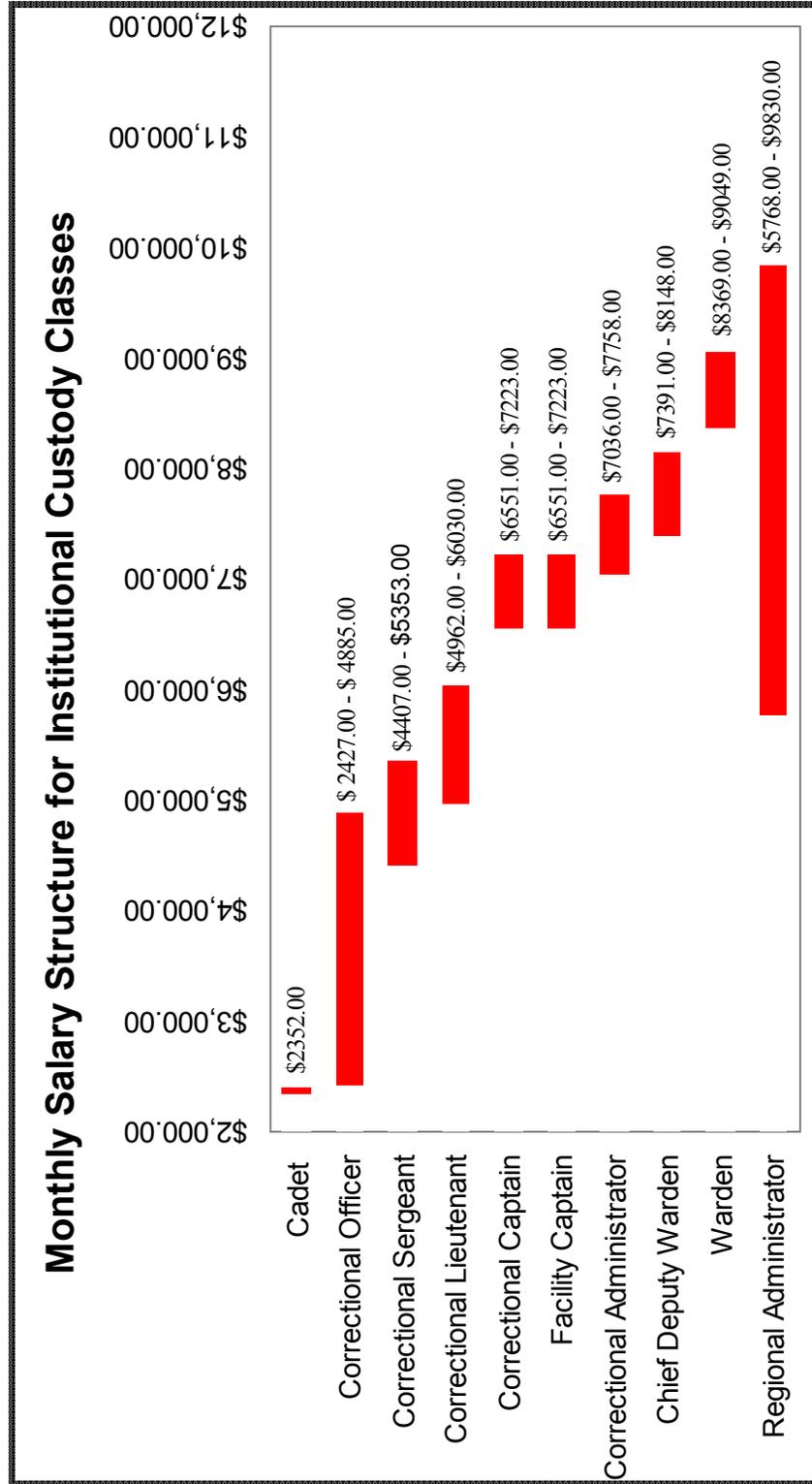
**TABLE 1**  
**Annual Salary and Scope of Responsibilities for Top Corrections Administrative Officials**

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**

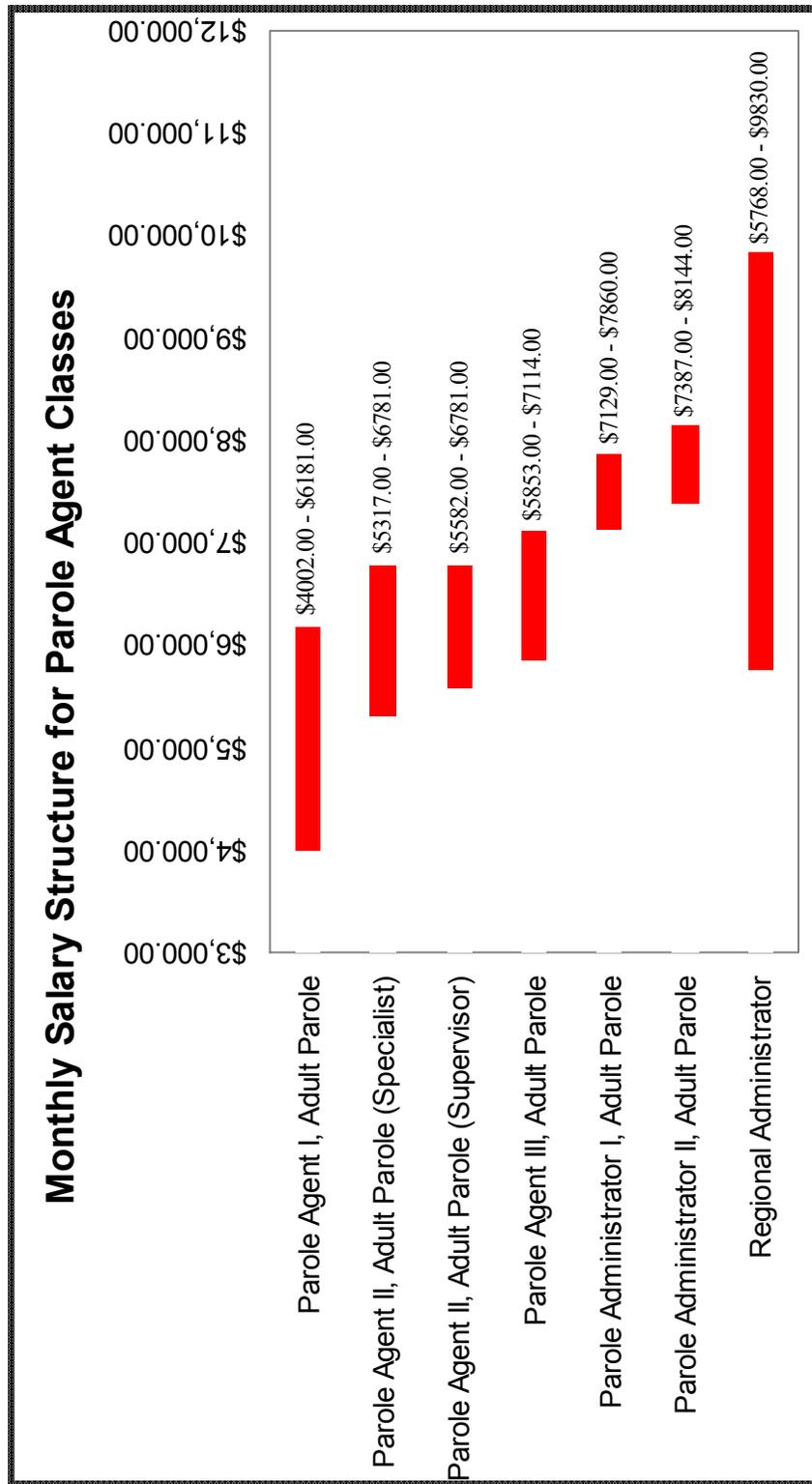
State	Maximum Annual Salary	Average Offender Population	Average Staff
<b>California</b>	\$108,588	4,761	1,258
Federal Bureau of Prisons	136,900	1,675	321
New Jersey	117,205	1,929	679
New York	124,583	1,855	464
Texas	63,819	1,310	349

TABLE 2



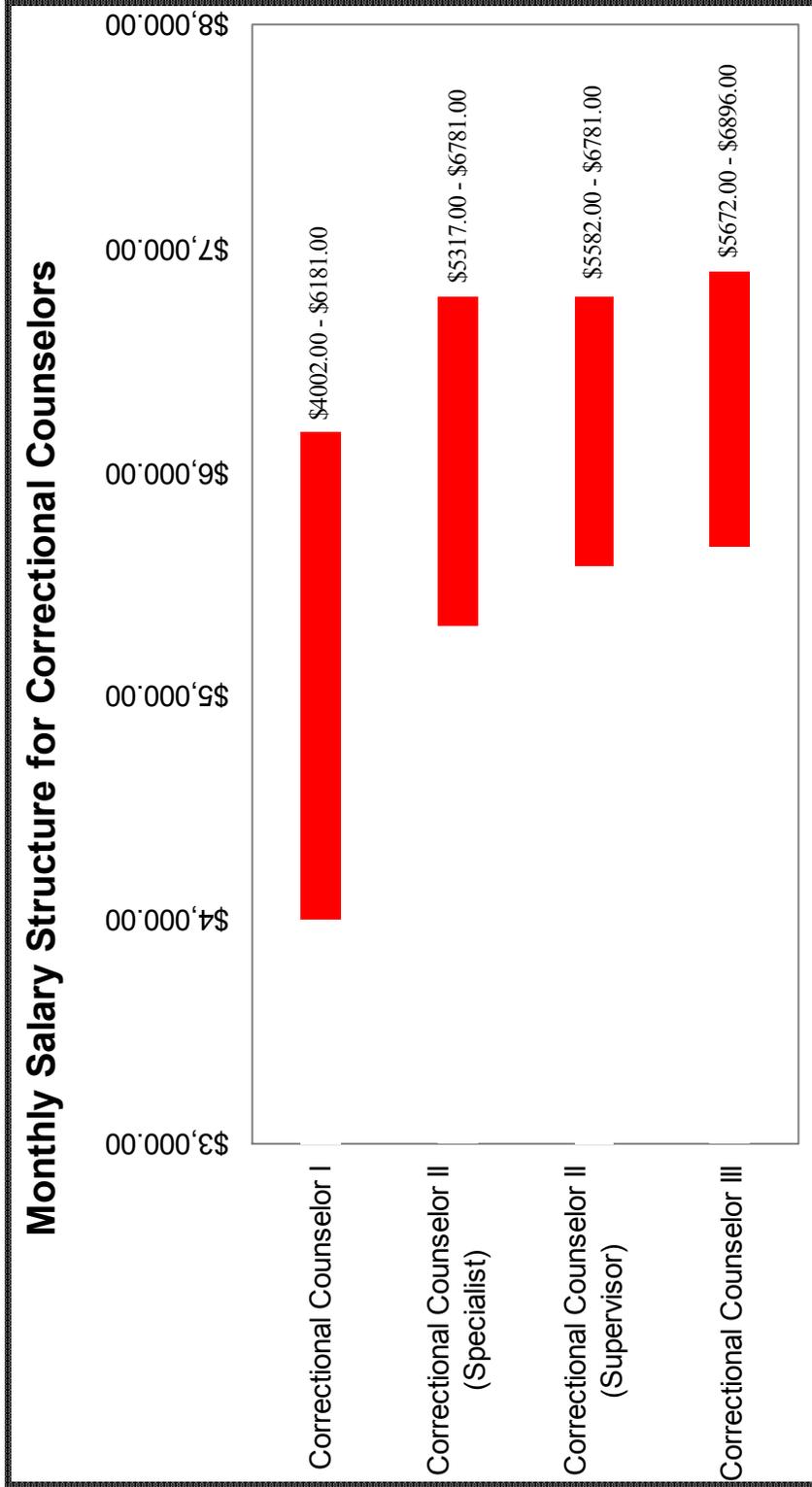
Source: California Department of Corrections

**TABLE 3**



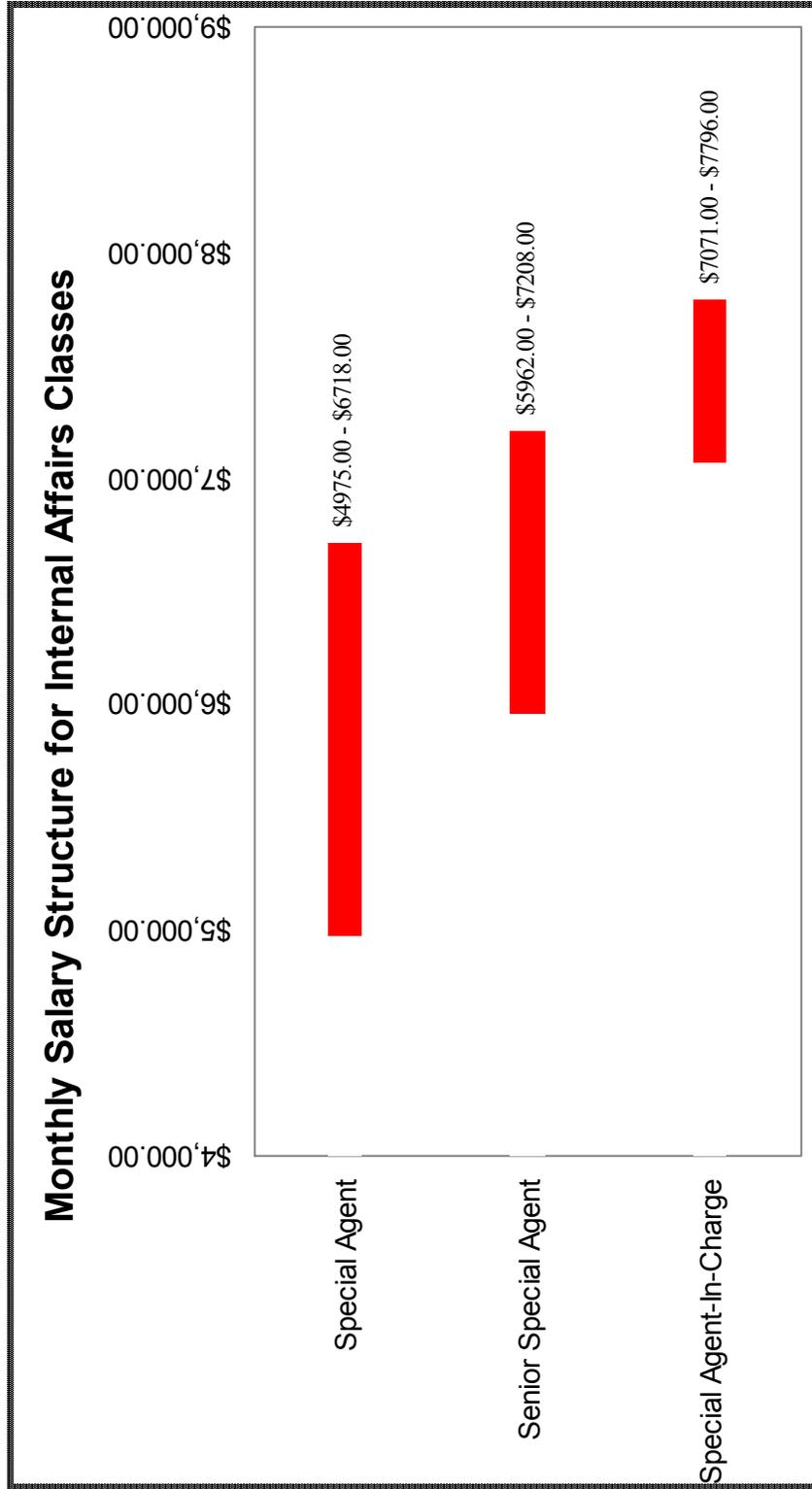
Source: California Department of Corrections

TABLE 4



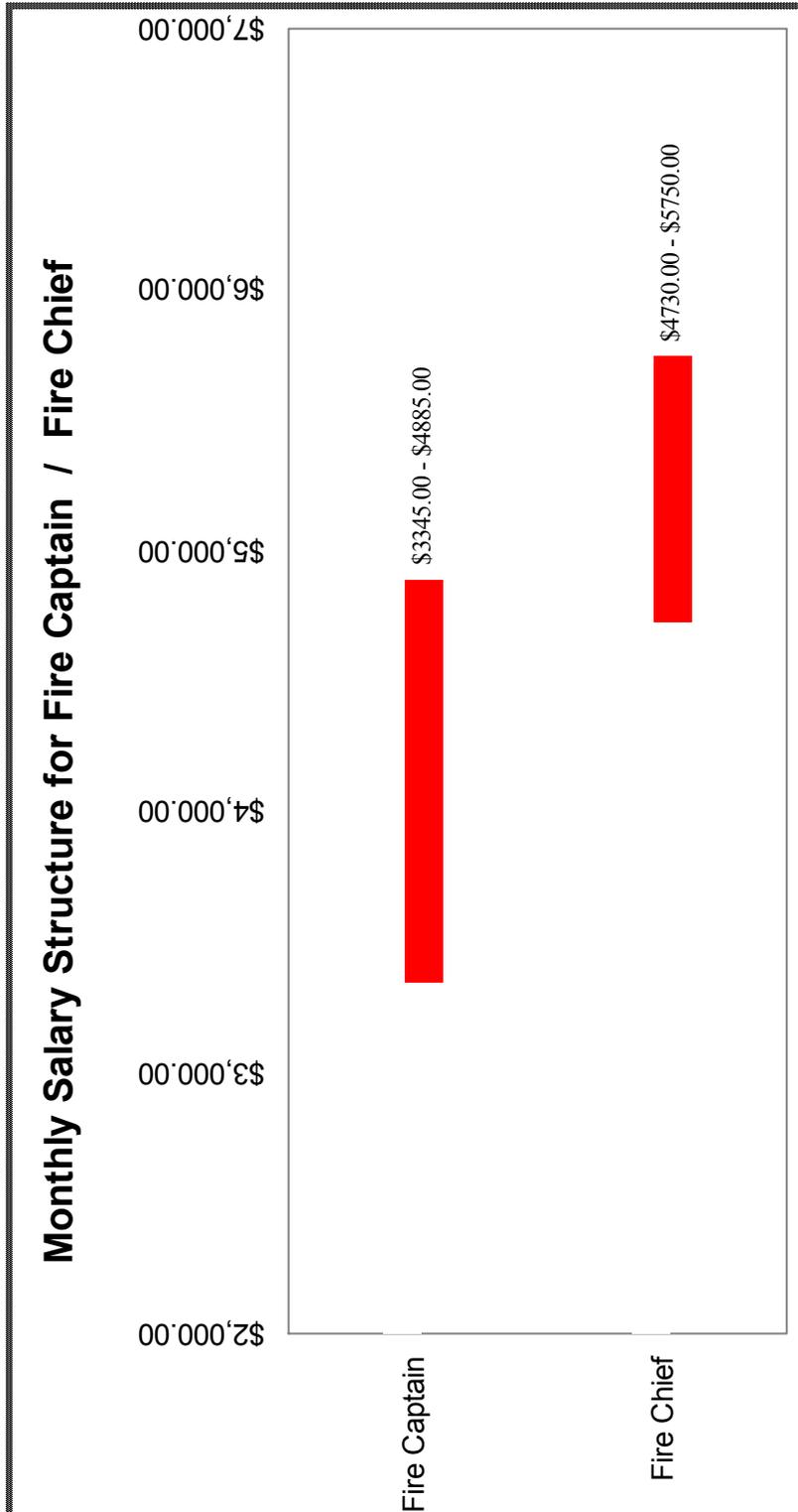
Source: California Department of Correction

**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 Fincel, 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

## Inmate/Parolee Population Management

California's prison system presently holds more than 162,000 adult inmates, with another 114,000 former inmates under state parole supervision. The cost of that system now approaches \$6 billion. The size of the prison population has resulted in part from tough-on-crime sentencing policies of recent decades, but the state has also been widely criticized for fueling the numbers by not doing a better job of preparing inmates to return to society. Approximately 90 percent of state prison inmates are eventually released on parole, and at present, more than half return to prison. A 2003 study by the Little Hoover Commission concluded that inmates are not prepared for their release from prison. Department of Corrections reports show that 43 percent of inmates released from prison in 1999 were sent back to prison within a year and that 56 percent returned within two years. Many of those returned to prison are parolees who are sent back for violating the conditions of parole, rather than for committing new crimes, and many of those go back for relatively short periods of time—an average of 5 ½ months. The vast numbers of parolees returning to prison help drive both the size of the prison population and the cost of the system. In 2001 more than 74,000 (47 percent) of the average daily prison inmate population of 157,000 was made up of parole violators.

To identify solutions to these problems the Corrections Independent Review Panel interviewed dozens of correctional experts, examined published studies, and researched the custody and parole practices of other states. As a result of that analysis, the panel recommends that the new Department of Correctional Services undertake several actions to better manage the inmate and parolee populations. The panel concluded that California can reduce the growing cost of managing its adult prison population by addressing three key factors that influence the size of that population — the length of time inmates serve in prison; the training and treatment they receive during incarceration to decrease the likelihood that they will return; and the services they receive during parole to help them remain crime-free and successfully integrate into society.

Underlying the panel's recommendations is the fundamental principle that the main goal of prison is to protect public safety, but that public safety is best served by a system that not only locks up criminals, but also helps inmates prepare for release and improves opportunities for parolees to stay out of prison. For those efforts to succeed, the custody and parole systems must work in concert, beginning with the first day inmates enter prison and continuing until parolees are released from supervision.

The length of time an inmate serves in prison depends on the sentence imposed by the court and on "time credits" earned by the inmate through in-prison work and program activities. The training and treatment inmates receive in prison includes education and other programs offered in accordance with goals identified for each inmate. And parole services include both surveillance and programs such as job placement and drug abuse treatment.

To address the length of time inmates spend in prison, the panel recommends eliminating the current time-credit system for non life-term offenses and adopting instead a “presumptive” sentencing structure that more effectively encourages inmates to achieve identified goals during incarceration. As an immediate measure to shorten prison terms, the panel recommends enhancing time credits inmates can earn in return for accomplishing specified goals. As a further means of reducing the prison population, the panel recommends identifying older inmates who could safely be released early, consistent with similar programs operating in several other states. To better prepare inmates for release, the panel recommends providing inmates with much greater access to in-prison education, vocational classes, life-skills training, re-entry services, and drug treatment. Those efforts should be guided by a research-based needs and risk assessment of each inmate upon entry into prison and should include a programming plan designed specifically to address the inmate’s identified needs.

To reduce the number of parolees who return to prison, the panel recommends changes that will enable parole agents to concentrate the most intensive supervision on parolees who represent the greatest risk to the community and improving services to help parolees reintegrate into society. The changes should include a risk-assessment of each parolee. The risk-assessment tool should be updated regularly to reflect any changes in the demographics of the parole population. Parolees identified through risk assessment as very low risk should be discharged from parole after three months. In addition, the panel recommends increasing the number of substance abuse treatment beds in the community and continuing implementation of the Department of Corrections “new parole model,” which includes pre-release planning, electronic monitoring, and residential treatment as an alternative sanction for technical parole violations. The new Department of Correctional Services should also implement effective research and data-collection capabilities to precisely identify the most effective and efficient methods of supervising parolees.

In implementing these reforms, the first order of business should be determining the operable capacity of the state’s prisons—the maximum capacity of the prisons to house inmates safely and securely while providing effective education, training, and treatment. The second order of business should be to determine the appropriate staffing needed to operate each prison and to provide inmates with needed programming. To improve strategic planning capabilities, the panel recommends that the new Department of Correctional Services contract with one of the state universities to undertake responsibility for inmate population projections.

### **Fiscal Impact**

The department saves money with each inmate and parolee it safely removes from the prison and parole population. The present average cost of housing an inmate is \$28,439 per year, and the average cost of supervising a parolee is \$2,930 per year. Some of the recommendations presented here require an initial investment, but can be expected to save money in the future by improving the chances for inmates and parolees to succeed, thereby reducing the numbers who return to prison and shrinking the overall prison population.

Other recommendations may immediately reduce prison and parole populations and thereby produce savings upon implementation.

### **Laying the Groundwork for Reform**

Every day, hundreds of thousands of inmates and parolees are housed, supervised, and moved around within the state prison and parole systems. Managing this population is complex and challenging. In today's environment, prison administrators must contend with severe overcrowding, the potential for violence, court mandates to provide constitutionally adequate conditions of confinement, budget cuts that have reduced staffing, and burgeoning inmate population levels, fueled in large part by former inmates cycling back into prison.

The key to reforming the system lies in reducing the numbers. That effort will require attention to sentencing practices, time-credit policies that allow inmates to reduce sentences, early-release for low-risk offenders, and a commitment to programs that help inmates and parolees reintegrate into society. For programming to succeed, in turn, the system must free up programming space and provide adequate staffing to provide program services and run the institutions. Strategic planning for that task will require accurate population projections, knowledge of the system's basic operable capacity, and a determination of necessary staffing levels.

### **Background**

Operable prison capacity — the maximum capacity of the prisons to securely house inmates and provide effective programming— differs from both design capacity and maximum "safe and reasonable" capacity. "Design capacity" is the term used for the past 50 years to designate the number of inmates a prison is designed to accommodate according to standards developed by the Commission on Accreditation and the American Correctional Association.<sup>1</sup> The number can be based on any combination of single-occupancy cells, double-occupancy cells, single- or double-bunked multiple occupancy rooms, or dormitories. The standards take into account the need for humane conditions, as well as the need to prevent violence and move inmates to and from programs, such as mental health care, education classes, and drug abuse treatment. In California, design capacity is based on one inmate per cell, single bunks in dormitories, and no beds in space not designed for housing. The design capacity of California's male prison system, including the capacity of the state's new prison at Delano, is 76,879 inmates. (See Table 1).<sup>2</sup>

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<sup>1</sup> California's actual prison capacity has never been limited to design capacity due to an ever-growing prison population. Actual prison population is represented here as a percentage of design capacity to provide a conceptual framework to convey the volume of prisoners that must be managed within the existing fixed environment.

<sup>2</sup> This report focuses primarily on the male prison population, which comprises 88 percent of the state's total prison population. According to the Department of Corrections "Monthly Report of Population as of April 30, 2004," compiled by the Offender Information Services Branch, the institution population on that date totaled 161,394, with 141,763 male inmates and 9,638 female inmates in the state's prisons and 9,993 male and female inmates in other types of facilities, such as contracted jail beds, public and private community correctional facilities, and other placements.

Maximum “safe and reasonable” capacity, in contrast to design capacity, refers to the maximum number of inmates who can safely and reasonably be housed in the prison system. That number takes into account the “safe and reasonable” capacity of individual housing units according to inmate custody levels, staffing levels, and the physical structure of the units. Level IV facilities, with a greater potential for violence, for instance, have a lower maximum safe and reasonable capacity than Level II and Level III facilities. The safe and reasonable capacity of each prison can be determined by totaling the safe and reasonable capacities of each housing unit in the prison, and the safe and reasonable capacity of the system can be estimated by combining the totals for each prison. The Department of Corrections has determined the maximum safe and reasonable capacity of the general population and reception center housing to be 190 percent of design capacity, while other housing can be filled only to between 100 and 160 percent of design capacity. Overall, the department has determined that the maximum safe and reasonable capacity of the state’s male prisons is 137,764 inmates - 179 percent of design capacity.

*Defining operable capacity.* Operable capacity, which takes into account space needed for effective programming in addition to safety and security, is greater than design capacity, but far less than maximum safe and reasonable capacity. A group of experienced California prison wardens told the panel at a recent forum that the operable capacity of the state’s prisons to support full inmate programming in a safe and secure environment is 111,309 inmates, or 145 percent of design capacity.

*The state’s prison system presently far exceeds operable capacity.* California prisons are presently filled to the breaking point, with populations exceeding both design capacity and “safe and reasonable capacity,” and far exceeding operable capacity. With 141,763 male inmates in a prison system designed to hold 76,879, as of April 30, 2004, the state’s prisons were operating at more than 184 percent of design capacity. That number exceeds the prison system’s safe and reasonable capacity by 4,000 inmates — and it exceeds operable capacity by 30,000 inmates.

Even those numbers understate some of the overcrowding. Accommodating the present inmate population has been accomplished by confining two inmates in cells designed for one, by double- and triple-bunking inmates in dormitories designed for single bunks, and by converting activity space into inmate housing areas. As Chapter 9 of this report notes, more than 9,500 male inmates are presently housed in activity space that was never designed for housing. Because Level IV inmates are generally more violent and cannot be crowded to the same degree as other inmate levels, Level IV celled housing units have now reached 152 percent of design capacity and may not realistically be filled beyond that point. As a result, greater numbers of inmates are forced into other housing, which has raised Level III housing to 201 percent of design capacity, and Level II housing to 220 percent. Consequently, the overall population of male prisons exceeds a safe maximum, and individual housing units in some prisons are so severely over-crowded as to be at a crisis stage. Reception centers, for example, which house all inmates entering prison, are housing a population of 20,000 male inmates in space designed for only 8,500 — putting reception centers at 236 percent of design capacity.

*Female prisons are also overcrowded.* Female prisons are nearly as crowded as the male prisons although they do not experience the same levels of violence. The population of female prisons as of April 2004 stood at 9,945 inmates, compared to a design capacity of 5,830. The most severely crowded female prisons operate from 173 to 184 percent of design capacity.<sup>3</sup> The effects of crowding in these prisons are as severe as in the male prisons, even with lower levels of violence. While these prisons do not represent the same challenges for security as their male counterparts, the recommendations in the Report for inmate programming apply equally to both.

*Staffing reductions have accompanied overcrowding.* From fiscal year 1990-91 to 2004-05, more than 5,000 positions were reduced from the state prison workforce through various legislative budget reductions. During the same period, almost 1,200 additional positions were cut from the headquarters and parole staff.<sup>4</sup> The positions cut have extended throughout the system, and have included correctional officer, vocational and classroom teacher and other support staff positions, with a marginal number of correctional officer positions retained to perform essential security functions. Although some positions have been added to accommodate increases in prison population, these have not been sufficient to offset the overall reductions.

*Overcrowding and inadequate staffing impedes programming.* Staffing reductions, overcrowding, and attendant violence have eroded the ability of the prisons to operate effectively for any purpose other than security. While the prisons attend to the primary objective of safety and security, they are able to pay little attention to inmate programming.<sup>5</sup> As a consequence, programs have been curtailed, which in turn has increased inmate idleness — ironic, in that effective programming would actually enhance internal security. Instead, combined with the reductions in security and non-security staff, the crowded conditions and lack of programming have elevated security risks and increased the probability of violent confrontations. Meanwhile, inmate programs such as education and substance abuse treatment that might reduce recidivism cannot be delivered because space intended to be used for such programs is instead used to house inmates.

The current situation in California prisons is untenable, and changes are required to bring about necessary controls. Before consideration is given to implementing the recommendations in this report concerning inmate programs, the safety and operability of the prisons must be improved. This report substantiates that education and other programs for inmates contribute to public safety. The environment that is needed for these programs to work must first be created and that requires:

- Violence control;
- Opening up program space by reducing prison population;

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<sup>3</sup> Monthly Report of Population as of Midnight April 30, 2004. Department of Corrections, Offender Information Services Branch

<sup>4</sup> Summary of Reductions, Department of Corrections, Budget Management Branch

<sup>5</sup> Warden's Forum on Prison Capacity, CIRP, May 26, 2004

- Adding staff necessary to implement specific effective programs; and
- Exploring creative measures for the use of existing resources.

The reduction of prison population may be accomplished through the use of the new parole model (which reduces returns to prison), the initiation of a program of increased credits for time served, and adoption of a new sentencing approach for the majority of inmates who otherwise would receive determinate sentences. These options are discussed below.

*Violence must be brought under control to make programming possible.* The violence potential of Level IV inmates, especially in crowded conditions, severely challenges the development of a program environment in male prisons. To support programming that emphasizes preparing inmates for re-entry into the community, order and control of potentially violent inmates is necessary.<sup>6</sup> Implementing a violence control program has the potential both to provide this needed order and control and to begin the process of improving inmate behavior through programming. Violence control programs use special support staff and a system of rewards to implement programs known to be effective, such as anger management courses designed to control violence and produce the means for violent inmates to improve behavior. The violence control program is endorsed by the National Institute of Corrections and used effectively in 20 other states.<sup>7</sup> This program will permit the new department to begin to take the initial steps necessary to establish an environment in the prisons that can foster a broader application of inmate programming and the “re-entry philosophy.”

*Increased staff and program space are needed to support effective programming.* Increases in both program space and staff are required to make effective inmate programming possible. Once operable capacity is determined and accurate population forecasts are made, the Department of Correctional Services can use a standardized staffing model to identify when staffing levels must increase or decrease. The new Department of Correctional Services should undertake a project to determine the appropriate staffing required for the operation of each type of institution, including management, custody, health care, and all other programs. Mission and capacities of institutions should be carefully designated so as to distinguish them on the basis of their mission, physical plant, specific inmate/ward supervision and programming requirements, and any other special consideration for a particular institution. Prisons can generally be divided into two types: modern prisons constructed after 1984 and older prisons constructed before 1984.

While standard staffing “packages” were approved for activating the prisons built after 1984, these packages should be used only for reference and should be updated to reflect

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<sup>6</sup> Fifty-eight percent of the current inmate population was sentenced to prison under a determinate sentence and will eventually be released for return to the community, according to *Prison Census Data as of December 31, 2003* provided by the Department of Corrections, Offender Information Services Branch.

<sup>7</sup> Department of Corrections, Violence Control Program Budget Change Proposal for fiscal year 2003-04.

position reductions, redirections, accommodations for “overcrowding,” court decisions, and other mandates that have affected staffing allocations. Input from operating wardens should be incorporated in determining the final results of the staffing project to ensure the operability of the institutions. The results should then be reconciled with the current budget for each of the institutions. Other recommendations in this report should be considered with respect to their applicability to the staffing project. The completion of this project can result in a more stable environment for current management and future planning for the continued development of the new department.

***Population projections.*** Projecting future institution population is a matter of extreme importance for the department. Providing effective management of inmates and wards is the fundamental mission of the new Department of Correctional Services and can be done only when forecasts of increasing or decreasing population are as accurate as possible, reflect the types of inmates and wards that will require housing, and support effective programs to encourage successful re-entry to parole or aftercare programs. The current method used to forecast institution populations has been shown to be remarkably accurate over a substantial period of years and appears to provide the best basis for planning to accommodate this population, but even this method cannot be 100 percent accurate and “surprises” or emergencies can occur, as when unexpected numbers of inmates arrive at prison reception centers. This kind of emergency prompts criticism of correctional management that at best alleges an inability to plan effectively, and at worst alleges manipulation of the population forecasts.

Notwithstanding the demonstrable accuracy of the current method of projecting population relative to any other forecasting method for this purpose, uncertainty and distrust undermine the credibility of administrators in carrying out their designated responsibilities. A change in methodology appears not to be required. A change in the manner in which the methodology is used is recommended. The new Department of Correctional Services should consider an interagency agreement with one of the state universities that is active both in corrections education and research to undertake the responsibility for population projections. Management of this university relationship should be assigned to the new Office of Research and Planning. Taking these important steps will move the vital function of population projections to a neutral site that has both experience and interest in the management and research value of this process. This move will provide independent credibility for the results. In addition, cooperative research between the new Department of Correctional Services and the selected university can be used to maintain and improve the current population projection model where warranted, and the information generated through the process can be used for other decision-making purposes. The costs of implementing this change are unknown at this time. The panel expects that the university-based researcher would supplement the current staff of the department.

***Reducing the amount of time served in prison.*** At present, most California Department of Corrections prisoners can reduce the length of their prison terms by staying out of trouble and having a “work assignment” inside the prison. Work assignments are broadly defined

to include education and vocational training as well as more traditional work that supports the operation of the prison, such as gardening, maintenance, or food-service. Most prisoners earn “day-for-day” credit, in which they earn one day off their sentence for each day they have a work assignment. Prisoners who are on a waiting list for an assignment earn one day off for every two days they are unassigned. Beginning in January 2003, inmates housed in the department’s conservation camps can earn “two-for-one” credit or two days off their sentence for each day they are otherwise eligible to earn sentence credits.<sup>8</sup>

*Methods to reduce sentences.* Short-range and long-range methods are available to reduce the average time served in prison sentences. The average length of time served in prison, the number of new admissions, and the number of parole violators returning to the prison system are the three major factors that influence the prison population. If the amount of time served drops significantly or the number of felons committed to prison declines, then the prison population will also decline. The Corrections Independent Review Panel proposes two methods that will motivate inmates to improve themselves in prison and will result in less time served in prison. (The panel also discusses changes to the parole system later in this chapter.) Both methods alter or expand the sentence-reduction credit process, but differ in how quickly the methods can generate benefits once implemented. The first method, called presumptive sentencing, will require a long implementation period and will only apply to newly committed inmates. The second method can be implemented immediately after minor statutory change, and will enhance the amount of sentence-reduction credits that inmates can earn—providing that the inmates accomplish certain goals.

*“Presumptive sentencing” focuses prisoners on preparing for release.* Inmates serving determinate sentences have a prescribed term imposed at the time of commitment to prison, the actual length of which is subject to change based on the application and removal of sentence-reduction credits for work and other activities. The credit system was originally intended to provide incentives for the inmates to improve themselves and thus reduce the actual time they need to serve in prison by taking advantage of opportunities to work or participate in education programs. It was to serve a dual function of making inmates more manageable in prison while improving their chances for a successful return to the community.

Due in part to the sheer size of the system, the administration of many of its provisions has become automatic, and coupled with its complexities it has become a system in which sentence-reduction credits have become a “right” to be protected. The responsibility of prison officials has shifted from making programs available to making sure the inmates are “programming.” Likewise, the focus of inmates has shifted from preparing themselves for parole through treatment and education to simply earning sentence-reducing credits by any means. The system is not the incentive system contemplated but has become instead a constant struggle for obtaining sentence-reduction credits increasingly viewed as a right in a prison structure in which funding for programs has diminished.

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<sup>8</sup> Penal Code, Section 2933.3

Numerous corrections officials expressed to the panel growing frustration in trying to safely manage inmates who have no particular incentive to behave under the current system. An alternative, such as a “presumptive sentence,” can return both simplicity and incentives to the administration of prison sentences. Under such a system a presumptive term and a maximum term would be established by a sentencing judge. The maximum term would be the same term as would be assigned under the current sentencing laws. The presumptive term would be a smaller portion of the maximum term (perhaps 50 percent). In selecting the presumptive term, the judge considers that it includes “good behavior” so that the presumptive term becomes the actual time to be served *provided that* good behavior is maintained by the inmate. Good behavior is further defined as completing a “program plan” that is assigned to the inmate upon arrival at prison<sup>9</sup>. (The program plan would need to address specific deficiencies or needs of the inmate and prescribe solutions that are flexible enough to work in the department’s varied prison settings.) The inmates would be reviewed periodically by a social worker or counselor to determine their progress with the plan.

Under a presumptive sentencing model, the inmate would be eligible for release after completing the presumptive term. However, actual release would require verification that the inmate actually completed the requirements — the presumptive elements — of the sentence. The details of such an approval process would require more specific development by the new Department of Correctional Services, but one recommended method would be to have the Hearings Administration identified in Chapter 1 of this report conduct a review to verify completion. If, after consideration of the inmate’s progress, the Hearings Administration determined that the inmate had completed the prescribed requirement, the inmate would be released. Alternatively, if the Hearings Administration determined that the inmate had not completed the requirements, the inmate would be denied release until he or she had completed the requirements (or until the maximum term elapsed.) Other methods of administering this process should also be considered by the new Department of Correctional Services.

***Presumptive sentencing supports re-entry programming.*** A presumptive sentencing model supports a needed shift in the department’s philosophy toward a “re-entry” orientation. The concept of a presumptive sentencing model provides a focus on eventual re-entry into the community as well as providing incentives for inmates to behave. It also requires a shift in the capability of the new Department of Correctional Services toward a “re-entry philosophy” that focuses on the eventual release of the inmate. Public safety is served not just by incarceration, but by both incarceration and a prison term dedicated to improving the chances for successful re-entry. Presumptive sentencing will provide an incentive to in-

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<sup>9</sup> An option would be to tie this process back to the community by having the sentencing judge approve or prescribe the content of the plan. There are a number of obstacles to implementing this option, including ensuring that the plan is prepared in advance of sentencing and making sure that the judge prescribes a plan that is actually available in the prison.

mates to take the responsibility of completing the program plan and to officials who will have the responsibility of developing and administering it.

It is important to note that the recommendation for a presumptive sentencing model is to replace the current structure of determinate sentences only, as a means of including this sentencing method in a comprehensive correctional approach focusing on successful re-entry. It does not include the current structure for life sentences or the “two-strike” and “three-strike” sentences, which are beyond the scope of this recommendation. In December 2003 there were about 90,500 inmates (58 percent) serving determinate sentences. The remaining 42 percent of the inmates were serving life sentences, two-strike, or three-strike sentences.<sup>10</sup> (Programs for these inmates should be developed as a secondary priority and are not considered in this report.)

The Corrections Independent Review Panel expects that once fully implemented, a presumptive sentencing model would generate significant savings as inmates become better prepared for reintegration into society. The presumptive sentencing model would require further development by the new department, and the panel recommends that the new department charter a special commission to fully develop this important sentencing reform.

*Goal-oriented sentence reduction credits could be increased quickly.* Under the current sentence-reduction credit system, most of the department’s inmates are limited to day-for-day credits, although some can earn more. (Fewer than 4,000 inmates housed in conservation camps earn two-for-one credits.) Inmates earn their day-for-day credits by participating in work, academic, or vocational activities; however, there is no requirement that the inmate fulfill any specific goals or even complete the training. The panel proposes that the department create a bonus sentence-reduction credit that would supplement existing credits and reward completion of education, vocational, or drug-treatment programs that are proven to reduce inmate recidivism.

This bonus sentence reduction credit would provide incentives for inmates’ work activities by rewarding *completion* of academic, vocational, or drug-treatment goals. For example, an inmate could earn a 90-day sentence reduction for completing a literacy program or a college-level class, or a 180-day reduction for completing a drug-treatment course or a vocational certificate. Larger sentence reductions could be awarded to inmates who complete more rigorous programs, such as a two-year college degree. To implement this concept, the department would need to develop specific policies and procedures, and develop legislation to amend the California Penal Code to grant the authority for inmates to earn additional time credits.

*Release of low-risk inmates to community supervision.* Other states have successfully formed partnerships with law schools to identify and consider for release low-risk older

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<sup>10</sup> California Department of Corrections, “Characteristics of the Inmate Population,” Table 10, February 2004.

and geriatric inmates. The California Department of Corrections currently houses more than 3,700 inmates who are between 55 and 59 years of age, and nearly 3,100 aged 60 or older<sup>11</sup>. The Legislative Analyst's Office, in its fiscal year 2003-04 Budget Analysis, recommended that California consider early release of elderly inmates. In its analysis, the Legislative Analyst noted that California does not track the cost of incarcerating elderly inmates, but that several other states do and that these other states have estimated that elderly inmates cost two to three times the amount needed to house younger inmates. The Legislative Analyst further reported that New York, for example, estimated its annual cost of housing elderly inmates to be between \$50,000 and \$75,000 each. The National Center of Institutions and Alternatives estimated the annual cost of confining elderly inmates at \$69,000 – nearly three times the national average of \$22,000 to incarcerate other inmates.<sup>12</sup>

The Legislative Analyst's Office noted that housing nonviolent elderly inmates is not a good use of scarce resources when they represent a low risk to society.<sup>13</sup> While the majority of these offenders should remain in custody because of the serious, violent, or sexual nature of their crimes, a small percentage could be considered for early release. Statistics published by the U.S. Department of Justice indicate that recidivism drops significantly as inmates age—from over 50-percent nationally for inmates between ages 18 and 29 to about 2-percent for inmates aged 55 or older.<sup>14</sup>

In a December 2003 analysis for the Legislative Analyst, the Department of Corrections estimated that release of non-serious, non-violent inmates aged 55 or older would reduce the inmate population by 657 and result in savings of \$10.5 million in fiscal year 2005-06, if these provisions become effective on January 1, 2005. In the first fiscal year, the institution population would be reduced by about 332 inmates, resulting in savings of \$5 million. Full-year savings would occur in fiscal year 2006-2007, when institution population would be reduced by 657 inmates, resulting in savings of \$11 million. The institution savings would be offset by the cost of supervising these offenders on parole. Also, these savings are based on the average cost of incarceration for all inmates.<sup>15</sup>

In its calculations, the department assumed certain elderly inmates would be excluded from eligibility. Parole violators—returned to custody, inmates with life terms, second-striker inmates, sex registrants, and persons whose current or prior offenses are serious or violent (as defined in Penal Code, sections 1192.7(c), 1192.8, and 667.5(c)) were considered ineligible for early release.

Several states have released elderly inmates under a program created by George Washington University professor Jonathan Turley. Turley is the founder of the Project for Older Prisoners program, which uses a partnership between law schools and corrections depart-

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<sup>11</sup> Department of Corrections, "Prison Census Data," December 31, 2003, Table 5.

<sup>12</sup> Legislative Analyst's Office, "Budget Analysis, Fiscal Year 2003-04," p. D-39

<sup>13</sup> *Ibid.*, p. D-40

<sup>14</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Trends in State Parole, 1990-2000."

<sup>15</sup> Department of Corrections, Legislative Estimates Unit, "Legislative Analyst Request 6," December 16, 2003.

ments to assess inmates for early release. To date, more than 200 inmates have been released under the program without a single act of recidivism.<sup>16</sup>

The Project for Older Prisoners program is likely to result in fewer early releases than the 657 figure estimated by the department because of its careful risk analysis and assessment of each inmate. This method is recommended, however, because of its conservative approach and excellent track record. Even if only one-quarter of the 657 inmates identified by the department met the more conservative criteria of the Project for Older Prisoners program, savings of \$2.75 million could ultimately be realized.

*Contracting with private companies for low-level inmates.* The Department of Corrections currently contracts with several private corrections companies for about 2,500 beds for lower level inmates. In January 2004 the department discontinued contracts for about 1,000 beds. Privatized beds provide a high degree of flexibility because the department has no long term investment in the infrastructure or the staffing and can renew contracts on an as-needed basis.

Based on the projected Level I male institution population in 2009, the department will need more than 10,000 additional beds in order to house Level I inmates in a safe environment with programming opportunities.<sup>17</sup> Renewing contracts with the existing facilities and reentering into agreements with the previously closed facilities would help to provide the beds needed for this population, with no capital outlay costs to the state.

### Recommendations

The Corrections Independent Review Panel recommends the following actions:

- Begin to create the environment in the prisons that is needed for inmate programs to be effective, which requires the following:
  - Implementation of a Violence Control Program;
  - Opening up program space by reducing prison population through lower returns to custody;
  - Adding staff necessary to implement specific, effective inmate programs;
  - Exploring creative measures for the use of existing resources.
- Develop an interagency agreement with one of the state universities that is active both in corrections education and in research to undertake the responsibility for

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<sup>16</sup> George Turley, speaking at a sentencing seminar hosted by McGeorge Law School, April 16, 2004; Web-page viewed on March 25, 2004: [www.gwu.edu/~ccommit/law.htm](http://www.gwu.edu/~ccommit/law.htm)

<sup>17</sup> Table 1: Analysis of Male Institution Bed Capacity, CIRP, June 2004

population projections. Management of this function should be assigned to the new Office of Research and Planning.

- Undertake a project to determine the appropriate standard staffing required for the operation of each type of institution, including management, custody, health care and all other programs.
- Charter a commission with appropriate members from the judicial and corrections fields to develop a presumptive sentencing model. The model would apply only to sentences for offenses that are not subject to “two-strikes,” “three-strikes,” or other life terms.
- Modify the Penal Code to allow inmates to earn supplemental sentence reduction credits after they complete specified education, vocational, or drug-treatment goals.
- Establish a program to identify older inmates who could be safely released early from prison. The program should be similar to the Project for Older Prisoners program that has successfully released more than 200 inmates in other states without a single instance of recidivism.
- Renew contracts with existing privatized correctional facilities and consider reentering into contract agreements with previously closed facilities to provide the beds needed for the Level I population.

### **Fiscal Impact**

*For sentencing reform.* The panel expects that once fully implemented, a presumptive sentencing model would generate significant savings as inmates become better prepared for reintegration into society. It is not possible, however, to estimate the fiscal impact at this time. There may be up-front costs to restore vocational and education programs that have been reduced.

*Standardized staffing.* Until a standardized staffing model is developed, it is impossible to predict whether its use would increase or lower current costs. In the long run, however, use of a standardized staffing model will allow greater accountability, which should result in cost savings.

*University-based population projections.* Similar to standardized staffing, better population projections will allow better planning and, in turn, provide greater accountability for the new department’s operations.

*For the early release program.* As noted above, estimated savings are \$2.75 million. Even greater savings may accrue from savings in health care cost avoidance; however, those savings cannot be estimated.

## Education Reforms

Numerous studies show that prison education programs help inmates reintegrate into society and reduce recidivism rates — the rate at which former inmates return to prison. California’s recidivism rate is high compared to those of other states, and many of the state’s inmates are ill prepared when they return to their communities.

The Corrections Independent Review Panel identified several areas where the new department can improve its educational system and re-entry programs to improve inmates’ chances for success. Specifically, the panel recommends on-going assessment and refinement of the education programs. In addition, recently launched programs such as the bridging program, which provides for education in the reception centers, re-entry services, and other programs aimed at increasing inmate employment opportunities should be expanded. Consideration should also be given to using selected inmates in educational programs for other inmates. Rather than seeking entirely to add staff to effectuate programming goals, the new Department of Correctional Services should explore the expansion of existing projects, such as the health care peer educator, teacher aide, and lead vocational trainer projects that identify and train inmates to be used to teach other inmates in programs. There is evidence in other jurisdictions of success with inmates tutoring other inmates in basic reading.

### Background

Many inmates released from California prisons do not have the skills needed to obtain and maintain employment. More than 65 percent are unable to read, write, communicate in English, and function on a job. Many are unable to find jobs when they return to society — the parolee unemployment rate is 70 to 80 percent.<sup>18</sup> This situation is aggravated by the fact that re-entry programs designed to provide links to employment opportunities for parolees serve only about 30 percent of all inmates.<sup>19</sup>

*Effective programs reduce recidivism.* There is ample evidence that prison education and substance abuse programs have a positive impact on parolee recidivism, whereas researchers agree that incarceration alone does not have a measurable impact on recidivism. In May 2002, the Urban Institute completed a literature review of the effectiveness of prison-based education and vocational programs and concluded that: “In general, participants in prison-based educational, vocational, and work-related programs are more successful — that is, they commit fewer crimes and are employed more often and for longer periods of time after release — than are non-participants.”<sup>20</sup> Similar results have been found in other studies, including a Federal Bureau of Prisons study that showed a 33 percent drop in recidivism among federal inmates who were enrolled in vocational and apprenticeship training.”<sup>21</sup>

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<sup>18</sup> Little Hoover Commission, “Back to the Community: Safe & Sound Parole Policies,” November 2003, p. vi.

<sup>19</sup> *Ibid.*

<sup>20</sup> The Urban Institute, “The Practice and Promise of Prison Programming Report,” May 2002, p 8.

<sup>21</sup> State Correctional Education Programs, State Policy Update by Michelle Tolbert, March 2002, p 1.

General evidence of the benefit of prison education programs is also reflected in specific studies at the state level. For example, a January 2001 study by the Florida Department of Corrections found that the recidivism rate for inmates who earn a general education degree (GED) was 29.8 percent, whereas the recidivism rate for inmates without a GED was 35.4 percent (a 5.6 percent reduction.) Even more dramatic reductions in recidivism were observed for inmates who both completed a GED and obtained a vocational certificate. In that situation, the inmate's recidivism rate was 19.9 percent compared to the 35.4 percent rate for inmates with neither a GED nor a vocational certificate. The recidivism rate in Florida was even smaller for inmates who completed a GED and improved their Test of Adult Basic Education score to a 9<sup>th</sup> grade level. The recidivism rate of those inmates was only 12.2 percent.<sup>22</sup>

A three-state study of education programs conducted by the Correctional Education Association and Management & Training Corporation also showed the benefits of education programming in prisons. Statistics from Maryland, Minnesota, and Ohio showed that their rates of re-incarceration dropped from 31 percent for inmates not participating in education programs to 21 percent when inmates participated in education programs.<sup>23</sup>

The Washington State Institute for Public Policy analyzed numerous evaluations of treatment and education programs in North America conducted over the past 25 years. Their findings showed that prison programs can reduce crime in a cost-effective manner. For example, the study showed that prison vocational programs generate savings of up to \$12,000 per participant and reduce crime by 13 percent, and that education programs generate savings of up to \$9,000 per participant and reduce crime by 11 percent. The Washington review also found that in-prison therapeutic community substance abuse programs could save \$2,365 per participant and reduce crime by 5 percent. (After the cost of the treatment was deducted and including both the direct savings to taxpayers and the benefits to potential crime victims.) When the type of program was followed through to the community (parole), the savings increased to an estimated \$5,230 per participant and the crime reduction increased to 8 percent. The study showed an even larger savings from cognitive-behavioral programs, which cost about \$300 per inmate but generated more than \$7,000 in savings per participant and reduced crime by 8 percent.<sup>24</sup>

*Inmates' preparation for release must begin upon entry to the prison.* Re-entry planning and a risk assessment tool are being developed as part of the new parole model.<sup>25</sup> However, the current plan is to use these features only during the six- to nine-month period prior to an inmate's release from prison. The Corrections Independent Review Panel con-

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<sup>22</sup> Florida Department of Corrections, "Academic, Vocational and Substance Abuse Program Impacts," pp. 3 and 11.

<sup>23</sup> Correction Education Association, Management & Training Corporation, "Education Reduces Crime – Three-State Recidivism Study," February 2003, p.12.

<sup>24</sup> Aos, Steve, *et.al*, Washington State Institute for Public Policy, "The Comparative Costs and Benefits of Programs to Reduce Crime," May 2001, p.8.

<sup>25</sup> Department of Corrections, draft memorandum - New Parole Model, February 2004.

cluded that this is too late. Instead, risk assessment and re-entry planning should begin when the inmate enters the institution, so that parole and prison staff can plan, along with the inmate, for eventual reentry by offering educational, behavioral, and drug treatment programs from the moment the inmate enters prison. Using this time constructively will both enhance public safety and save money if it can reduce the offender's future criminal behavior. It is important to include the parole division in this process because they are familiar with the community resources and what is needed for a successful re-entry.

*The availability of program classes is still limited to a small percentage of inmates.* At present, only inmates in the general population may participate in academic, vocation, or work programs; participation is not allowed for inmates in administrative segregation, secure housing units, and hospitals. Inmates in the reception centers participate in the bridging program, but are not considered part of the eligible population for traditional academic programs. The number of inmates participating in academic education programs rose from 7,178 in 1990 to 11,668 in 2004. During the same time period vocational program participation increased from 7,426 to 15,000.<sup>26</sup> However, the 2004 enrollment numbers reflect that only 26,668 (23 percent) of the 116,338 eligible inmates are participating.

The number of inmates who can enroll in academic and vocation programs is calculated by a formula used by the department that designates one filled teaching position for every 27 inmates. The total number of inmates who can receive programming is referred to as the enrollment capacity. A review of enrollment statistics indicates that the department does not accurately assess a true enrollment capacity number. As an example, in October 2003 the enrollment capacity was determined to be 33,371, while only 30,288 inmates were actually enrolled. Factors that affect the enrollment capacity are classroom availability and teacher vacancies for sick leave, vacation, and special assignments. The department should revise the enrollment capacity numbers to project a true number that accounts for site-specific classroom size, availability limits, and projected teacher absences.

*Program participation is voluntary.* Factors that limit the department from offering programming to a higher number of inmates are further aggravated by the fact that program participation is voluntary. Legislative efforts to mandate programs and incentives that provide day-for-day sentence reduction for class participation have had a limited effect on enrollment numbers. In 1995, Penal Code Section 2053.1 mandated that literacy classes be offered to 60 percent of the eligible inmate population, yet only 35,136 of the available 80,016 eligible inmates participate.<sup>27</sup> The presumptive sentence concept described earlier in this chapter could increase enrollment and provide additional incentives for inmates to participate in education programs. If presumptive sentencing is implemented, the department would need to evaluate and adjust the number of education programs, teaching positions, and program hour needs.

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<sup>26</sup> Vocation enrollment figures obtained verbally from John Jackson, Supervisor of Academic Instruction, Education and Inmate Programs Unit.

<sup>27</sup> Department of Corrections, "Vocational and Academic Program Summary," October 2003.

*Education begins in the reception centers.* The 2003 Budget Act required the department to implement education programming in reception centers so that inmates could begin earning “day-for-day” sentence-reduction credits pursuant to Penal Code Section 2933. In January 2004, the department began providing academic programs at the reception centers under its “bridging” program. The bridging program allows inmates to receive academic education and day-for-day sentence credits during the average three-month reception center period.

To implement these programs, the department uses an assessment through the Test of Adult Basic Education and Comprehensive Adult Student Assessment System, and education programs in anger management, employment options, life skills, and personal life planning.<sup>28</sup> In April 2004, 215 bridging instructors were in place and another 212 instructor positions were unfilled.<sup>29</sup> Some of the teaching positions were obtained as a result of shifting instructor positions from eliminated vocational programs. Typical academic programs use classroom settings with 27 students and one instructor. The bridging instructor program is designed to allow inmates to use cell study materials. The elimination of a classroom setting allows an inmate/instructor ratio of 54 to 1. This program is designed to provide academic training, which allows day-for-day credits upon entry into the reception centers. The program is new and not fully implemented. The effectiveness of the program will depend on its ability to be fully implemented and evaluations should be conducted to assess the benefits.

*College education shows a decrease in recidivism.* A 2003 Little Hoover Commission report on the parole system presented findings that inmates with at least two years of college education have a 10 percent re-arrest rate and a significantly better rate of employment (60 to 75 percent).<sup>30</sup> A 1997 report by Education Works reported findings from the state of Ohio that calculated that the recidivism rate for inmate graduates of college level programs decreased by as much as 72 percent compared to inmates who do not participate in prison education programs.<sup>31</sup> Correctional studies in Oklahoma found “the rate of recidivism was 8 percent for inmates who participated in college courses in prison and 3 percent for inmates who earned a college degree in prison.”<sup>32</sup>

The Ironwood State Prison Community College Program provides an example of the benefits of college courses. The program provides distance learning to approximately 300 inmates. The estimated cost savings to the institution at \$8 million dollars per year, based on lower rates of recidivism and a decrease in disciplinary incidents in the prison.<sup>33</sup> The

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<sup>28</sup> California Department of Corrections, Bridging Program Mission Statement.

<sup>29</sup> Department of Corrections, “Instructor Vacancy Report,” April 2004.

<sup>30</sup> Little Hoover Commission, “Back to the Community, Safe & Sound Parole Policies”, 2003, p 44.

<sup>31</sup> Mary Ellen Batiuk, “The State of Post-Secondary Education in Ohio,” *Journal of Correctional Education*, June 1997, pp.70-72

<sup>32</sup> Davis, Dr. H.C., “Correctional Education: Success and Hope,” *Correctional Education Association News and Notes*, October 1999.

<sup>33</sup> Little Hoover Commission, “Back to the Community, Safe & Sound Parole Policies”, 2003, p. 45.

program is provided at no cost to the department. The National Institute for Literacy defines distance learning as follows:

*Distance learning is defined as the delivery of education through electronically mediated instruction such as satellite, video, audio graphic, computer and multimedia technology. Distance education refers to teaching and learning situations in which the instructor and learner or learners are geographically separated and therefore rely on electronic devices and printed materials for instructional delivery.*<sup>34</sup>

Another example of college-level courses available in the prisons is the Incarcerated Youth Offenders Program, which began in 1998. Inmates who are under 26 years of age with five years or less commitment time and who possess a high school diploma are allowed to participate. The program offers three areas of study: continuing coursework, obtainment of postsecondary education degree, and/or vocational certificate. In fiscal year 2002-2003, the program was operating at 12 institutions with 1,040 participants. Approximately 45 percent of the participants complete the program. During the same fiscal year, the 401 Incarcerated Youth Offenders Program participants released from prison showed that 124 (31 percent) were employed and 34 (8 percent) returned to prison within a year.<sup>35</sup> The program is paid for with federal funding through the U.S. Department of Education Office of Vocational and Adult Education.<sup>36</sup> The Incarcerated Youth Offenders Program has had a positive effect on recidivism and employment rates and should be continued and expanded.

In 2004, the possibility of implementing on-line college courses, with the program paid for by grant funding, was presented to the department's Education and Inmate Programs Unit by James Fay of California State University, Hayward. The department concluded that implementation of the program would need approval through the Department of Finance and the department's Information Services Division. Additional barriers include current restrictions that bar inmates from Internet access.<sup>37</sup> Based on its ability to provide postsecondary education using grant funding to reduce cost, this program would be beneficial. The program should be implemented and assessed for its effect on recidivism.

*Department of Corrections technology is inadequate to support education programs.* The department lacks a computerized system to easily share inmate education program information and promote effectiveness of paper-based programs. Because an inmate's education files are paper-based and are retained at the institution of commitment, it is difficult for the department to share information. For example, it would be helpful for a parole agent to be aware of an inmate's education background, training, and coursework. Even when inmates are transferred between prisons, their education history may not travel with them. This

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<sup>34</sup> National Institute for Literacy, "State Policy Update," February 2004, p 2.

<sup>35</sup> Gary Green, Ph.D., "Incarcerated Youth Offenders Program, 2002-2003 Annual Report."

<sup>36</sup> Department of Corrections, Education and Inmate Programs, Incarcerated Youth Offenders Program statistics sheet.

<sup>37</sup> Memorandum, Yvette M. Page, Superintendent of Correctional Education, Education and Inmate Programs Unit.

happens so frequently that inmates are simply retested when they are transferred to a new institution. This places both the inmate and those trying to assist the inmate with education programs at a disadvantage.

A larger-scale solution is needed to ensure that education programming information is widely available. This solution should include a computer program at each institution that is linked statewide to other institutions, parole offices, department education program personnel, and others.

*The Department of Corrections lacks statistical data on program effectiveness.* The department lacks statistical information to show whether its education programs reduce recidivism. The department tracks the number of inmates eligible for vocation and education programs, the number of program participants, inmate levels of achievement, and teaching positions. However, it does not track program statistics to determine whether parolees who recidivate were involved in education programs.

As discussed earlier, various studies have shown that education programs reduce recidivism. However, it is important that the department collect specific information about how its programs reduce recidivism in California, so that the department can optimize its programs. One method to accomplish this would be for the department to document education programming for each parolee who recidivates. This information could be used to determine whether education programs or the lack of programs were a factor in the parolee's return to prison. Similarly, the department should debrief parolees who are about to be discharged from parole so that the department can learn what factors and programs may have contributed to the parolee's success. This information could then be used to measure the effectiveness of institutions and programs.

*Re-entry programs show success.* The New Parole Model of the Department of Corrections includes a bridge between prison education programs and parole needs. The new model has planned for expanded inmate re-entry programs through its Police and Corrections Team program, which establishes a partnership between parole, law enforcement, and service providers in the community. (See Appendix A to this chapter for additional information about the New Parole Model).

During the first two weeks of parole, parolees must attend a mandatory Police and Corrections Team program. The program consist of a 2-1/2 hour orientation meeting where the parolee develops a personal action plan and receives on-site information about housing, food, employment, and substance abuse treatment. A key component of this program is the link to immediate employment opportunities in the community and on-site job training opportunities. Important skills, training, and job opportunities could be enhanced for the parolees if these programs were expanded to a full day instead of the current 2-1/2 hours. In a longer format, additional instruction could be offered for social and interpersonal skills, resume writing, job search, financial literacy, and personal management.

*Temporary Assistance for Needy Families.* Parolees who have been convicted of a drug felony since August 1996 are not eligible for Temporary Assistance for Needy Families or food stamps. Approximately half of the costs of these benefits are paid by the federal government. Although this restriction affects only the adult portion of the grant and not the portion attributable to children, receipt of these benefits may improve the likelihood that parolees will be successful in reintegrating into society. The federal government allows states to pass a waiver to allow drug offenders to receive these benefits, but this has not occurred in California. Full or partial waivers have been passed in 32 other states.<sup>38</sup>

*Police and Corrections Team.* One example of how employment opportunities are made available to parolees is the Police and Corrections Team program operating in the Sacramento area. This program provides on-site training through the Skills Center operated by the Sacramento Unified School District. One of the training programs available for parolees is an 18-week, 720-hour training class in truck driving. Since 1998, the recidivism rate for the 250 parolees who graduated from this training program has been 7 percent.<sup>39</sup>

*Community Re-Entry Bridging Program.* Another example of a successful re-entry program is the Community Re-Entry Bridging Program in Sacramento. This program supplements the institution re-entry programs by having a teacher assist parolees on an individual basis to identify housing, transportation, health care systems, food, and clothing needs. Participation in the program is voluntary. Sixty-one parolees from piloted institutions have participated in the program and all but one (98 percent) have successfully completed training and are now employed.<sup>40</sup>

These programs are examples of the positive impact that re-entry programs can have to reduce recidivism and help parolees integrate back into their communities. Programs such as these, when they produce demonstrable results, should be expanded to other regions of the state.

*The Joint Venture Program shows economic benefit.* In 1990 a statewide initiative created the Prison Inmate Work Incentive, which mandated the department to recruit private businesses into partnerships using inmate labor. Inmates participating in the joint venture programs are paid a comparable wage with deductions for restitution, room and board, and forced savings.<sup>41</sup> In return for their participation, the inmates receive day-for-day sentence reduction credits. According to the department, since its inception 13 years ago, the program has generated the following benefits:

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<sup>38</sup> National Conference of State Legislatures website: [www.ncsl.org/statefed/welfare/program.htm](http://www.ncsl.org/statefed/welfare/program.htm).

<sup>39</sup> PACT program statistics, e-mail communications with Ward Allen, Program Coordinator, Sacramento City Unified School District.

<sup>40</sup> Education and Inmate Programs Unit, memorandum dated May 7, 2004.

<sup>41</sup> California Department of Corrections Joint Venture Program website: [www.cor.ca.gov/institutionsdiv/instdiv/programs/programs-jointventure.asp](http://www.cor.ca.gov/institutionsdiv/instdiv/programs/programs-jointventure.asp).

- √ \$18.7 million wages paid to inmates
- √ \$3.5 million in restitution for crime victims
- √ \$2.9 million in taxes paid from inmate wages
- √ \$2.3 million deducted for support of inmate families
- √ \$4 million placed in mandatory inmate savings accounts.<sup>42</sup>

In fiscal year 2002-03, the program costs were lowered and revenue of \$35,000 was returned to the general fund. The statistics for 2003 were:

- √ \$315,066 program budget
- √ \$350,714 reimbursement to the general fund
- √ 206 average number of inmates participating
- √ 10 average number of programs
- √ \$1,350 administrative cost per inmate
- √ \$1,700,000 wages paid to inmates
- √ \$286,944 in restitution for crime victims
- √ \$235,924 federal taxes paid by inmates
- √ \$59,000 in inmate earnings withholding orders.
- √ \$222,855 deducted for support of inmate families
- √ \$351,034 placed in mandatory inmate savings accounts
- √ \$383,532 placed in inmate trust accounts

Unfortunately, the joint venture program budget for fiscal year 2003-04 was decreased to \$103,709, and the budget does not provide adequate funding for the administrative positions and financial firm contract. According to an analysis by the Joint Venture Program, in fiscal year 2004-05 the budget will have to be increased to \$410,542.<sup>43</sup>

Based on the low cost to operate the program and the financial benefits in restitution, tax revenue, inmate wages, and savings the department should provide an adequate budget and consider expanding the program. One possibility would be expanding the program to operate outside of the institutions, such as through joint ventures with community-based businesses that employ parolees. That arrangement would create a natural employment opportunity as parolees transition into their communities.

***Prison Industry Authority programs increase employment and reduce recidivism.*** Prison Industry Authority programs show success in increasing employment and reducing recidivism. The Prison Industry Authority was established in 1982 to develop and operate manufacturing, agricultural, and service industries within correctional institutions. The Prison Industry Authority operates more than 60 service, manufacturing, and agricultural industries at 22 prisons, employing 5,823 inmates.<sup>44</sup> According to its fiscal year 2002-03 report, the

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<sup>42</sup> California Department of Corrections, Joint Venture Program document prepared by J. R. Griggs, Program Manager.

<sup>43</sup> Department of Corrections, Joint Venture Program analysis by Susan Jacobson

<sup>44</sup> Prison Industry Authority, fiscal year 2002-03 annual report.

Prison Industry Authority provided an annual net cost avoidance to the department of \$14.1 million based on programming costs that the department would otherwise incur.”<sup>45</sup>

As part of its Inmate Employability Program, the Prison Industry Authority provides certain inmates with industry-accredited certifications in fields such as welding, optical technician, laundry and linen management, and metalworking. Since 2001, 2,346 inmates have received industry-accredited certifications in 13 different fields. These certifications reduce parolee recidivism — the recidivism rate for parolees who obtained accredited certifications is about 13 percent.<sup>46,47</sup> Similarly, Prison Industry Authority-trained inmates have higher employment rates than inmates not trained in its programs. For example, for former Prison Industry Authority workers on parole who had completed six or more months in the program employment rates were approximately 60 percent compared to typical rates of 20 to 30 percent for other parolees.<sup>48</sup> Because of the success of the accredited certification program, it should be continued and expanded where appropriate.

To further assist inmates in finding employment after parole, the Prison Industry Authority will pilot a new job placement service through the Offender Employment Continuum that will begin in July 2004. The program will operate in five institutions and coordinate employment services between the institution and parole.

### Recommendations

The new Department of Correctional Services should take the following actions to improve results from education, vocational, and re-entry programs:

- Provide inmate planning and re-entry assessment at the time of initial incarceration.
- Revise enrollment capacity numbers to reflect accurate capacity.
- Expand education and vocational programs.
- Promote education program attendance by implementing presumptive sentencing.
- Fully implement the bridging program and evaluate the academic effectiveness and sentence reduction benefits.

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<sup>45</sup> *Ibid.*

<sup>46</sup> California Department of Corrections, *California Prisoners and Parolees – 2002*, Tables 54 and 54a.

<sup>47</sup> Calculations for recidivism vary depending both on the definition of recidivism and amount of time elapsing between release and the moment recidivism is measured. As a result of these variables, the literature and this report cite various recidivism rates for California depending on the source and the context of the discussion. The panel found universal agreement from those it contacted that California’s recidivism rate is high compared to those of other states. [Little Hoover Commission, *Back to the Community, Safe & Sound Parole Policies*, 2003, p. 39].

<sup>48</sup> Prison Industry Authority, Inmate Employability Program report, April 29, 2004.

- Expand college correspondence courses and conduct on going evaluations on their effect on recidivism.
- Continue and expand the Incarcerated Youth Offenders Program.
- Implement on-line college programs.
- Track education program participation against parole success (and recidivism.)
- Debrief successful parolees during their last scheduled parole agent contact to determine whether education programs affected their success.
- Develop a state-wide computer database to track inmate education assessment and classroom achievement.
- Continue mandatory participation in the Police and Corrections Team orientation program and consider expanding it to a full day.
- Provide job training programs at the Police and Corrections Team orientations when possible.
- Expand the Community Re-Entry Bridging Program.
- Expand the in-prison joint venture program and explore creating community-based joint venture programs for parolees.
- Expand the Inmate Employability Program.

### **Fiscal Impact**

Providing greater access to education and vocational programs for inmates will require an investment in additional teachers and other resources, but this investment will generate cost savings through a lower return to prison rate for parolees. This will occur because inmates will be better prepared for reintegration into society.

## Reforming Parole

It costs almost ten times as much to maintain an offender in prison as it does to supervise a parolee. Therefore, unless the risk to public safety requires returning a parolee to prison, supervising parolees in the community is a wiser use of the state's limited financial resources. To make that possible, California must make the best use of both the prison and parole options. The number of parolees returned to prison can be effectively and efficiently reduced by better preparing inmates for eventual release, beginning from the moment the inmate arrives in prison and continuing through careful re-entry planning before release. Once released into the community, the parolee must receive an appropriate level of supervision that includes a broad spectrum of possible services and sanctions.

The panel reviewed the state's existing parole process and found that the Parole and Community Services Division has partially implemented promising improvements through its "new parole model." The panel recommends that the new parole model be closely monitored and that successful programs be expanded as quickly as possible. In addition, the panel identified other improvement opportunities, including early discharge of low-risk parolees, expansion of eligibility rules for drug-treatment programs, better data collection and analysis of parole programs, and, perhaps a reconsideration of the present policy of placing all offenders released from prison on parole.

### Background

In 2002, the California Department of Corrections released more than 117,000 inmates to parole supervision.<sup>49</sup> These inmates were released with few job skills and with limited treatment for health and drug abuse problems. Ten percent end up homeless and nearly 70 percent return to prison within 18 months.<sup>50</sup> In 2003, 78,056 were returned to prison for either parole violations or new prison terms.<sup>51</sup>

After release from prison, parolees are supervised by parole agents, whose duties include monitoring the parolee's activities, assisting the parolee in obtaining needed services such as drug-treatment or job training, and ensuring that parolees abide by specified conditions of parole. If a parolee threatens public safety by committing a new crime or by violating the parole conditions, the parole agent can arrest the parolee and recommend that the Board of Prison Terms revoke parole and return the parolee to prison. In cases where the parolee is to be returned to prison, the Board of Prison Terms decides the length of time the parolee will serve in prison. In 2001, the Board of Prison Terms revoked the parole of approxi-

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<sup>49</sup> California Department of Corrections Data Analysis Unit, Offender Information Services Branch, "Historical Trends 1983-2002," Table 8a.

<sup>50</sup> Little Hoover Commission, "Back to the Community: Safe & Sound Parole Policies," November 2003, pp. i;vi.

<sup>51</sup> California Department of Corrections, Population Projection Unit, Offender Information Services Branch, "Actual vs. Spring 2004 Projections," March 17, 2004.

mately 74,400 parolees. Since then, the number of parole revocations has decreased. In 2002 the number dropped to 71,246 and in 2003, it dropped to 62,358.<sup>52</sup>

Not all parolees who violate conditions of parole are returned to prison. In some instances, a parole agent may recommend drug treatment, more intensive supervision, or some other kind of sanction. When appropriate, the use of these types of interventions is preferable to returning a parolee to prison—which is much more costly. However, a large percentage of parolees ultimately return to prison. According to department reports, 41 percent of the 55,321 inmates paroled in 2001 returned to prison within one year of release. After two years, the recidivism rate increased to nearly 55 percent.<sup>53</sup>

In recent years, the Department of Corrections has developed three programs to address these problems. The programs provide opportunities for parolees to make fundamental behavioral changes and also to refocus parole supervision into less punishment-oriented solutions. Specifically, the Preventing Parolee Crime Program offers employment, drug treatment and education; the Office of Substance Abuse Programs provides drug programs both in and out of prison; and the new parole model includes graduated sanctions for minor parole violations and re-entry planning, drug treatment, and program coordination among various community and law enforcement agencies. These programs are described in more detail in Appendix A to this chapter. The new parole model, which the parole division began developing in 2001, consists of the following:

- ***Pre-release planning.*** Provides for a plan to be developed for the inmate's reintegration into society, based on the inmate's needs and risks. Pre-release planning begins about six months before the end of the prison sentence.
- ***Graduated sanctions.*** Provides a matrix of sanctions for parole violations, matched to the severity of the violation.
- ***Substance abuse treatment control unit.*** Provides in-custody drug treatment for low risk parolees who have returned to drug use. Used in lieu of returning the parolee to prison.
- ***Halfway back.*** Residential treatment facilities that provide life skills, education, and employment assistance for low-risk parolees who have violated the conditions of parole. Used in lieu of returning parolees to custody.
- ***Electronic monitoring.*** For low-risk parolees who have committed minor violations of parole. Used in lieu of incarceration.
- ***Police and Community Corrections Team.*** Establishes partnerships between parole, law enforcement, and community service providers. Requires each newly released parolee to attend an orientation meeting with this team.

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<sup>52</sup> California Department of Corrections, Data Analysis Unit, Offender Information Services Branch, "Historical Trends 1982-2002" Table 5; California Department of Corrections Population Projection Unit, Offender Information Services Branch, "Actual vs. Spring 2004 Projections," March 17, 2004.

<sup>53</sup> California Department of Corrections, Policy and Evaluation Division "Recidivism Rates Within One and Two Year Follow-Up Periods – Released From Prison for First Time in 2001," March 2004.

*Programs that address parolees' problems help reduce recidivism.* Research indicates that the most effective way to break the costly cycle of parolees returning to prison is to treat the parolees' problems of drug addiction, illiteracy, lack of employability, and criminal thinking. For example, a three-year study of the parole division's Preventing Parolee Crime Program showed that 28,000 parolees who participated in the program were significantly less likely to commit new crimes or abscond from parole supervision. The program has generated \$21 million in savings for the department. The study further indicated that participants avoided returning to prison for 54 days longer, on average, than those who did not participate in the program. According to the study, for every dollar invested in the program, the program saved \$1.56.<sup>54</sup> In another example, an analysis conducted by the Washington Institute of Public Policy of more than 400 research studies showed that many treatment programs both reduced recidivism and generated savings for every dollar invested.<sup>55</sup> Finally, a study of a 2,000-bed expansion in the department's substance abuse treatment program found that the 12-month return to custody rate was 24 percent for parolees who participated in aftercare and 15 percent for those who received 90 days or more of aftercare services.<sup>56</sup>

*The new organizational structure will support preparing inmates for release.* Chapter 1 of this report describes a new organization structure for the parole division. Under the reorganization, both the parole function and the custody function will operate under the control of the Director of Adult Operations. Regional directors will each manage five or six prisons and related-parole operations. In turn, the wardens of individual prisons and the regional parole managers will report to the regional directors. The Corrections Independent Review Panel believes that placing responsibility for both prison and parole operations under the leadership and management of the regional directors, will properly align the focus of the regional directors onto preparing inmates for release back into society.

*Implementation of the department's new parole model has been slow.* The new parole model of the Department of Corrections will address many past recommendations and represents a good start toward bringing California's parole system in line with current research on how to reduce crime without jeopardizing public safety, but its implementation has been slower than expected. The re-entry portion was scheduled to begin in February 2004, and, according to an official from the parole division in charge of the new model, staff has been hired and was scheduled to begin training in May 2004. The pre-release program, which was scheduled to begin in the department's 32 institutions on June 1, 2004, has begun.<sup>57</sup>

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<sup>54</sup> California State University San Marcos Foundation, "An Evaluation of the California Preventing Parolee Crime Program" by Sheldon Zhang, Ph.D., San Marcos, California, 2003, pp. 4,45.

<sup>55</sup> Washington State Institute for Public Policy, "The Comparative Costs and Benefits of Programs to Reduce Crime," Olympia, Washington, May 2001, p. 8

<sup>56</sup> UCLA Integrated Substance Abuse Programs, "Semi-Annual Report on the UCLA-ISAP Evaluation of the 2,000-Bed Expansion of Therapeutic Community Programs for Prisoners," Michael L. Prendergast, Ph.D. July – December 2003, Appendix C.

<sup>57</sup> Shirley Poe, Parole Administrator, Parole and Community Services Division, interview, May 12, 2004

It is important to visualize the model not simply as an experiment, but as an investment toward making the department a national leader in helping inmates and parolees reintegrate into society. It is too early to judge the new model's impact on recidivism or public safety because most components have yet to be implemented, but there have been some promising signs. For example, the proportion of parolees returned to custody decreased by 7 percent between July-December 2003 compared to the same period one year earlier.<sup>58</sup> The decrease is probably due not to the new parole model, but to a new policy implemented earlier, which requires parole administrators to review each return to custody recommendation and consider alternatives to incarceration. Nonetheless, the new policy will dovetail with the new parole model because both encourage agents and supervisors to consider alternative sanctions instead of returning the parolee to custody.

The cornerstone of the new parole model is a risk assessment instrument, which the department plans to use, but has not yet purchased. The risk assessment instrument uses an actuarial approach to identify the treatment needs of the parolee and the likelihood that the parolee will re-offend. The predictions are made using a computerized system that takes into account specific information about the parolee's background, including criminal and social history, and compares that information to statistical risk scales. A research group assembled by the parole division reviewed several different risk-assessment instruments, recommended one for selection, and has submitted that recommendation to the Youth and Adult Correctional Agency for approval.

The risk assessment tool is critical to formalized, consistent decision-making by parole agents. For the instrument to be accurate, it is imperative that the parole division complete periodic follow-up evaluations of its results and update the instrument to reflect any changing demographics in the population being assessed. It is also important to evaluate the assessment tool to make sure that it has predictive validity and that the classification of parolees is in line with the parolees' actual behavior.

The violation matrix is another important component of the new parole model. Still being developed by the parole division, the violation matrix will guide parole agents in making decisions about what sanctions, including treatment alternatives to re-incarceration, to impose for particular violations. Parole agents will use the violation matrix to match a parolee's violation against a graduated range of increasingly strident sanctions. According to officials, changes to the violation matrix are pending approval by the division's deputy director.<sup>59</sup> It is risky to begin less-restrictive sanctions, such as drug treatment in the place of re-incarceration, without first using risk-assessment to determine who is appropriate for various programs.

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<sup>58</sup> California Department of Corrections, "Spring Population Projections 2003," p.13; "Spring Population Projections 2004," p.13.

<sup>59</sup> Shirley Poe, Parole Administrator, Parole & Community Services Division, telephone interview, May 13, 2004

Other components of the new model have only recently been implemented or are similarly awaiting purchase, staffing, and approval. The electronic monitoring component has been submitted for bid offerings and should be solidified by June 2004. The halfway back facilities have been open since February 2004, and the Substance Abuse Treatment and Control Unit component became operational in mid-May 2004. The agents for the Police and Community Team had been chosen and were in place by June 2004, as was the staff for the pre-release component.

The new parole model incorporates many of the recommendations made by both the Little Hoover Commission and the 1990 report of the Blue Ribbon Commission on Inmate Population Management. Specifically, the Little Hoover Commission recommended that the department should prepare inmates for parole while they are still in prison, build strong partnerships with community agencies, use structured decision-making to establish clear guidelines for responding to parole violations, and consider less restrictive, treatment-oriented sanctions for parole violations. As described in Appendix A to this chapter, the new model includes a matrix as a guide for graduated dispositions for parole violations; includes a re-entry component; creates a community/law enforcement/parole team to work with parolees; and provides two new treatment programs to be used in lieu of incarceration for parole violations.

The Corrections Independent Review Panel is optimistic that the new parole model will help the parole division improve its operation and will reduce the number of parolees returned to prison each year. The parole division must implement all features of the new model as quickly as possible, however. Also, the new department must view the new model as an investment, rather than an experiment in reforming its much-criticized parole process.

*An inmate's preparation for release must begin upon arrival at prison.* As discussed earlier, re-entry planning and risk assessment are being developed as part of the new parole model, but the current plan is to use these only during the six- to nine-month period before the inmate is released from prison. Instead, risk assessment and re-entry planning should begin when the inmate enters the institution so that parole and prison staff, along with the parolee, can plan for the parolee's reentry with educational, behavioral and drug treatment programs available from the moment the inmate enters the prison. If it can reduce the future criminal behavior of the offender, using incarceration time constructively will both enhance public safety and save money. It is important that the parole division be included in this effort, because the parole staff is familiar with available community resources and what is needed for successful re-entry.

*Substance abuse treatment in prison should be expanded.* Approximately 210,600 prisoners and parolees under custody or supervision by the department need drug treatment. About 132,000 of those needed drug treatment are inmates, yet, according to the Office of Sub-

stance Abuse Programs, only 14,800 are being treated.<sup>60</sup> More than 95 percent of all inmates will eventually be released from prison. To reduce recidivism, save money and protect the public, the number of treatment beds should be increased. Participation in and completion of the treatment program could be tied to the offender's release using the presumptive sentencing model discussed earlier.

*Successful parole and re-entry programs should be expanded.* The Department of Corrections has made efforts to address parolees' needs for drug, vocational, and education intervention with the Preventing Parolee Crime Program, Office of Substance Abuse Programs, and the new parole model. These programs have demonstrated success, but because they have addressed the needs of only a fraction of eligible offenders, the programs should be expanded with more funding. There is a particular need for residential treatment beds for parolees whose problems cannot be resolved in an outpatient setting. One way to accomplish this would be to change the focus of the existing halfway back program to drug treatment. The department could expand the capacity of substance abuse treatment beds by contracting with existing community-based residential treatment programs. These community-based programs also have secure lock-up facilities available for when that type of program is required. In some instances, these community-based facilities may charge a lower fee than the \$59 per day rate charged by the local jail-operated programs currently used by the state.

The Office of Substance Abuse Programs estimates that there are 78,000 parolees with drug abuse problems, but fewer than 25,000 of them receive treatment. A study of the Preventing Parolee Crime Program by California State University found that the rate of return to prison of those who completed the drug and education component was 20-percentage points lower than the non-treated population. For the study period, participants' incarceration rate was reduced by an average of 56.6 days per parolee, saving the state over \$21 million after the costs of the program were subtracted.<sup>61</sup>

The Legislature has also recognized the value of providing drug treatment. Penal Code Section 3070 directed the Department of Corrections to develop and present a plan by December 31, 2000, that would ensure that all parolees and inmates "receive appropriate treatment, including therapeutic community and academic programs" by January 1, 2005. According to the parole division, this plan was not prepared; instead, a brief letter was sent to the Legislature reporting that it was not feasible to accomplish the plan now because of fiscal problems and changes in sentencing laws. The Legislature indicated that it agreed. Proposition 36, the ballot initiative that provides drug treatment in lieu of incarceration, passed soon after Penal Code Section 3070 went into effect, but the state's subsequent fiscal

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<sup>60</sup> Merrie Koshell, Correctional Counselor III, Office of Substance Abuse Programs, telephone interview, Sacramento, California, April 15, 2004.

<sup>61</sup> California State University San Marcos Foundation, "An Evaluation of the California Preventing Parolee Crime Program," by Sheldon Zhang, PhD, (San Marcos, CA, 2003), p.5

crisis has resulted in uncertainty about whether any substance abuse treatment programs would continue.<sup>62</sup>

*Global positioning satellite tracking can bolster electronic monitoring.* Global positioning satellites are an advanced form of electronic monitoring that allows real-time tracking of the location of parolees. The devices can be programmed to alert parole agents and local law enforcement when a parolee enters or leaves a particular area. The technology could be useful for high-risk parolees such as armed robbers or sex offenders. Global positioning satellite systems cost about \$10 per day to operate – which is significantly less expensive than placing an offender back in prison.

Florida has used global positioning satellite systems since 1997 to target high-risk sex offenders, and other cases of high public interest. Texas also uses global positioning satellite systems to track the highest risk parolees, primarily sex offenders.

One potential drawback to global positioning satellite technology is that it requires parole agents or local law enforcement to respond quickly if an “alert” is issued by the device when a parolee leaves an authorized area. Failure to respond quickly could be a public safety risk, as well as a political embarrassment, if the parolee committed a crime while in an unauthorized area. Another potential drawback is that the increased surveillance that global positioning satellite systems generate can often lead to increased revocations. This increase may counter the money-saving aspect of global positioning satellite systems, but must be considered a necessary public safety benefit.

*Early discharge of low-risk parolees will reduce costs.* California’s existing parole policy focuses treatment time and money on non-serious, nonviolent parolees, yet it is the high risk, serious offenders who commit the most violent offenses and consequently pose the greatest threat to public safety. In 2001, 21 percent of those paroled had originally been sentenced to prison for possession of a small amount of drugs.<sup>63</sup> These parolees take as much time and effort to supervise as do those convicted of violent offenses. Rather than directing resources toward offenders whose crimes are drug-use related and who have no history of violence, the department’s emphasis should be placed on serious, high-risk parolees. Low-risk parolees should be required to participate in self improvement programs throughout their prison stay and should be prepared for parole through a rigorous prison re-entry program. Immediately upon release they should be connected with needed community services. This “hand-off” component is critical because parolees tend to fail during the first few months on parole.

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<sup>62</sup> Merrie Koshell, Office of Substance Abuse Programs, interview, April 15, 2004

<sup>63</sup> California Department of Corrections, Policy and Evaluation Division, “Recidivism Rates Within One and Two Year Follow-Up Periods – Released From Prison for First Time in 2001,” March 2004.

The Corrections Independent Review Panel recommends that parolees who are employed or self supporting, have a stable residence, and have no violations of their parole conditions after three months on parole be discharged from parole supervision. The discharge would require approval from the hearings administration identified in Chapter 1 of this report. In December 2003, the Department of Corrections estimated annual savings of between \$150 and \$176 million if all non-serious or non-violent parolees were discharged after three months.<sup>64</sup> To enhance public safety, a portion of the savings realized from early discharge should be redirected to more closely supervising high-risk parolees. The panel assumes that about 50 percent of low-risk parolees will qualify for release after three months and that 50 percent of the resulting fiscal savings would be redirected to supervising high-risk parolees. Under these assumptions, according to Department of Corrections calculations, the department would save about \$10 million in the first six months of implementation and \$39 million and \$44 million in the second and third years, respectively.<sup>65</sup>

To accomplish this change, the parolee's risk level should be determined using the evidence-based risk and needs instrument described earlier. Parolees with a history of violent or serious felony conduct (such as those crimes identified in Penal Code Sections 1192.7 and 667.5) and parolees who must register as sex offenders would be excluded. The goal would be to require that parolees participate in programs in prison, remain crime free and stable upon release, and be rewarded for their participation and success by early discharge from parole supervision. Following these guidelines will improve public safety.

*Should all inmates released from prison be placed on parole?* In California, 100 percent of those released from prison are placed on parole supervision for three or four years. In contrast, several other states supervise only certain prisoners after release. A few states, including Maine and Virginia, have abolished parole supervision altogether. Michigan supervises parolees for only two years, compared to California's three- or four-year parole supervision period.<sup>66</sup>

Scarce public resources are forcing corrections to make difficult decisions about where to place limited funds. Joe Lehman, Secretary of Washington State Department of Corrections, noted that when both low-risk and high-risk parolees are placed together on a caseload, parole agents don't give enough time to serious offenders. To remedy this, the Washington officials asked the questions: "Why do we (prison/parole) exist? What can the public reasonably expect us to do?" They concluded that the public wants to be protected from dangerous criminals and has tolerance toward treating drug addicts who are not violent.<sup>67</sup> They

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<sup>64</sup> California Department of Corrections, Legislative Estimates Unit, "Legislative Analyst Request 4&7," December 16, 2003.

<sup>65</sup> Department calculations prepared in December 2003 for the Legislative Analyst.

<sup>66</sup> Petersilia, Joan, Ph.D., *Reforming Probation and Parole*, American Correctional Association, 2002, p.115.

<sup>67</sup> Lehman, Joseph D., "A Forum on Current Issues in the Field of Corrections," presented by the Department of Corrections for the California Performance Review, April 27, 2004.

further concluded that focusing on more dangerous offenders and not supervising those on parole for less serious offenses would lower recidivism.<sup>68</sup> That sentiment is echoed by nationally recognized corrections expert Joan Petersilia. Petersilia notes that research indicates that the public is becoming more willing to tolerate treatment for nonviolent offenders, particularly substance abusers, and to focus punishment on those convicted of violent crimes. This is especially so when the public is aware of the high costs of incarceration.<sup>69</sup>

*Participation in drug-treatment programs is presently too restricted.* Studies show that parolees who complete drug treatment programs are less likely to re-offend.<sup>70</sup> Yet many parolees in California are excluded from participation in drug treatment programs because of their past criminal history. For example, parolees whose crimes are defined under Penal Code Sections 667.5 and 1192.7 as “serious” or “violent,” or who are required to register as sex offenders are barred from participating in the Substance Abuse Treatment Control Unit program, which has 30-day inpatient and 90-day outpatient components. This restriction is illogical from a public-safety standpoint because the Substance Abuse Treatment Control Unit program is a “lock-up” program typically located in city or county jails. So long as the normal criteria are met for this jail-based drug program and the violation is for drug use only, these currently excluded parolees would benefit from drug treatment as much as a lower risk offender. If these offenders were allowed to participate in the Substance Abuse Treatment Control Unit program, the department would save money because the cost of that program is cheaper than the cost of returning the offender to prison. Moreover, numerous studies have demonstrated that those who complete substance abuse programs are less likely to be sent back to prison, particularly when they complete both in and out patient components.

*Private contractors can be used to provide specific treatment.* Exploring the use of private contracted facilities to provide treatment can expand the availability of efficient resources to support the new parole model. Private contractors could be used to provide secure facilities for specific kinds of treatment designed to maintain the parolee in the community. These programs have the promise of success at a cost substantially lower than state prisons, and sometimes lower than county facilities. Programs provided include 90-day treatment for drug and alcohol addiction, which has been shown to have a positive effect on preventing new offenses. These facilities and programs can be found especially in large urban areas.

*Data collection is critical to measuring program effectiveness.* Collecting data and measuring the results of both new and existing programs is critical to on-going improvement. At

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<sup>68</sup> Washington State Institute for Public Policy, “Washington’s Offender Accountability Act: An Evaluation of the Department of Corrections’ Risk Management Identification System,” January 2003.

<sup>69</sup> Petersilia, Joan, Ph.D., *Reforming Probation and Parole*, American Correctional Association, 2002, p.180.

<sup>70</sup> Aos, Steve *et al*, Washington State Institute for Public Policy, “The Comparative Costs and Benefits of Programs to Reduce Crime,” May 2001.

present, there is no comprehensive, integrated data system in the department to even provide information about trends or the success or failure of policies. This lack of data collection and analysis prevents the department from showing lawmakers and the public the effectiveness of its programs. The lack of data mirrors a similar lack of research to evaluate parole programs nationwide. Petersilia notes,

*It is safe to say that parole programs have received less research attention than any other correctional component in recent years. A congressionally mandated evaluation of state and local crime prevention programs included just one parole evaluation among the hundreds of recent studies that were summarized for that effort.<sup>71</sup>*

For years the department has been focused on incarceration over rehabilitation programs, in spite of the research statistics that show rehabilitation programs help offenders and simultaneously reduce the skyrocketing prison populations and costs. As California's new parole programs are implemented, it is important that they be monitored to determine both whether they are affecting return to custody rates and whether they compromise public safety. A measurement component should be built into the programs, and adequate funding should be provided to the department so that decision making and public policy is based on valid analysis of what programs and policies are effective.

The following are suggested outcomes that the new Department of Correctional Services should measure to demonstrate the success of its prison and parole programs. Each of these outcomes should improve as the department becomes more effective at preparing inmates for reintegration back to society.

- Reduction in risk and needs scores, as measured by the risk and needs assessment instrument;
- Rate and duration of parolee employment;
- Program attendance rates;
- Improvements in reading levels;
- Reduction in the number of fugitives from parole; and
- Recidivism rate.

*Effectively supervising parolees requires parole agents to have a balance of skills.* Most agents now working in parole were hired and trained when the department's focus was on surveillance and detection of criminal behavior. This focus was reinforced by department training, which included arrest procedures and use of force. The department provides no training in casework issues, such as patterns of recovery from drug addiction or mental illness and its impact on relapse.

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<sup>71</sup> Petersilia, Joan, *Reforming Probation and Parole in the 21<sup>st</sup> Century*, American Correctional Association, 2002., p.190

Furthermore, hiring practices and requirements impede hiring individuals with social services background. Agents are rarely hired from social service disciplines, such as child protection agencies, treatment programs, or even probation, largely because of the lengthy background investigations required of applicants not already employed as peace officers by the department. It can take up to a year to hire an individual from other disciplines such as social services or probation, whereas current department correctional officers can be hired almost immediately. This is because correctional officers seeking parole agent positions have already gone through a Department of Corrections background investigation, so the investigator need only examine the period in the applicant's career subsequent to the original background investigation. To hire an applicant from outside the department, conversely, the investigation must start from scratch—a time-consuming process. Consequently, most new agents are chosen from the prison correctional officer ranks. To develop a more balanced force of parole agents who bring a combination of law enforcement and social work skills to parole operations, the new Department of Correctional Services should remedy these hiring barriers and provide on-going training in social service skills to its parole agents.

### **Recommendations**

To improve parole operations the new Department of Correctional Services should take the following actions:

- Continue implementation of the Department of Corrections new parole model.
- Consider the use of private contractors to provide specific kinds of treatment in secure facilities designed to maintain the parolee in the community.
- Begin preparation for re-entry when the offender enters prison.
- Increase the number of substance abuse treatment beds in prison.
- Increase the number of substance abuse treatment beds in the community by increasing funding for programs that are proven successful. This could include halfway back, Substance Abuse Treatment Control Unit, or other community-based facilities.
- Use the needs and risk assessment tool when the inmate first enters prison and design a programming plan that addresses those needs.
- Discharge parolees who are determined to be very low risk from parole three months after they are released from prison.
- Consider the use of global positioning satellite tracking for certain high-risk offenders.

- Allow both high- and low-risk parolees to participate in treatment and training programs.
- Add a quality control feature to the new parole model programs to measure effectiveness.
- Increase focus on casework skills when recruiting new agents and in agent training.
- Develop a comprehensive data collection and analysis system that measures the effectiveness of the department's parole programs. This system must also link with other department data analysis systems.

### Fiscal Impact

The Little Hoover Commission estimated that changes outlined in the commission's November 2003 report on parole could save the department \$151 million by reducing the percentage of parole violators returned to prison. The commission further estimated that an additional \$300 million could be saved by reducing the length of revocation sentences for "low end" offenders from an average of 140 days to 100 days.<sup>72</sup> The Department of Corrections has estimated that the new model will reduce the parolee return to prison rate by 5 percent in 2004.<sup>73</sup> Already, as agents seek alternatives to incarceration, there has been a decrease of 5,765 parolees in prison for violations from January 2003 to January 2004 as compared to the same period a year earlier.

Many of the recommendations of the Corrections Independent Review Panel require an initial investment, but are designed to save money in the future as they increase inmates' chances for success on parole.

The Corrections Independent Review Panel estimates the following savings would occur from implementation of the recommendations presented in this report:

- **Early discharge from parole – after 3 months of successful parole**

Fiscal Year	2004-05 - \$10 million
Fiscal Year	2005-06 - \$39 million
Fiscal Year	2006-07 - \$44 million

<sup>72</sup> Little Hoover Commission, "Back to the Community: Safe & Sound Parole Policies," November 2003, p. iii.

<sup>73</sup> Arthur Chung, Chief, Offender Information Services Branch, California Department of Corrections, interview, March 22, 2004

## **Appendix A**

### **Preventing Parolee Crime Program**

In 1998 Assembly Bill 2321 provided funding to expand the Department of Corrections pilot program known as the Preventing Parolee Failure program. As codified in Penal Code Section 3068, this program was renamed Preventing Parolee Crime Program and includes the following components.

- **Offender Employment Continuum.** This is a 40-hour mandatory employment workshop for parolees focusing on identifying and correcting long term barriers to employment. It includes job preparation, resume writing and interviewing skills, as well as employment referral and continued counseling to ensure that the parolee stays on the job.
- **Residential Multi-service Centers.** These facilities provide a therapeutic environment primarily for homeless parolees to help them transition into independent living. The program offers substance abuse treatment, literacy training, and individual and group counseling. Parolees can live in the program for up to 180 days. There is a 60- to 90-day aftercare period.
- **Computerized Literacy Learning Center.** This a computer-assisted instructional program staffed by credentialed teachers. The programs are located in parole offices at 21 sites throughout the state. (as of August 2003)
- **Substance Abuse Treatment and Recovery.** This is a 20-day education-based substance abuse program located in at least 28 parole offices. Parole agents refer parolees who have tested positive for drugs. Approximately 8,060 parolees are using this program.

In its February 1998 analysis of the fiscal year 1998-1999 budget, the Legislative Analyst's Office stated that, according to the department, the Preventing Parolee Failure program resulted in net state savings of \$74 million over a four-year period. The Legislative Analyst recommended expanding the Preventing Parolee Failure program, noting that the program would save between \$2 and \$3 for every \$1 invested.<sup>74</sup>

### **Office of Substance Abuse Programs**

The Office of Substance Abuse Programs estimates that there are 210,000 inmates and parolees with drug abuse problems. The office estimates that approximately 16,500 parolees are receiving treatment in one of its programs. The Office of Substance Abuse Programs coordinates the following prison and community based programs:

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<sup>74</sup> Legislative Analyst's Office, "Analysis of the 1998-99 Budget Bill," February 1998, pp. D-25, D-33

- Substance Abuse Program. There are 8,500 therapeutic community slots in 35 substance abuse programs in 19 prisons. The length of stay is from six to twenty-four months. Each slot serves an average of 1.33 inmates annually.
- Transitional Treatment Team Program. At Folsom State Prison, 200 inmates participate in this four-month program that includes intensive pre-release planning. Parolees who go back to prison briefly for drug violations and who have completed a substance abuse program in prison are also eligible for this program.
- Parole Services Network. This program is for parolees who have not been in a prison substance abuse program but need drug/alcohol treatment. The average length of stay for a residential program is 30 to 90 days, followed by outpatient services. The Office of Substance Abuse Programs coordinates with the California Department of Alcohol and Drug Programs to manage the service networks. The Department of Alcohol and Drug Programs transmits funds to the counties, which in turn contract with treatment providers. These programs offer up to 180 days of services, which include assessments, detoxification, and residential and outpatient treatment.
- Drug Treatment Furlough. This is an in-prison substance abuse program for 1500 nonviolent, non-serious offenders. Inmates participate in this residential community aftercare treatment program during their last 120 days in prison.
- Family Foundations Program. A 70-bed program for women with small children who have been convicted of low-level felonies. This program is used in lieu of state prison.
- Community Mother Infant Program: This is also a 70-bed program for low-risk female inmates who are pregnant or give birth in prison. The 70 beds are divided between three facilities.

The Community-Based Aftercare Programs are included under the Office of Substance Abuse Programs. Merrie Koshell of the Office of Substance Abuse Programs indicated that according to a study, (R.J. Donovan In-Prison and Community Substance Abuse Program: Three-Year Return-to-Custody) 24 percent of those who complete both the prison and aftercare drug portions of the R.J. Donovan program return to prison, compared to 78 percent of those who complete only the prison component. The programs are much more successful if the inmate/parolee completes all components.

The Substance Abuse Services Coordination Agency is also included under Office of Substance Abuse Programs. The Substance Abuse Services Coordination Agency manages the aftercare portion of the drug programs. The agency has offices in each of the four parole regions and purchases services from community-based providers. These are 30- to 90-day residential care programs followed by outpatient drug treatment.

- **Female Offender Treatment and Employment Program.** This program was established by Penal Code Section 3054, as enacted by SB 491, Chapter 500 in 1998. Female parolees who graduated from a prison-based substance abuse program are eligible to receive up to 15 months of Female Offender Treatment and Employment Program services. For parolees who choose to use the program, the average length of stay is 135 days. Services include substance abuse treatment, employment/educations programs, and life skills development. Child care and transportation is provided. Some of the residential programs allow children to live with their mothers.
- **Enhanced Substance Abuse Treatment Control.** This is a 200-bed treatment program located at Folsom Prison. After completion of this program the parolee is eligible to use the other community-based programs of the Office of Substance Abuse Programs.

### **The New Parole Model**

In September of 2001 the Parole and Community Services Division created its new parole model to address recidivism issues. The model focuses on non-serious/non-violent offenders as they are thought to pose the least risk to the community if they are offered alternative sanctions to incarceration. The basic components of the model are the following:

- **Violation matrix.** This is a structured system for providing clear guidelines to decision making for parole violations.
- **Pre-release planning.** Inside prison, a Parole Agent II, social worker and parole service assistant will assess the inmate using a computer-based tool that identifies the inmates' needs and the risk they present to others. Agents will continue to use this tool throughout the parole period and will modify parole conditions and supervision levels accordingly.
- **The Police and Corrections Team.** The team establishes a partnership between parole, law enforcement, and service providers once the offender is released. Every newly released parolee will be required to attend an orientation meeting with this group of professionals. A Parole Agent II will run this program with the help of a social worker. The department plans to have a team in each of the 24 parole divisions.
- **Electronic monitoring** will become available for non-violent/non-serious offenders. This will allow agents to impose home detention as an alternative sanction for parole violations. It costs \$43.00 a day to house an inmate in prison and approximately \$5.00 a day to monitor a parolee at home with an electronic device. There will be 1,000 of these devices, which will provide about five per parole unit.

- The Halfway Back program offers residential treatment as an alternative sanction for parolees who have committed a technical violation and who need a more structured setting to both address their problems and monitor their behavior. The Halfway Back units focus on life skills, education, and employment. Statewide there are 18 facilities with a total capacity of 792 beds. These facilities were being used as work furlough beds for inmates during the last six months of their term. As the work furlough inmates parole, the beds are being filled with parolees. This program began in March 2004. Currently it is 74.5 percent full; however inmates are still in the process of transitioning out of the facilities.
- The Substance Abuse Treatment Control Unit will provide a 30-day, in-custody drug treatment program for parolees whose drug addiction is too advanced to be addressed in the community. It is designed to serve up to 1306 parolees. 1770 beds have been contracted in various jails throughout the state —600 beds are now available at the Los Angeles County Detention Center, with another 20 beds at Humboldt County Jail.

**TABLE 1**

Male Institution Bed Type (Includes Civil Addict Program)	Design Capacity (DC) updated on 6/2/04 <sup>1</sup>	Actual Male Institution Population April 2004 <sup>2</sup>	Actual Percentage of Design Capacity April 2004	CDC Defined Maximum % of DC	Male Institution Population Equivalent of CDC Maximum	Bed Changes Req'd to Reach CDC's Maximum Percentages	Warden's Proposed Operable Capacity (OC) as % of DC <sup>3,4</sup>	Male Institution Population Equivalent of Warden's Proposed OC	Projected Male Institution Population on 6/30/09 <sup>5</sup>	Population Reductions Needed by 2009 to Meet Warden's OC <sup>6</sup>
<b>CAMP BEDS</b>	<b>3,588</b>	3,752	105%	100%	3,588	164	<b>100%</b>	3,588		
General Population:										
Level I - MSFs	4,759									
Level I - old design	<u>5,091</u>									
<b>LEVEL I TOTAL</b>	<b>9,850</b>	15,751	160%	190%	18,715	-2,964	<b>150%</b>	14,775	29,054	-10,691
Level II - new design	6,406									
Level II - old design	<u>9,622</u>									
<b>LEVEL II TOTAL</b>	<b>16,028</b>	35,306	220%	190%	30,453	4,853	<b>150%</b>	24,042	31,334	-7,292
Level III - standard	13,252						160%			
Level III - over/under	<u>2,122</u>						100%			
<b>LEVEL III TOTAL</b>	<b>15,374</b>	30,912	201%	190%	29,211	1,701	<b>152%</b>	23,325	38,245	-10,048
Level IV - 180 design	7,510						140%			
Level IV - 270 design	<u>6,520</u>						140%			
<b>LEVEL IV TOTAL</b>	<b>14,030</b>	21,293	152%	190%	26,657	-5,364	<b>140%</b>	19,642	28,030	-3,591
Reception Center cells	5,646						150%			
Reception Center over/under	256						150%			
Reception Center dorms	<u>2,608</u>						190%			
<b>RECEPTION CENTER TOTAL</b>	<b>8,510</b>	20,055	236%	190%	16,169	3,886	<b>162%</b>	13,808	17,628	-3,820
Administrative Segregation/III	2,262						150%			
Administrative Segregation/IV	<u>1,152</u>						120%			
<b>AD SEG TOTAL</b>	<b>3,414</b>	7,092	208%	150%	5,121	1,971	<b>140%</b>	4,775		
<b>SUBSTANCE ABUSE TX</b>	<b>1,056</b>	1,467	139%	140%	1,478	-11	<b>140%</b>	1,478		
<b>SECURITY HOUSING UNIT</b>	<b>2,436</b>	2,780	114%	120%	2,923	-143	<b>100%</b>	2,436	3,165	-729
<b>CONDEMNED</b>	<b>604</b>	604	100%	100%	604	0	<b>100%</b>	604		
<b>YOUTHFUL OFFENDERS</b>	<b>82</b>	82	100%	100%	82	0	<b>100%</b>	82		
<b>EOP</b>	<b>1,691</b>	2,397	142%	150%	2,537	-140	<b>150%</b>	2,537		
<b>PSU</b>	<b>192</b>	248	129%	100%	192	56	<b>100%</b>	192		
<b>PHU</b>	<b>24</b>	24	100%	100%	24	0	<b>100%</b>	24	25	-1
<b>TOTAL SYSTEM</b>	<b>76,879</b>	141,763	184.4%	179.2%	137,754	4,009	<b>144.8%</b>	111,309	147,481	-36,172

## Notes for Table 1

<sup>1</sup> "Design Capacity" (DC) is based on the following assumptions:

- (1) one inmate per cell,
  - (2) single bunks in dormitories, and
  - (3) no inmates housed in spaces that were not designed for housing, such as dayrooms, hallways and gymnasiums.
- The numbers used here provide a basis for expressing the actual capacity of the prisons as a percentage of design capacity. Includes new beds at the Delano II facility.

<sup>2</sup> The population reflected here is the male felon and civil addict population housed in CDC institutions and camps. This population does not include (1) women, (2) inmates housed in various community correctional centers, (3) inmates housed in the Department of Mental Health state hospitals, and (4) inmates housed in county jail beds.

<sup>3</sup> "Maximum Operable Capacity" (MOC) is determined through an assessment of experienced Wardens and is expressed as the percentage of design capacity of the various housing units within the institutions wherein the prison can be operated both safely and can provide programming for every inmate, consistent with the inmate's ability. Programming means the provision of education, vocational education, drug and alcohol prevention and other programs especially for inmates serving a determinate sentence or PV-RTCs, which is consistent with a renewed emphasis on preparation for re-entry. For the purposes of the process of determining Operable Capacity, it is assumed that (1) all "bad beds" are closed, thus freeing up program space, and (2) staff with requisite experience are available to manage an effective program.

<sup>4</sup> Ad Seg and Level III maximum operable capacities are a weighted average based on the number of beds and the recommendations by bed type for the different designs.

<sup>5</sup> Based on Table 6 in the the Spring 2004 Population Projections, which has fewer breakdowns for inmate/bed types. Campers, Administrative Segregation, Substance Abuse Treatment, Condemned, Youthful Offenders, EOP, and PSU inmates are included in the projections for Levels I through IV.

<sup>6</sup> Camp beds are included in Level I figures. Ad Seg beds are broken out between Level III and Level IV. Substance Abuse treatment beds are included in Level III. Condemned, Youthful Offenders, EOP and PSU beds are included in Level IV.

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## Ward / Parolee Population Management

Providing education, training, and treatment to youthful offenders is central to the mission of the California Youth Authority. Forty years ago, California was the undisputed national leader in carrying out that responsibility. But in the 1980s, tougher sentencing for juveniles, subsequent overcrowding of youth correctional facilities, and a societal emphasis on custody over rehabilitation began eating away at the State's programs for helping incarcerated youths.

Today, a new set of forces is at work. In recent years, the number of youthful offenders in California correctional facilities has fallen by almost half, from 10,114 in June 1996 to 4,879 in June 2003, with the number expected to decline to 3,740 by June 2009. Most of the youths now committed to state custody are proportionately more violent and have significantly greater needs for mental health care and other program services compared to the youths of earlier years. At the same time, the state is under increasing challenge from the public, from lawmakers, and from the courts for failing to provide humane and constitutionally adequate conditions of confinement for incarcerated youths and for not providing adequate education and treatment services.

In light of those circumstances, the Corrections Independent Review Panel examined what California can do to improve its treatment, education, and parole services for the serious, chronic, and violent youthful offenders committed to its custody. As a result of that study, the panel recommends that the State institute a series of best-practices reforms in its education and treatment programs to more successfully protect society by helping youthful offenders reintegrate back into the community.

### Fiscal Impact

Implementing the panel's recommendations can be expected to result in long-term savings by reducing disciplinary incidents in youth correctional institutions, helping youthful offenders earn earlier release, and reducing the number who commit new crimes and return to custody. The recommendations will also assist the new Department of Correctional Services in complying with the requirements of the consent degree anticipated in a major court action, *Farrell v. Harper*. A detailed legislative financial analysis involving key stakeholders is needed to more fully determine the fiscal impact of the recommendations.

### Background

The mission of the California Youth Authority is as follows:

*[T]o protect the public from criminal activity by providing education, training, and treatment services for youthful offenders committed by the courts; directing these offenders to participate in community and victim restoration; and assisting local justice agencies with their efforts to control crime and delinquency, and encouraging the development of state and local programs to prevent crime and delinquency.<sup>1</sup>*

<sup>1</sup> California Youth Authority, Public Affairs Office

The department's historical obligation to provide juvenile offenders with education, training, and treatment services was set forth when the California Youth Authority was created by the Youth Corrections Act of 1941. At the time of its enactment, the law was revolutionary in that it substituted training and treatment for youthful offenders in place of retributive punishment, which had been the national norm. In the years following, the act also made California the national model in juvenile treatment. By the mid-1960s the success of California's training and treatment model became not only accepted practice across the country, but also the formal legal policy of the United States, certified by the U.S. Supreme Court, in *Kent v. United States* (1966). Although the U.S. Supreme Court has since modified the treatment model, allowing juveniles to be tried as adults in cases involving particularly egregious offenses, it has nonetheless preserved the importance of individual assessment of the circumstances of the juvenile before sentencing, and the general policy of rehabilitation for juveniles remains sacrosanct. The U. S. Supreme Court continues to affirm the special developmental status of those under the age of 18 and the State's obligation to provide them with special protection.

Studies have shown that wards who participate in education and vocational training programs have a lower risk of recidivism.<sup>2</sup> Yet, despite those studies, and despite the historical mandate to provide treatment services to youths committed to the California Youth Authority, the State's commitment to providing such services has been eroding since the early 1980s. During the 1980s and 1990s, the department's budget failed to keep pace with rising ward populations resulting from "tough on crime" sentencing laws that made sanctions for juvenile crime comparable to those of adults and from stricter parole policies instituted by the Youthful Offender Parole Board that lengthened incarceration times. Largely because of Youthful Offender Parole Board policies, the average length of stay for wards increased from 21.6 months in 1991-92 to 27.6 months in 2002-03.<sup>3</sup> Between 1987 and 1991, the ward population in California Youth Authority facilities averaged 139 percent of bed capacity and over-crowded living conditions and double bunking became standard.<sup>4</sup>

With the overcrowding came increased violence in youth correctional facilities—group disturbances, suicidal behavior, escape attempts, and other acts of destructive conduct. And, in an escalating cycle, increased violence led to longer stays, still more overcrowding, and still more violence. Research by the California Youth Authority shows that before crowding began in 1987 disciplinary incidents were significantly fewer. In 1987 the disciplinary rate for serious ward misbehavior stood at 102.5 incidents per 100 wards, but as crowding increased between 1987 and 1991, the rate of disciplinary actions increased by 33

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<sup>2</sup> Stephen J. Steurer, Linda Smith and Alice Tracy, "Three State Recidivism Study, Preliminary Summary Report," September 30, 2001.

<sup>3</sup> Department of Youth Authority, "Population Projections for Fiscal Years 2004-05 through 2007-08," March 9, 2004, pages 1; 7-8.

<sup>4</sup> Department of Youth Authority, "Budget Change Proposal, Institutions and Camps Branch, Fiscal Year 2003-04, Fiscal Year 2004-05," March 9, 2004, pages 1-2.

percent to 136.2 incidents per 100 wards. Under earlier policies, wards were nearly always able to decrease the time they served through a system that deducted time as a reward for positive behavior. But under policies instituted in the 1980s, as the number of disciplinary incidents rose, the Youthful Offender Parole Board increasingly deferred release to the point that it was not unusual for wards to have served all their “available confinement time” — the maximum sentence imposed by the committing court— with no reduction for good behavior by the time they left the institution. At present, approximately 540 wards— 14 percent of the current California Youth Authority population— are serving all of their available confinement time as a result of disciplinary actions.

Because of this pattern, several reforms were enacted in January 1, 2004, with the passage of Senate Bill 459. The new law removed authority from the Youthful Offender Parole Board for setting projected parole dates and for making decisions about time adds and time cuts and gave it back to the California Youth Authority, which had that authority until 1980. The bill also includes a provision allowing wards to reverse time adds through sustained positive behavior. In addition, the new law re-named the Youthful Offender Parole Board as the “Youth Authority Board,” and required it to report to the Director of the California Youth Authority, who is once again designated chairman of the board. The board retains its public protection role of making decisions concerning parole release and parole revocation.

In the meantime, the California Youth Authority is under court mandate to improve its programming and treatment of youthful offenders. A complaint for injunctive and declaratory relief, filed in the Alameda County Superior Court in the case, *Farrell v. Harper* alleges numerous deficiencies in education, treatment, and parole services for youthful offenders.<sup>5</sup>

### *Education services*

California Welfare and Institution Code Section 1120 requires the California Youth Authority to operate a statewide correctional school district under the direction of the Superintendent of Education.<sup>6</sup> Each of the California Youth Authority’s eight institutions provides academic and vocational classes and teaches life survival skills to help wards attain a high school diploma or general education degree (GED) equivalent before they are released. Each institution has a school administered by a principal, one or more assistant principals, teachers, teaching assistants, and specially credentialed supplemental service providers.<sup>7</sup>

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<sup>5</sup> Complaint for Injunctive and Declaratory Relief, Superior Court For The State Of California, County Of Alameda, Margaret Farrell v. Jerry L. Harper, January 16, 2003.

<sup>6</sup> California Youth Authority, “Report on Education Funding Levels, Submitted in Response to the Supplemental Report of the 2002 Budget Act – Item 5460-011-0001,” November 2002, page 2.

<sup>7</sup> California Youth Authority, “Report on Education Funding Levels, Submitted in Response to the Supplemental Report of the 2002 Budget Act – Item 5460-011-0001,” November 2002.

All California Youth Authority high schools are accredited through the Western Association of Schools and Colleges.<sup>8</sup>

At the time of commitment, the educational level and abilities of each ward are assessed at a reception center clinic and an individual education plan is developed for those in special education. The methods by which education services are provided are substantially influenced by the ward's security restrictions and program needs, including the need for substance abuse treatment or mental health services.<sup>9</sup> These factors, in turn, dictate the institutional setting in which education services are provided. Education services at the California Youth Authority are provided through the following primary delivery models:

- *Conventional classrooms.* Wards attend conventional classrooms and vocational shops with up to 15 students.
- *Special management programs.* These programs provide education services to wards with special needs whose behavioral problems prevent them from attending school for significant periods of time. At present, instruction for special management program wards is conducted by teachers either on a one-on-one basis at the room door or in open settings in small groups not exceeding five wards.
- *Temporary detention.* Wards placed in temporary detention for misbehavior receive education through an alternative education plan. This is an ever-changing population, as wards are moved in and out of temporary detention on a continuous basis.
- *Self-contained classrooms.* These classrooms are an adjunct feature of special program facilities that provide mental health services, and the instructional schedule mirrors that of the conventional classroom.
- *Reception centers/clinics.* At California Youth Authority reception centers and clinics, the focus of the education activities is assessing the ward's education proficiency and determining the appropriate subject and grade level into which he or she should be placed upon arrival at a residential institution. The reception centers also provide a pre-education service to assess how the ward functions with peers in conventional classrooms.
- *Conservation camps.* Wards attend a full-day schedule of classes during afternoons and evenings outside the three- to four-month fire season.

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<sup>8</sup> Richard Kai and Robert Brown, Deputy Director and Assistant Deputy Director, Education Services Branch, California Youth Authority, interview, April 2004.

<sup>9</sup> California Youth Authority, "Report on Education Funding Levels, Submitted in Response to the Supplemental Report of the 2002 Budget Act – Item 5460-011-0001," November 2002, page 8.

- *Community colleges.* Under cooperative agreements with local community colleges, the California Youth Authority provides coursework toward the Associate of Arts degree to wards who possess a high school diploma or who have earned a GED.<sup>10</sup>
- *Vocational training.* The California Youth Authority's high school curriculum once emphasized "hands-on" vocational education combined with regular coursework, but due to the declining ward population and subsequent budget cuts, the number of vocational education instructors was dramatically reduced and the emphasis was shifted to obtaining a high school diploma.

*The California Youth Authority's education programs have received high marks.* In contrast to strong criticisms leveled at the California Youth Authority's custody practices and at the violence in its institutions, the department's education programs have received generally favorable assessments. In September 1999, a department publication noted, "the level of education in CYA is better than three years ago as there has been notable progress in education services provided and also in gaining greater acceptance within the community of educators throughout the state."<sup>11</sup> The authors of an independent review conducted for the California Attorney General in 2002 that assessed whether the department was providing adequate education opportunities to wards, commented: "the CYA is commended for its efforts to provide quality educational programming for the wards committed to its care."<sup>12</sup> The reviewers went on to note: "the overall quality of high school programming offered to general and special education wards by CYA is considered to be adequate. In some cases the programs being provided are exemplary."<sup>13</sup> Those comments contrast sharply with assessments of the general environment in California Youth Authority facilities. One such assessment, an officially commissioned review, noted: "it is abundantly clear from a range of data that I collected as part of this review, the CYA is a very dangerous place, and that neither staff nor wards feel safe in its facilities."<sup>14</sup>

*The department plans to combine education services with custody operations.* Studies have shown that for education services to be effective in youth correctional facilities, they must receive primary focus and they must be administered separately from custody operations. Yet, the California Youth Authority is currently planning to place its Education Services Branch, which is responsible for education services in youth facilities, under the Institution and Camps Branch, which is responsible for custody and treatment programs. That proposal seems particularly ill-advised considering that the Institution and Camps Branch has been severely criticized for its failure to effectively operate treatment and custody pro-

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<sup>10</sup> Department of Youth Authority, "Draft, Major Capital Outlay Five-Year Plan, FY 2004-09," April 2004, pages C1-C2.

<sup>11</sup> California Youth Authority, Today, Director's Corner, September 1999.

<sup>12</sup> Thomas O'Rourke and Robert Gordon, "Education Program Review of California Youth Authority, Deputy Attorney General, California Department of Justice, 2002, page 3.

<sup>13</sup> Ibid.

<sup>14</sup> Barry Krisberg, Ph.D., "General Corrections Review of the California Youth Authority," December 2003, page 18.

grams. The branch has been successfully sued by the Prison Law Office for failure to provide proper conditions of confinement consistent with public, ward, and staff safety and is under scrutiny and review by the U.S. Department of Justice and the California Attorney General.

*Other reforms in the education program are needed.* Although assessments of the California Youth Authority's education program have been generally positive, a number of improvements are needed. The problems to be addressed include the following:

- *The year-round school year does not allow for teacher training and vacations.* The school year in California Youth Authority facilities runs 248 days compared to 184 days in local public schools. The year-round school session was instituted to address the serious education gaps typical of youthful offenders. The long school year generally allows students to take four courses per day and to complete approximately 60 credits a year toward the 200 credits required for high school graduation.<sup>15</sup> But the long school session does not accommodate teacher vacations, scheduled breaks, and in-service training. As a result, classes are frequently cancelled because of teacher absences.
- *Teacher-student ratios are inadequate for special education.* The teacher-student ratios required under current department policy do not adequately take into account the lower ratios needed for special education programs. The base teacher-student ratio required at the California Youth Authority is 1:15 for regular education students and 1:12 for special education students. The California Attorney General's 2002 review of the California Youth Authority found that the teacher-student ratios do not take into account the different types of programs offered and that the number of regular and special education teachers allocated is not adequate to meet the required ratios. The base ratio formerly included a factor for teacher relief and substitute coverage, but that factor was eliminated in fiscal year 1988 budget reductions. At that time, the California Youth Authority did not provide education to students who were on restriction in program settings (special management program and temporary detention). Subsequent legal challenges in 1989 resulted in the requirement that all students receive education services regardless of program placement. For safety and security reasons, education services are now provided to wards in restricted program settings either individually or in small groups of no more than five students. As many as 1,000 of the wards presently in California Youth Authority facilities have been diagnosed with special education needs and many have two or more learning disabilities. The financial formula used to obtain teaching resources for these wards does not make adjustments for wards with multiple disabilities, but rather pro-

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<sup>15</sup> California Youth Authority, "Report on Education Funding Levels, Submitted in Response to the Supplemental Report of the 2002 Budget Act – Item 5460-011-0001, November 2002, page 10.

vides resources for only one disability. This severely affects the ability of the education program to provide necessary resources for wards with multiple disabilities.

- *Chronic shortages of qualified teachers.* The California Youth Authority has difficulty recruiting and retaining teachers, and as a result suffers from continual vacancies in specialties such as science, math, and English. The vacancies stem in part from the inability of the California Youth Authority to recruit and retain teachers because of competition from public school districts and from other state agencies. Public school districts offer higher salaries, added financial incentives such as sign-on bonuses and forgiveness of school loans as well as a shorter school year compared to the California Youth Authority. Comparable public school district pay scales average 4 to 10 percent higher than the California Youth Authority for a 184-day school year, compared to the 248-day school year at the California Youth Authority.<sup>16</sup> Five of the 32 California Department of Corrections institutions offer a monthly enhancement of \$200 per teacher, and state-run schools under the Department of Education, such as the school for the blind and school for the deaf, give teachers monthly enhancements ranging from \$200-\$700.<sup>17</sup>

Just as low-performing public schools often experience a 15 to 25 percent turnover in teaching staff, the disadvantages of working in a correctional environment also hamper the department's ability to recruit and retain teachers as teachers with high-level skills are recruited to more favorable settings.<sup>18</sup> As a result, the California Youth Authority frequently resorts to hiring part-time teachers, administrators, and school psychologists, who "moonlight" from other jobs.

State fiscal policies also impede the department's ability to maintain an adequate teaching staff. Under present policies, one teacher position is eliminated each time the youthful offender population at a facility is reduced by 15. During fiscal years 2002-03 and 2003-04, 106.8 teacher positions were eliminated because of the reduced youthful offender population. Those staffing reductions disproportionately affected the areas of English, special education, and math.<sup>19</sup>

The continuing vacancies in important classifications impede the ability of the California Youth Authority to meet its obligation to provide quality education

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<sup>16</sup> Thomas, Robert, O'Rourke and Gordon, "Education Program Review, California Youth Authority," page 5.

<sup>17</sup> Karen Sanders, Staff Personnel Program Analyst, Department of Personnel Administration, telephone conversation, May 2004.

<sup>18</sup> National Governors Association Center, Reaching New Heights - Turning Around Low-Performance Schools, August 2003.

<sup>19</sup> Thomas, Robert, O'Rourke and Gordon, "Education Program Review, California Youth Authority," page 8.

services and make it difficult for students to complete courses needed for graduation.

- ***Security issues and medical appointments interfere with class attendance.*** The California Youth Authority has set a school attendance goal of 90 percent, but classes are frequently cancelled because of teacher absences, facility maintenance activities, and security reasons. A recent six-month review of monthly school attendance at the California Youth Authority found that 20 to 30 percent of the wards were absent from school each day. The authors of the review commented: *“it is evident that education is not the primary focus during the school day”*.<sup>20</sup> The reviewers identified three main reasons for school absences:
  1. Wards are scheduled to attend medical or counseling appointments, work assignments and hearings mandated by the Youthful Offender Parole Board during scheduled class time.
  2. Wards are removed from school because of correctional incidents resulting in temporary lock downs.
  3. Wards refuse to attend school. The report noted that allowing school to be “optional” appeared to be unofficial practice at California Youth Authority institutions.<sup>21</sup>

## **Recommendations**

The Corrections Independent Review Panel recommends that the new Department of Correctional Services make education a priority, not an option. Accordingly, the director should develop collaboration and program guidelines designed to enforce school attendance. Specifically, the panel recommends that the department take the following actions:

- Establish a separate unit in the Office of the Director of Youth Operations to develop and implement educational and vocational training programs proven to be effective in the treatment of youthful offenders.
- Develop a “school first policy” to reduce student absenteeism. Measures to be taken should include a master schedule for each institution that plans activities around the school schedule to avoid interruptions in the school day for counseling, medical, board hearings, and work activities. Non-emergency deviations from the master schedule should require supervisory approval.

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

<sup>21</sup> *Ibid.*, page 9.

- Develop an operational plan to facilitate school re-entry after group disturbances for the use of all institutions and mandate its application.
- Develop a multidisciplinary intervention team to provide assessment, counseling, and incentives to improve school attendance when wards are absent more than three times in any semester.
- Determine the most effective teacher-student ratios for general education, special education, and segregated program settings, including an accurate formula for counting wards with multiple disabilities.
- Determine the most effective substitute teacher relief ratio to cover teacher absences.
- Institute financial incentives to recruit and employ more dual-credentialed teachers in core academic areas who are capable of instructing both regular and special education wards.
- Enhance options for recruiting qualified teachers through a student teacher employment incentive program, such as a 20/20 program providing for 20 hours of work and 20 hours of school per week.
- Establish a regular 220-day school year calendar to be followed by all California Youth Authority schools.

### **Fiscal Impact**

Enhancing teacher-student ratios and providing financial incentives to recruit and retain qualified teachers are likely to result in additional state expenditures, but effective education is also more likely to reduce recidivism among youthful offenders. The average time wards serve in the California Youth Authority is 29 months, at an annual cost of \$66,000 to \$80,000 per ward, which equates to as much as \$193,000 per ward for the entire commitment term. If improved education services reduce annual recidivism by only 20 wards the State would save \$3,860,000. From this cost breakdown, it is easy to see that educational programs have the potential of paying for themselves in a short time.

To fully establish fiscal implications related to this proposal the new Department of Correctional Services should assess the number of teachers required to meet recommended teacher-ward ratios and determine the number of additional teachers required. Following are cost estimates related to given assumptions:

- *Increase the number of special education segregated program settings teachers.* The California Youth Authority is currently requesting 85 additional teacher

positions to address deficiencies in general population, special education and segregated program settings.<sup>22</sup> Assuming that 60 percent of the additional teachers would be assigned to segregated program and special education program settings, and the annual cost per teacher (including benefits) is approximately \$80,000, this recommendation would cost the state \$4,080,000 annually (51 teachers x \$80,000).

- ***Increase the number of substitute teachers.*** A 15 percent relief factor allowing for substitute teachers is based on a total of 215 teachers system wide. This would result in 32 substitute teacher positions, for a total annual cost of \$1,920,000 (32 teachers x \$60,000, as the average rate of pay for substitute teachers is less than that of full-time teachers.)
- ***Improve recruitment of dual-credential teachers.*** Assuming an annual turnover of 10 percent and \$3,000 per teacher in financial incentives this recommendation would cost the state \$63,000 annually (21 teachers x \$3,000).
- ***Improve teacher retention.*** A five percent retention pay per teacher would cost the state \$725,625 annually (215 teachers x \$3,375).

### **Counseling and Treatment Services**

The new Department of Correctional Services will continue to have the statutory obligation of protecting public safety by providing training and treatment to youthful offenders. That mission is as valid today as it was when the California Youth Authority was established in 1941. In recent years the department has fallen behind in carrying out those responsibilities. During that time, the department has been repeatedly challenged by the U. S. Department of Justice, the Office of the Inspector General, and youth advocacy organizations such as the Prison Law Office, for failing to meet national standards in providing “best practices” treatment services. In general, it is clear that wards with complex mental health problems are not receiving adequate treatment from trained and licensed professionals and that wards with less severe problems who are housed in the general population are not receiving adequate counseling from the non-professional youth counselor staff.

National standards for juvenile corrections represent the minimum conditions and best practices found to be effective in the rehabilitation of juvenile offenders. In the area of treatment, the standard is to provide activities and interventions that target risk factors by using treatment models demonstrated to be effective in reducing recidivism. The treatment models use cognitive behavioral approaches, family involvement, and structured after-care.<sup>23</sup>

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<sup>22</sup> Bill Costa, Assistant Superintendent, Education Services Branch, California Youth Authority, telephone conversation, May 2004.

<sup>23</sup> California Youth Authority, “The New Youth Authority Proposal,” National Standards, American Correctional Association, *Standards for Juvenile Training School*, 1991.

The delivery of specialized treatment at the California Youth Authority is based on a continuum of care model with multiple levels of care provided by department staff, but a number of deficiencies have been identified in the department's implementation of the model. As a result of the *Farrell v. Harper* court action filed by the Prison Law Office, a formal review of California Youth Authority treatment services was conducted by a panel of experts under the direction of the California Attorney General as part of a general corrections overview of department practices. The inquiry compared current conditions in the California Youth Authority to accepted standards of service in the field of juvenile corrections. The panel's findings are now being used as the basis for a negotiated settlement (consent decree) to reform California Youth Authority practices. That inquiry and other assessments conducted by experts have identified the following deficiencies in the department's treatment program.

- **Treatment planning.** Treatment planning is the process of identifying reasons a youth needs treatment and developing a plan to address the youth's symptoms and emotional disorders by setting specific treatment goals. The inquiry experts found: "Despite the screening, assessment and specialized assessments being done, treatment planning...is not evident in the clinical records of youth in CYA. Treatment planning requires significant improving."<sup>24</sup>
- **Case management.** Case management entails the coordination and monitoring of rehabilitation needs identified by court documents, as well as the treatment and educational needs assessed through screenings and assessments initially conducted at California Youth Authority reception center/clinics and at subsequent institutional settings. Maintaining consistent communication among clinical, educational, and custody staff is a key component of case management. The review experts found, however, that at the California Youth Authority "case management standards are inconsistently applied from institution to institution and are in need of significant improvement."<sup>25</sup>
- **Crisis management.** Crisis management requires that facilities, consistently and in a well-monitored manner, address, assess, develop and implement programs to prevent youths from engaging in behaviors that place them or others at risk of harm. In reviewing the department's crisis management policies and procedures, the California Attorney General's review experts found the California Youth Authority policies and procedures related to suicide prevention to be inadequate.

**Suicide prevention.** California Youth Authority wards are at high risk of suicide because of stressful situations related to incarceration. The risk is

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<sup>24</sup> E.Trubin, and Raymond Patterson, "Report of Findings of Mental Health and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities," December 2003, page 5.

<sup>25</sup> *Ibid*, page 5.

compounded by the background histories of juvenile offenders, which are riddled with violence, physical abuse, emotional instability, substance abuse, mental health disorders and impulsive behavior. It is also important to consider suicide risk in the context of the general youth population. Suicide ranks as the third leading cause of death for adolescents (behind accidents and homicide) and is the most frequent cause of death in youth incarceration facilities in the United States.<sup>26</sup> As with adults, the majority of adolescent suicides are committed by males. Among 15-24 year olds, males commit 73 percent of suicides. The reverse is true of attempted suicides, with females more likely to attempt suicide.

Combined, these factors make suicide prevention in youth correctional institutions a difficult challenge. Most suicide attempts at the California Youth Authority are by hanging, which requires an immediate response to avoid a fatality. Medical evidence shows that brain damage from strangulation can occur within four minutes, and that death can occur within five to six minutes.<sup>27</sup> From May 1996 through January 2004 there were 14 suicides in California Youth Authority institutions, with six suicides occurring in the past five years. Between January 2001 and December 2003, there were also 172 suicide attempts.<sup>28</sup>

In light of these circumstances, the California Attorney General's review experts examined whether the California Youth Authority's suicide watch policies and procedures were adequate and whether they are being properly implemented. The reviewers concluded as follows:

*[The]CYA is currently effectively designing appropriate policies and procedures to address the issue of suicide....and...what remains to be addressed are the implementation and consistent monitoring, supervision, and quality assurance that will sustain the policy in practice at a high level of performance compliance.*<sup>29</sup>

In suicide prevention, the consensus of industry experts is that those who are actively suicidal — either threatening or engaging in suicidal behavior — should be put under continuous, uninterrupted observation. Best practice for suicidal wards requires a level of therapeutic programming greater than isolation and watch and calls for reintegration activities for

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<sup>26</sup> American Association of Suicidology, May 2004.

<sup>27</sup> Department of Youth Authority, "Spring Finance Letter, Institutions and Camps Branch, Fiscal Year 2004-05, Civil Rights for Institutionalized Persons Act Action Plan," page 13. .

<sup>28</sup> Rudy Haapanen, Ph.D., Chief of Research, Department of Youth Authority, May 2004.

<sup>29</sup> E. Trupin Ph.D., and R. Patterson M.D., Mental Health Services and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities, Page 17, December 2003.

wards who may still be at suicidal risk but who will not be made better by simple lock-up and observation. In contrast, California Youth Authority policy has been to isolate suicidal wards in camera rooms where they are observed only at five-minute intervals. As a result of a U.S. Department of Justice finding that the department's isolation of wards is punitive, the department is requesting a budget augmentation to allow a designated staff person to provide continuous direct observation when the ward is not in a suicide-safe room. In assessing the department's suicide prevention measures, the California Attorney General has noted, "the CYA have developed appropriate policies, but ... the application of these policies ... must be assured."<sup>30</sup>

**Violence prevention.** Several studies have addressed the general issue of violence at California Youth Authority facilities. As noted earlier in this chapter, one such assessment concluded that "the YA is a very dangerous place and that neither staff nor wards feel safe in its facilities." The author of that assessment based the conclusion in part on a 2002 data-driven study of violent incidents at six institutions in which rule violations for ward-on-ward assault and battery had been sustained under the department's disciplinary decision-making system. During that period, more than 4,000 such infractions occurred — at least 10 a day.

The California Attorney General's review experts found that the department lacks an appropriate classification system for security and programming and that fear of violence, especially of gang behavior, dominates the thinking of the living unit staff. As a result of the lack of a structured classification process, the assessment concluded that decisions are made on an *ad hoc* basis.<sup>31</sup> The assessment concluded that there is no conflict between an objectively weighted classification instrument for each ward and the department's primary mission to provide high quality treatment and education within a safe environment. An effective classification system, the assessment concluded, would enable the California Youth Authority to be more effective in determining security and custody needs in housing wards, and would thereby reduce the danger to wards and staff and increase public safety. The reviewers noted that the classification instrument should classify youths into differing levels of risk for escape and serious institutional misconduct, particularly assaults on staff and other wards.

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<sup>30</sup> *Ibid.*

<sup>31</sup> Barry Krisberg, Ph.D. "General Corrections Review of the California Youth Authority," December 2003, p.18.

- *Youth development and treatment programs.* National standards require juvenile institutions to operate a well-defined, incentive-based behavior management program covering all domains in which juveniles function. The goal is to provide opportunities for juveniles to learn and practice effective behaviors that promote self regulation and pro-social conduct in most aspects of daily living. Toward that end, the standards should cover unit activities, recreation, school, and group programs.

*The department's behavior management program is deficient.* The California Attorney General's review experts found the department's behavior management program to be inadequate. The California Youth Authority uses a phase system in living unit programs in which wards advance from lower phases to higher phases through positive behavior. But the review experts found that incentives were not consistently applied and that cognitive behavioral principles were not being consistently implemented. The reviewers concluded that the line staff had not been adequately trained by clinicians to help youths handle anger and frustration in the group living environment.

*Wards do not receive adequate counseling services.* A number of studies have shown that California Youth Authority wards do not receive appropriate counseling services. Management review audits of several California Youth Authority institutions by the Office of the Inspector General between 2000 and 2003 found that youth counselors did not provide basic small group or individual counseling to wards.<sup>32</sup> To address that problem, the department developed a treatment and programming approach called the "Enhanced Casework Pilot Program," which separates the roles of youth correctional officers from those of youth counselors. The change assigns to youth correctional officers the primary responsibility of group supervision and allows youth counselors to conduct more group counseling, have more individual contact with wards, and devote more time to developing and monitoring individual and case plans. The Corrections Independent Review Panel found that the pilot program has shown encouraging results. Wards participating in the program have been involved in four times as many hours of treatment than before, have earned many more time credits for good behavior, and have incurred fewer time adds for serious disciplinary infractions.

*The department lacks appropriate treatment programs.* Timely access to appropriate care is a critical test of the constitutionality of a medical and mental health care services program. At present, the California Youth Author-

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<sup>32</sup> Office of the Inspector General, Management Review Audits of: Herman G. Stark Youth Correctional Facility, October 2000, page 24; Ventura Youth Correctional Facility, June 2002, page 4; Fred C. Nelles Youth Correctional Facility, July 2002; pages 6-7; Southern Youth Correctional Reception Center and Clinic, March 2003, pages 4-5.

ity does not have the right blend of programs to consistently provide wards with appropriate care and therefore does not meet this standard. The department's medical and mental health treatment programs provide the following treatment beds:

- Department of Mental Health – 10 beds at state hospitals
- Correctional treatment centers – 33 beds
- Intensive treatment programs – 225 beds
- Special behavior treatment program – 35 beds
- Special counseling program – 300 beds
- Sex offender program – 207 beds
- Substance abuse program – 370 residential beds
- Outpatient housing units for general population wards – 61 beds
- General population – 2,000 beds

*Sex offender treatment is inadequate.* The department measures whether the number of treatment beds is sufficient to accommodate all wards needing services by the number of wards on program waiting lists. By that standard, the number of beds is adequate except in the area of sex offender treatment. Under California Welfare and Institutions Code Sections 727.2 and 6000, the California Youth Authority must provide juvenile offenders committed for sexually violent offenses with sexual offender treatment consistent with specified protocols. At present, however, the majority of sex offenders are housed in the general population with no formalized treatment. A study conducted for the California Attorney General in September 2003 by a nationally recognized expert concluded that the department does not offer adequate sex offender treatment to all of the wards covered by the statutory requirement. The study showed that 207 wards were receiving sex offender treatment, but that an additional 624 wards in need of sex offender treatment were not receiving it. The study noted other deficiencies in the sex offender treatment programs:

*[T]he programs do not meet current standards of practice even minimal ones....programs are understaffed, there is a lot of staff turnover, some of the staff is not appropriate to work with the population and some are not trained to do so....the total treatment environment must be integrated so that 24 hours a day there are constant opportunities to apply therapeutic interventions and newly learned skills....the current therapeutic CYA culture has allowed a counter-productive prison culture to develop, which is reactive rather than proactive and punitive rather than cultural.<sup>33</sup>*

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<sup>33</sup> Jerry Thomas, California Youth Authority, Evaluation of Sex Offender Programs, September 2003.

To address the deficiencies in the sex offender treatment programs, the California Youth Authority has issued a fiscal year 2004-05 budget change proposal that would standardize sex offender treatment in the facilities and ensure that all sex offenders in California Youth Authority institutions receive treatment.

*Other deficiencies in the department's mental health programs.* A number of other studies have also found deficiencies with the California Youth Authority's mental health treatment programs. A Stanford University study found that the organizational culture of most California Youth Authority facilities is not conducive to mental health treatment and that treatment services throughout the California Youth Authority are fragmented.

An investigation conducted by the U.S. Department of Justice in August 2003 into compliance with the Civil Rights for Institutionalized Persons Act at the California Youth Authority's N.A. Chaderjian Youth Correctional Facility found a number of deficiencies in the area of mental health. The investigation found the following specific problems:

- A lack of registered nurses in the intensive treatment and specialized counseling programs, resulting in the inability to deliver bedtime medications at appropriate times.
- The housing of mentally ill wards in special management programs and in temporary detention (lock-up) units that appeared to lack specialized mental health treatment services.
- Lack of treatment services for developmentally disabled wards.
- The inappropriate placement and isolation of wards on suicide watch into temporary detention and the use of handcuffs and force on wards on suicide watch.

The issues of nursing coverage and care of mentally ill wards are discussed further in *Chapter 6, Risk Management and Health Care*.

*Treatment services for developmentally disabled wards.* The California Youth Authority defines developmental disabilities as disabilities attributable to a mental or physical impairment, manifested before age 22, likely to continue indefinitely, resulting in substantial limitation in three or more specified areas of functioning, and requiring specific and lifelong extended care. The department has documented that 1,000 wards presently receive special education services. Of that population, seven have been identified as mentally developmentally delayed and six others suffer from a traumatic brain injury that

leaves them developmentally disabled. A lawsuit against the Department of Corrections has established that the Americans with Disabilities Act applies to the developmentally disabled population and that correctional agencies must provide support services for those with physical or mental disabilities.<sup>34</sup>

The U.S. Department of Justice recommended that developmentally disabled wards be programmed in a separate living unit with specialized services. The department does not yet have a specific program to meet the specialized needs of this ward population.

## Recommendations

The Corrections Independent Review Panel recommends that the new Department of Correctional Services take the following actions to improve counseling and treatment services for wards.

- Ensure that treatment services provided to wards conform to national standards and are appropriate for addressing the complex problems of youthful offenders.
- Provide appropriate assessment and placement and programming of wards identified as suicide risks.
- To reduce ward-on-ward violence, develop a research-validated security classification instrument to be used in scoring each ward.
- Establish programming for group living environments that effectively promotes pro-social behavior.
- Institute system-wide a program similar to the “Enhanced Casework Pilot Program” to improve individual and group counseling services for wards.
- Develop treatment services specifically for developmentally disabled wards.
- Ensure that effective treatment services are provided to wards identified as sex offenders.

## Fiscal Impact

Implementing the panel’s recommendations would enhance treatment and counseling services for wards and create potential long term savings by reducing disciplinary incidents and helping wards earn earlier releases. More effective treatment will improve safety for staff and wards and contribute to lowering recidivism. Instituting best practices treatment

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<sup>34</sup> *Armstrong vs. Wilson*, 1997.

and counseling services will also assist the Department of Correctional Services in complying with the forthcoming consent decree, thereby reducing costs associated with court-ordered monitoring and the potential for future litigation.

Costs associated with implementing the recommendations include the following:

- Costs for developing treatment services for developmentally disabled wards. The panel recommends that the department convert an existing program for this purpose. Approximately 40 hours of training would be needed for the staff.
- Costs to provide continuous direct observation of suicidal wards when they are outside a secured suicide watch room. The annual cost for a designated staff member to provide the additional coverage is estimated to be \$19 million. The cost assumes two additional hours of coverage per day for each day after the first day a ward is placed on suicide observation. Coverage is required 12 hours per day for every day after the first day the ward is on suicide observation.
- Costs for providing appropriate treatment to sex offenders is projected to be \$3.4 million. The cost assumes that treatment could be provided on an outpatient basis and that 33 staff positions would be needed.

## Parole Services

The purpose of the Parole Services and Community Corrections Branch is to protect the public while helping parolees in returning to the community. The panel reviewed the functional operations of the California Youth Authority Parole Branch and identified several areas that need improvement.

Wards who have been incarcerated in California Youth Authority institutions are generally the most serious and violent offenders in the juvenile justice system. The department currently provides parole services to approximately 4,200 wards through 16 parole offices located throughout California. The parole offices are divided into two regions: the northern region, which supervises approximately 1,880 parolees, and the southern region, which supervises approximately 2,200 parolees. The northern region is comprised of seven field offices encompassing 47 counties, including the Bay Area, the Central Coast, Northern California, and the San Joaquin Valley. The southern region includes nine field offices covering 11 counties, including Los Angeles, San Luis Obispo, Santa Barbara, Ventura, San Diego, and Imperial counties.<sup>35</sup>

Parole agents assigned to each parole office must work closely with local law enforcement to enforce conditions of parole, protect the community, and broker community resources to promote the ward's successful integration into society. All 16 parole offices provide core parole services. A detailed description of these services and other programs offered by the California Youth Authority are listed in Appendix A.

At present, the authority to grant or revoke parole rests exclusively with the Youth Authority Board in accordance with California Code of Regulations, Title 15, Section 4966, and California Welfare and Institutions Code Section 1723. The parole hearing process, which includes setting projected parole dates, involves both the Youth Authority Board and the California Youth Authority staff. The projected parole date, also called the "projected board date," is based on the ward's committing offense. Absent from this phase of the process is the committing court and community probation resources. A more coordinated effort and partnership involving the committing courts, local community resources, and the California Youth Authority would improve case management and provide a more effective continuum of treatment services.

*At present, counties do not have the option of supervising non violent wards.* The California Youth Authority is presently responsible for supervising all wards released from state youth correctional facilities and returned to communities. These wards remain under the jurisdiction of the California Youth Authority rather than the counties. Instead, non violent wards could be returned to counties for probation services upon release from state youth correctional facilities. The California Youth Authority could pay counties a pre-determined

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<sup>35</sup> California Youth Authority, Parole Services and Community Corrections Branch, document revised, April 2004.

“rebate” for every non-violent ward (presently designated as Categories 5, 6, and 7) for whom the county agrees to provide parole supervision and services. The change would enable the new Department of Correctional Services to re-direct resources and supervision to high-risk parolees in Categories 1, 2, 3, and 4, thereby improving the likelihood of success for these offenders (Appendix B.)

The current parole population of non violent, Category 5, 6, and 7 wards totals approximately 1,740. Field parole agents who provide parole supervision are spread out over a large geographical area, making it difficult for remote areas to be covered. With responsibility for this parole population removed, parole positions could be reduced proportionately and the additional resources could be re-directed to high-risk parolees to lower the ward-to-parole agent ratio.

*Counties are not paying the true cost incurred by the state for supervising wards.* The sliding fee scale outlined in California Welfare and Institutions Code Section 912.5 and in Title 15 of the California Code of Regulations does not reflect the actual cost incurred by the California Youth Authority for treatment, training, and supervision of lower level wards. The sliding fee scale designates specific percentages of a pre-determined per-capita cost incurred by the California Youth Authority to be reimbursed to the state by each county.<sup>36</sup> The base cost in the sliding scale fee is \$36,500 yearly and counties pay a flat fee of \$175.00/month for all high risk commitments. Counties pay 50 percent, 75 percent, or 100 percent of the per capita cost for non-violent wards classified respectively in Categories 5, 6, and 7. (A new provision to this section, enacted on July 1, 2003, allows for annual review of actual costs incurred and subsequent adjustment of the pre-determined base amount for the sliding scale).<sup>37</sup>

The sliding fee scale was introduced in 1997 to encourage counties to find alternatives to California Youth Authority commitment for non-violent offenders and appears to have had that effect. An estimate of future overall youthful offender population shows a continuing decrease in the California Youth Authority population (See Appendix C, Table 1). Conversely, the more violent ward population continues to rise. That fact, coupled with the development of increased services for more troublesome wards, has increased the true cost incurred by the Youth Authority to house each ward. Current estimates of actual per capita costs range between \$66,000 estimated by the California Youth Authority<sup>38</sup> and \$80,000<sup>39</sup> estimated by the Juvenile Justice Reform Group and Kevin Carruth, Undersecretary of Youth and Adult Corrections Agency. Both figures far exceed the current \$36,500 per capita reimbursement rate (Appendix D.)

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<sup>36</sup> Welfare and Institutions Code Sections 912, 912.1, 912.5

<sup>37</sup> *Ibid.*

<sup>38</sup> Sheryl Ward, Chief of Financial Services Management, California Youth Authority, telephone interview.

<sup>39</sup> Juvenile Justice Reform Group meeting, April 1 2004, participants' notes.

Given these circumstances, an upward adjustment to the sliding fee scale of 25 percent to \$50,000 is warranted. This prudent adjustment will continue to encourage counties to reduce the number of non violent youthful offenders sent to the California Youth Authority without making the cost prohibitive and will encourage local program development. The option of sending the most difficult, unmanageable youth that the county cannot effectively program will remain affordable.

*Judges and probation officers have no role in decisions to continue incarceration.* The California Youth Authority has not been mandated to involve local courts, judges, and probation officers in the treatment and incarceration of youthful offenders. One superior court judge noted recently in correspondence to Senator Gloria Romero that local juvenile justice systems are not afforded the opportunity to oversee or be involved in decisions affecting wards committed to the California Youth Authority.<sup>40</sup> In most cases, the committing court hears little about wards committed to the California Youth Authority until they are in trouble again. Much to the same extent, county probation departments are also left out of the loop about wards until they receive a notification of additional charges because the ward's stay at the California Youth Authority has been extended. According to Dr. Barry Krisberg of the National Council on Crime and Delinquency in correspondence to G. Kevin Carruth, Undersecretary of Youth and Adult Corrections Agency, most judges would welcome the chance to interact with youthful offenders throughout all stages of the juvenile justice system.<sup>41</sup> Furthermore, the concept of coordinating efforts and increasing community involvement seems to be the resounding theme among youthful offender advocates, employees of the California Youth Authority, and the Department of Finance.

At present, there is no effective partnership between the California Youth Authority, the courts, and county probation departments and communication between these entities is minimal. The cost of this disconnect is the loss of valuable resources and services for youthful offenders paroled from California Youth Authority institutions. The amount of additional time wards serve in California Youth Authority institutions for misbehavior varies. Many receive much more time. At present, 540 California Youth Authority wards will serve all of their available confinement time due to time extensions for disciplinary or treatment reasons.<sup>42</sup> Often, these time extensions are unknown to the counties until they receive a request for payment of services provided.

Partly because of these extensive time adds, Senate Bill 459, which went into effect on January 1, 2004, provided for the new Youth Authority Board to serve as the second and final review level to hear appeals regarding treatment and training and disciplinary time extensions. The Corrections Independent Review Panel has concluded that this appeal process should be retained, but that for wards in Categories 5-7, the decision of the Youth Authority Board will be reviewed by the committing court.

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<sup>40</sup> Judge Leonard Edwards, Judge, Santa Clara Superior Court, letter to Senator Gloria Romero, March 1, 2004.

<sup>41</sup> Electronic mail from Barry Krisberg to G. Kevin Carruth, re: Juvenile Justice Reform Workgroup, March 29, 2004.

<sup>42</sup> Sue Easterwood, California Youth Authority, electronic mail re: Maxed Out, May 11, 2004.

When wards are referred for return to the county for probation, the California Youth Authority should reimburse the county \$5,000 annually for aftercare services provided to each ward.<sup>43</sup> A caveat to this recommendation is that probation officers not be granted the authority to revoke probation and refer wards directly to the California Youth Authority for revocation, but instead may refer the case to the court for review and recommendation. The presiding judge may hold the commitment to the California Youth Authority in abeyance, conditional on successful completion of probation.

Recognizing that some counties are not equipped to provide these services, and that the needs of some wards may be greater than the capacity of county probation services to provide, the state should encourage counties to develop “joint use facility agreements” with adjoining counties to provide aftercare services. Counties also should be allowed to contract with the California Youth Authority for parole services in accordance with a “needs assessment” conducted for the ward.

*The California Youth Authority has lost valuable parole resources to budget cuts.* In the past four years, the California Youth Authority has lost a number of parole resources as a result of budget cuts. Programs such as the “Transitional Residential Program” and “Fouts Springs” offered pre-release planning and other options in lieu of re-institutionalizing for parolees who violate technical conditions of parole. The programs were similar to the traditional half way houses but offered stronger treatment, educational, counseling and job assistance components.<sup>44</sup> The Transitional Residential Program, established in 1982 in Los Angeles County, provided pre-parole placement in a residential center operated by Volunteers of America, Inc. The program provided employment development services, job referrals, counseling services, and 24-hour supervision for up to 34 wards. Participants were required to seek full-time employment and, upon obtaining employment, were responsible for their transportation costs. After a ward successfully completed the program, the parole agent made a recommendation for parole consideration to the Youth Authority Board. Although the Transitional Residential Program did not formally track participants, the former administrator estimated that 75-80 percent of program graduates had not re-offended within a year of completing the program. Anecdotal evidence indicates that most participants maintained employment and often were promoted to jobs earning a higher wage.<sup>45</sup> The program was discontinued because of budget cuts.

Fouts Springs was developed in 1987 to fulfill a need for drug treatment options for northern California parolees having a substance abuse history. The program offered 90-day drug

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<sup>43</sup> Zlatco Theodorovic, Department of Finance Budget Analyst and Ms. Sheryl Ward, Chief of Financial Services Management, California Youth Authority, telephone discussions.

<sup>44</sup> Parole Services and Community Corrections Branch, document provided by Mike Cardoff, California Youth Authority parole agent III, May 2004.

<sup>45</sup> According to Allen Breed, former California Youth Authority Director and nationally recognized court monitor, the lack of solid research to support best practices is one of the difficulties in the California Youth Authority. Allen Breed, letter to former Governor George Deukmejian, May 11, 2004.

treatment in a partnership between the California Youth Authority and Fouts Springs Youth Correctional Facility. The program was operated by Solano and Colusa counties as a relapse option in lieu of parole revocation. The cost benefits of this short-term program were significant when compared with the cost of re-incarcerating wards for a period of 6 to 12 months for technical parole violations involving substance abuse. For wards, a return to custody counts as a parole failure, whereas the Fouts Springs program was in lieu of revocation. This program was also discontinued due to budget constraints.

*The California Youth Authority needs more specialized Parole Agent IIs.* The California Youth Authority presently does not have enough specialized Parole Agent IIs to adequately supervise sex offenders and mentally ill wards on parole. Providing treatment, supervision, and critical services to sex offenders paroling from California Youth Authority institutions is critical to the parolee's re-integration into the community, and only Parole Agent IIs receive specialized training for that purpose. Inside the institutions, sex offenders receive treatment and training designed to address the urge to offend. Aftercare treatment, provided to parolees by Parole Agent IIs, who have been trained in the sex offender curriculum, is designed to reinforce the concepts, therapeutic issues, and relapse prevention techniques. As of April 5, 2004, there were 381 sex offenders in the department's parole population, yet eight parole offices have no specialized Parole Agent IIs to provide sex offender services, thus breaking the continuum of treatment.<sup>46</sup> It is critical this group of offenders be afforded highly individualized parole services and that treatment services be continued.

## Recommendations

The panel recommends that the state take the actions listed below to improve the ability of the California Youth Authority Parole Branch to meet the specialized treatment and mental health needs of the wards under its supervision. The recommendations are intended to create a more effective partnership with county probation and court services to enable wards released from California Youth Authority institutions to be better served in their local communities.

- Adjust the sliding fee scale used to determine how much a county pays the state for housing non-violent wards in the California Youth Authority from \$36,500 to \$50,000 to more accurately reflect the actual cost of those services.
- Grant committing courts sole authority and final review for revoking parole or probation or for extending length of stay at the California Youth Authority for wards in Categories 5, 6, and 7.
- Encourage counties to develop joint-use facility agreements or to contract with adjoining counties to provide aftercare services for parole services.

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<sup>46</sup> Parole Services and Community Corrections Branch North and South Regions, January 2004

- Provide funding in each parole region for entry programs, aftercare services, transition programs such as half-way houses, and alternatives to parole revocation. The services should include employment assistance and short-term substance abuse treatment.
- Increase the number of specialized Parole Agent IIs by eight to provide services for sex offenders and wards with mental health problems. Each field parole office should have one specialized parole agent II to supervise and provide training and resources to sex offenders and mentally ill parolees.
- Give counties the option of providing parole supervision for non-violent wards in Categories 5, 6, and 7. The state should subsidize the cost of probation services offered by the counties.
- As a result of allowing counties to provide parole supervision for non-violent wards, cut the number of parole agent positions proportionately and allow some of those positions to be re-directed toward the more violent high-risk offenders (Categories 1, 2, 3, and 4) in order to lower the ward-to-parole agent ratio.

### Fiscal Impact

Although a detailed financial analysis would be necessary to determine the actual costs and savings associated with these recommendations, the Corrections Independent Review Panel estimates that the recommendations would result in an annual savings of approximately \$4.5 million. The expected savings can be summarized as follows:

- *Adjustment to the sliding fee scale.* Increasing the sliding scale fee that counties pay the state for housing non-violent wards from \$36,500 to \$50,000 so as to more accurately reflect the actual cost of those services would provide an estimated \$9,568,698 in increased annual revenue to the state. The estimate is based on average daily population estimates for the spring of fiscal year 2004-05 (Appendix C). The totals can be broken down as follows:

Category 5 = \$4,651,815 increased revenue to the California Youth Authority  
Category 6 = \$4,575,144 increased revenue to the California Youth Authority  
Category 7 = \$341,739 increased revenue to the California Youth Authority  
Total = \$9,568,698 increased revenue to the California Youth Authority

- *Funding for entry programs, aftercare services, and transition programs.* Funding for entry programs, aftercare services, transitional programs, and alternatives to parole revocation could result in significant savings. Savings of approximately \$45,000 annually (\$3,800 per month) could be realized for each available bed in a transition program similar to the Transitional Residential Program. Assuming the availability of 34 beds, annual savings would amount to an estimated \$1.55

million. Entry and aftercare service programs would create off-set possibilities to decrease state costs and improve services to parolees. The Transitional Residential Program charged approximately \$1,200 per month to provide each ward with food, housing, and personal expenses, whereas the average monthly cost to house wards in a dormitory setting in a California Youth Authority institution is approximately \$5,000 per month.<sup>47</sup>

A savings of \$27,600 annually (\$2,300 per month) would be realized for each available bed in a program similar to the Fouts Springs program, which offered drug treatment as an alternative to parole revocation. Assuming the availability of 44 beds, annual savings would be an estimated \$1.2 million.<sup>48</sup> The Fouts Springs program charged approximately \$2,700 per month to provide each ward with housing, treatment programming, and medical care, compared to approximately \$5,000 to house wards in a California Youth Authority institution dormitory setting.

- ***Increasing Parole Agent II positions.*** Increasing the number of Parole Agent II positions by eight, to provide sex offender and mental health services is expected to initially increase state expenditures by approximately \$528,000 ( $\$5,500/\text{monthly base salary} \times 12 \text{ months} \times 8 \text{ positions}$ ). Over time, this expenditure would be expected to be offset in the form of reduced criminal acts and recidivism for parolees receiving the services.
- ***Subsidizing county probation services.*** Assuming that all 1,740 non-violent wards presently under California Youth Authority parole supervision could be served instead through county probation services subsidized by the state, a net rebate of \$8.7 million would be returned to the counties. That amount equates to 28 percent of the California Youth Authority's \$31 million parole budget and is based on \$5,000 per parolee.
- ***Cutting and re-directing parole agent positions.*** Reducing the number of California Youth Authority parole agent positions by a number proportionate to the number of wards supervised through county probation services instead of through California Youth Authority parole services and re-directing some of the positions to the more violent ward population would result in an estimated savings of \$1,440,000. The estimate assumes a 40 percent reduction in the present staff of 120 parole agent positions, for a reduction of 48 positions, and a re-direction of 50 percent of that number (24 positions) toward more violent youthful

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<sup>47</sup> The \$5,000 per month rate was used as the cost of housing wards for purposes of this fiscal estimate because wards eligible for transitional programs would not have specialized treatment needs, would not be sex offenders, and would have a low violence potential and low escape risk.

<sup>48</sup> Parole Services and Community Corrections Branch, document provided by Mike Cardoff, Parole Agent III, California Youth Authority, May 2004.

offenders in the parole population. The change would result in a net reduction of 24 parole agent positions, with a total of 96 positions remaining. The estimated savings is based on a \$5,000/month Parole Agent I base salary. Additional savings would be expected through reduced recidivism resulting from improved services to parolees and a decrease in the parole agent caseload.

## Appendix

This Appendix is divided into four sections;

- A. Parole Services offered at California Youth Authority parole offices.
- B. California Code of Regulations, Title 15, explanation of California Youth Authority Categories 1-7.
- C. Tables depicting the California Youth Authority population and administrative staffing.
- D. Estimates of county sliding fee payments.

### Appendix A

#### Parole Services

**Gang Investigation and Apprehension Unit.** Each parole region operates a gang investigation and apprehension unit. The primary focus of the unit is aggressive investigation and apprehension of missing parolees and institutional escapees. The gang investigation and apprehension unit collaborates with state, federal and local law enforcement, including county probation departments.

**Intensive Re-entry Caseload.** Intensive re-entry is designed to increase public protection by early detection and prevention of parole violations, and to provide maximum services during the most critical period, e.g., the transition from institutional to community living. Caseload ratios are 1:15. Each parole unit provides intensive re-entry services, in areas where it is geographically feasible. This program averages 90 days in duration, and is dependent upon the service needs of the wards released to parole. Intensive re-entry services include two contacts per week for the first 30 days and weekly contacts for the duration of the re-entry period. Also included is twice monthly substance abuse testing for parolees with substance issues, employment/education/job training assistance, individual and group counseling, subsidized placement, and other services as needed.

**Specialized Caseload.** Each parole unit has one or more specialized caseloads, based on local needs. Parole agents are assigned fewer cases (1:30 budgeted ratio) than those with case management caseloads. Specialized caseload provides concentrated, intensive services for parolees with special needs, e.g., severe substance abuse, sex offenses, mental health problems, needs for specialized placement, and heavy gang activity. Specialized caseloads increase the likelihood of offender's successful adjustment as self supporting and contributing members of the community, and enhance the ability of the parole agent to identify potentially dangerous behavior at the earliest possible time. Parolees typically remain on specialized caseloads until they have exhibited stable behavior for a significant period of time and no longer pose a major threat to public safety or need intensive services.

**Case Management Caseloads.** Parolees are transferred to case management after intensive re-entry or upon transitioning from a specialized caseload. Parolees are seen a minimum of twice per month if classified as maximum supervision/services, and once if classified medium. The purpose of case management is to assist the parolee in maintaining acceptable levels of behavior, job, and at home, and a variety of collateral contacts.

**Parenting Program.** To improve the parenting skills of parolee fathers through an educational parenting course with the intention of helping their children break the inter-generational cycle of learned violence and involvement in the criminal justice system.

**Education Services.** Classes are on site in Parole Offices and Charter Schools located in Sacramento and Watts (Youth Authority operated Parole Schools), Central Valley Stockton, South Coast, Inland, LA Metro, Gang Services (local school district operated Charter Schools), Oakland, San Jose, San Fernando and San Diego.

**Community Service.** Parolees are required to perform 80 hours of community services in order to receive an honorable discharge. Parole offices work with government agencies, non-profit organizations and business to provide parolees with community services projects to do clean-up, landscaping, remodeling and other services.

**Specialized Counseling for Sex Offenders.** Contracted counseling services, which include, but are not limited to, weekly counseling sessions (group and individual).

**Restitution.** From July 1996 through March 2004, Parole has collected \$215,047 in Restitution Fines and \$295,575 in Victims Restitution for a total of \$510,622 from parolees.

**Tattoo Removal.** Parolees can have tattoos removed through a partnership with designated treatment facilities and hospitals in Northern and Southern California.

**Tools for Success.** A partnership with Parole's San Diego Project, Franklin Outreach Center, and community-based organizations is based on a "wrap-around service model" — a collaborative team, which includes parole agents, teachers, Parolees and community based organizations. They ensure the following services are implemented: basic re-entry services, community integration, cognitive restructuring, training, and employability/vocational assistance. The program is for newly-released parolees, with classes scheduled for six weeks, eight hours a day. Activities include employment, parenting and family re-unification.

**Project Choice.** A new collaborative effort between the City of Oakland and various city and state departments including the County Probation Department and a coalition of community partners. With more than 3,000 parolees released to Oakland each year (including Department of Corrections parolees), this project is designed to reduce recidivism by providing additional support to parolees for successful re-entry into the community, while providing for a safer community.

**Mentoring Services.** This mentor program matches volunteer attorneys with parolees. Matches participate in VIP sponsoring events. The VIP program provides services to the following parole offices; San Diego, Watts, Covina, South Coast, Gang Services, San Fernando, East Los Angeles, Oakland, Fresno and San Jose. Program activities include job training and placement, education, legal aid, and other services necessary to help parolees become productive and self-sufficient.

**Westside Energy Service Training and Education Center (WESTEC).** Collaboration between the Bakersfield Parole Office, Taft Community College, the Department of Corrections, County Probation and the WESTEC. The college pays tuition fees with WESTEC developing the training courses in light to heavy general petroleum and mining industries. Parolees may also further their education by attending courses in general education and vocational training. Employer visits the classes and interview potential employees. More than 600 parolees have completed the training program with 93 percent of the parolees employed for a minimum of 90 days.

**Appendix B****California Code of Regulations, Title 15,  
Explanation of California Youth Authority Categories 1-7****California Code of Regulations, Title 15, Section 4951 - Category 1 Offenses**

A parole consideration date interval of seven years shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Murder – First Degree
2. Murder – Second Degree
3. Kidnapping w/death of victim
4. Kidnapping w/substantial injury
5. Torture
6. Conspiracy to commit any Category 1 offense.

**Section 4952 – Category 2 Offenses**

A parole consideration date interval of four years shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Voluntary Manslaughter
2. Rape
3. Sodomy
4. Sexual Assault w/foreign object
5. Oral Copulation
6. Lewd/Lascivious w/child under 14
7. Kidnap for ransom, reward, extortion
8. Kidnap during carjacking
9. Explosion or attempt to ignite device w/intent to commit murder
10. Kidnap for robbery
11. Conspiracy to commit any Category 2 offense
12. Attempt of any Category 1 offense
13. Continuous sexual abuse of a child

**Section 4953 – Category 3 Offenses**

A parole consideration date interval of three years shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Sexual Assault w/foreign object
2. Rape
3. Sodomy
4. Oral Copulation
5. Kidnap
6. Robbery (armed w/dangerous, deadly weapon, w/substantial injury)

7. Robbery of inhabited dwelling
8. Robbery – Operator of transportation of vehicle for hire
9. Assault w/deadly weapon likely to produce great bodily injury on peace officer, fireman, custodial officer, or school personnel.
10. Assault w/firearm on peace officer fireman
11. Grand Theft Person – armed w/dangerous, deadly weapon, w/substantial injury
12. Burglary armed w/dangerous, deadly weapon, w/substantial injury
13. Shooting at inhabited dwelling, occupied building, or vehicle, w/substantial injury
14. Arson causing great bodily injury or during State of Emergency
15. Mayhem
16. Vehicular manslaughter w/gross negligence
17. Gross vehicular manslaughter while intoxicated
18. Carjacking
19. Kidnap w/intent to commit specified sex crimes
20. Discharge firearm from motor vehicle
21. Conspiracy to commit any Category 3 offense

#### **Section 4954 – Category 4 Offenses**

A parole consideration date interval of two years shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Vehicular Manslaughter
2. Involuntary Manslaughter
3. Robbery (Armed With Dangerous or Deadly Weapon or With Substantial Injury)
4. Assault with Caustic Chemicals
5. Assault with a Deadly Weapon or Force Likely to Produce Great Bodily Injury w/substantial injury
6. Assault with Firearm w/substantial injury
7. Assault with Intent to Commit Rape, etc.
8. Child Cruelty likely to produce great bodily injury death
9. Extortion
10. Grand Theft Person armed with dangerous or deadly weapon or w/substantial injury
11. Burglary armed with dangerous or deadly weapon or w/substantial injury
12. Shooting at Inhabited Dwelling House, Occupied Building or Vehicle
13. Arson
14. Recklessly Causing a Fire of any Structure, Forest Land, or Property (with substantial injury)
15. Sale, Possession for Sale, Transportation, or Furnishing of Controlled Substance, Narcotics, Marijuana.
16. Maintaining Place for Selling, Using of Certain Controlled Substances or Specified Narcotics

17. Any other felony including attempted felony not listed in Categories 1 through 3 w/ substantial injury
18. Conspiracy to commit any Category 4 offense
19. Discharging a Firearm from a Motor Vehicle
20. Attempt of any offenses in Categories 2 and 3.
21. Recommitment for any offense listed in Category 5 and 6 w/ a prior commitment for any offense in Categories 1 through 6.

**Section 4955 – Category 5 Offenses**

A parole consideration date interval of eighteen months shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Assault with a deadly weapon or force likely to produce great bodily injury
2. Battery w/substantial bodily injury
3. Battery upon a peace officer, fireman, or custodial officer
4. Recklessly Causing a Fire of Inhabited Structure or Property
5. Robbery
6. Grand Theft Person
7. Burglary, 1st Degree
8. Accessory to Murder
9. Sexual Battery
10. Intimidation of Witness by Force or Fear; in furtherance of a conspiracy; for pecuniary gain; or by a repeat offender
11. Conspiracy to commit any Category 5 offense
12. Attempt of any Category 4 Offense.

**Section 4956 – Category 6 Offenses**

A parole consideration date interval of one year shall be established for those cases committed to the Youth Authority for offenses in this category.

Offenses:

1. Concealable Firearms
2. Possession of Explosives, Flammable Matter or Fire Bomb
3. Recklessly Causing Fire to Uninhabited Structure or Forest Land
4. Burglary, 2nd Degree
5. All felonies not listed
6. Conspiracy to commit any Category 6 offense
7. An attempt of any Category offense

**Section 4957 – Category 7 Offenses**

A parole consideration date of one year or less shall be established for those cases committed to the Youth Authority for offenses not listed in Categories 1 through 6. This provision also applies to a case in which parole has been revoked for technical violation.

**Appendix C**

Tables depicting the California Youth Authority population and administrative staffing

**TABLE 1**  
**Ward Population- Historical and Projected**

<b>Actual Population As Of June 30</b>		<b>Projected Population As Of June 30</b>	
Year	Wards	Year	Wards
1996	10,144	2004	4,090
1997	8,790	2005	3,895
1998	8,122	2006	3,760
1999	7,618	2007	3,755
2000	7,380	2008	3,750
2001	6,776	2009	3,740
2002	5,847		
2003	4,879		

**TABLE 2**  
**Administrative Staffing**

<b>Fiscal Year</b>	<b>Auth. Pers. Year (Py)</b>	<b>Conversion To Auth. Positions</b>	<b>Admin. Budget</b>
2003-04	321.4	338.3	\$29,850
2002-03	278.7	293.4	\$29,569
2001-02	319.2	336.0	\$30,200
2000-01	315.4	332.0	\$26,403
1999-00	299.9	315.7	\$20,993
1998-99	TBD *	0.0	TBD
1997-98	TBD	0.0	TBD
1996-97	TBD	0.0	TBD
1995-96	TBD	0.0	TBD

\*Amounts not yet determined.

**Appendix D**  
**Estimates of county sliding fee payments**

**DEPARTMENT OF THE YOUTH AUTHORITY**  
**ESTIMATE OF COUNTY PAYMENTS**  
**USING SPRING 2004 POPULATION PROJECTIONS**  
**2003-04 FISCAL YEAR**

<u>COUNTY</u>	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	<u>CAT. I - IV MONTHLY COST \$176</u>	<u>CAT. V -VII ANNUAL PER CAPITA \$36,504</u>	<u>TOTAL COST</u>
ALL COUNTIES	I - IV	2,393	\$ 5,054,016		\$ 5,054,016
	V	850		\$ 15,514,200	15,514,200
	VI	549		15,030,522	15,030,522
	VII	<u>29</u>		1,058,616	1,058,616
<b>TOTALS</b>		<b>3,821</b>	<b>\$ 5,054,016</b>	<b>\$ 31,603,338</b>	<b>\$ 36,657,354</b>
2004 Spring Projections estimated reimbursements					\$ 36,657,000
2003-04 as adjusted by 1/10/2004 Governors Budget					37,483,000
Increase/(Decrease) in estimated reimbursements					<u><u>(826,000)</u></u>

**ASSUMPTIONS:**

- Juvenile Court Commitments only.
- ADP based on current commitment rates.
- Fee Indexing = \$176 per month.
- Per Capita Cost = \$36,504 per year. AB 1758 (CH 158/2003) effective July 1, 2003
- Fee Indexing cost computation example: Category I-IV = (ADP x (\$176 per month x 12 months)).
- Sliding scale = Category V (50%) of per capita cost; Category VI (75% of per capita cost); Category VII (100% of per capita cost).
- Cost computation example: Category V = (ADP x (\$36,504 x 50%));  
 Category VI = (ADP x (36,504 x 75 %)); Category VII = (ADP x 36,504).
- Effective July 1, 2003.

<u>COUNTY</u>	<u>SPRING POPULATION PROJECTIONS CURRENT YEAR</u>		<u>FALL POPULATION PROJECTIONS CURRENT YEAR</u>		<u>DIFFERENCE</u>
	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	
ALL COUNTIES	I - IV	2,393	I - IV	2,494	-101
	V	850	V	829	21
	VI	549	VI	534	15
	VII	<u>29</u>	VII	<u>34</u>	<u>-5</u>
<b>TOTALS</b>		<b>3,821</b>		<b>3,891</b>	<b>-70</b>

**DEPARTMENT OF THE YOUTH AUTHORITY  
ESTIMATE OF COUNTY PAYMENTS  
USING SPRING 2004 POPULATION PROJECTIONS  
2004-05 FISCAL YEAR**

<u>COUNTY</u>	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	<u>CAT. I - IV MONTHLY COST \$180</u>	<u>CAT. V -VII ANNUAL PER CAPITA \$37,343</u>	<u>TOTAL COST</u>
ALL COUNTIES	I - IV	2,049	\$ 4,425,840		\$ 4,425,840
	V	735		\$ 13,723,553	13,723,553
	VI	482		13,499,495	13,499,495
	VII	27		1,008,261	1,008,261
TOTALS		3,293	\$ 4,425,840	\$ 28,231,308	\$ 32,657,148
2004 Spring Projections estimated reimbursements					\$ 32,657,000
2004-05 Fall Population					32,348,000
Increase/(Decrease) in estimated reimbursements					\$ 309,000

**ASSUMPTIONS:**

1. Juvenile Court Commitments only.
2. ADP based on current commitment rates.
3. Fee Indexing = \$180 per month.
4. Per Capita Cost = \$37,343 per year. AB 1758 (CH 158/2003) effective July 1, 2004
5. Fee Indexing cost computation example: Category I-IV = (ADP x (\$180 per month x 12 months)).
6. Sliding scale = Category V (50%) of per capita cost; Category VI (75% of per capita cost); Category VII (100% of per capita cost).
7. Cost computation example: Category V = (ADP x (\$37,343 x 50%));  
Category VI = (ADP x (37,343 x 75 %)); Category VII = (ADP x 37,343).
8. Effective July 1, 2003.

<u>COUNTY</u>	<u>SPRING POPULATION PROJECTIONS BUDGET YEAR</u>		<u>FALL POPULATION PROJECTIONS BUDGET YEAR</u>		<u>DIFFERENCE</u>
	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	<u>YOPB CATEGORY</u>	<u>AVERAGE NUMBER OF WARDS</u>	
ALL COUNTIES	I - IV	2,049	I - IV	2,179	-130
	V	735	V	716	19
	VI	482	VI	450	32
	VII	27	VII	28	-1
TOTALS		3,293		3,373	-80

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## Closures

Over the last century and a half since California's first prison opened in 1852, the state's correctional system has grown to become the largest in the nation, rivaling in size and numbers even those of most other countries. Today, California operates 32 adult prisons, 38 fire camps, and eight youth correctional facilities—providing custody for more than 162,000 adult inmates and 4,000 youthful offenders. California's prisons stretch the length and breadth of the state, from Crescent City on the Oregon border to San Diego on the south; east to Blythe in the Mojave Desert, up through the central valley, and all the way to Susanville in the northeast.

Not surprisingly, this massive system shows the strains of both its age and its decades-long growth. Adult prisons are severely overcrowded, imperiling the safety of both correctional employees and inmates. Youth correctional facilities, built decades ago to house truants, runaways, and so-called "incorrigibles," now must accommodate far more violent and disturbed youths. Maintenance costs for aging facilities, meanwhile, consume an ever-greater share of the corrections budget.

Now another fundamental shift is taking place. In the last five years, the number of youthful offenders committed to state custody has fallen by more than half, and recent projections show that the adult inmate population is also now expected to decline.

In that context, the Corrections Independent Review Panel considered what changes could be made to better match correctional facilities to ward and adult inmate populations and whether older institutions with higher repair and maintenance costs could be closed.

The panel concluded that the declining numbers will allow the state to make adult prisons safer by shifting inmate populations to relieve acute overcrowding. At the same time, the dramatic decline underway in the number of youthful offenders committed to state custody will make it possible to close several youth institutions. More important, closing selected youth facilities while retaining the same staffing levels would enable the state to vastly improve treatment and programming for youthful offenders.

### Fiscal Impact

Implementing the panel's recommendations would save the state an estimated \$85.7 million between fiscal years 2005-06 and 2008-09 and would eliminate the need for 639 budgeted correctional officer positions. The estimate assumes that the staffing reductions would be achieved through normal attrition, rather than through layoffs.

## Department of Corrections

California's adult prisons are filled to almost double capacity. As a result, some inmates are triple-bunked — stacked three deep in bunk beds — others are living two-to-a-cell in cells designed for one, and beds for both low- and medium-risk inmates are crammed into gyms and dayrooms that were never meant to be used for housing. These “ugly beds,” as prison administrators call them—which presently total almost 9,500—create difficult, unsanitary living conditions where ventilation is poor, toilet access is limited, and as many as 200 people might share six showers. The situation makes the prisons dangerous, putting correctional employees and inmates alike at risk of violence, and has made the state vulnerable to lawsuits challenging the constitutional adequacy of inmate conditions of confinement.

Now, though, after decades of escalating inmate population levels, the Department of Corrections expects the number of adult inmates to begin declining, fueled by such factors as better mental health services, day-for-day credit granted earlier in an inmate's sentence, broader availability of drug treatment, and a new parole and reentry program.

But because inmate population figures are influenced by numerous factors outside the department's control, including crime and arrest rates, sentencing laws, and judicial decisions, the downward trend has yet to materialize. As of May 5, 2004, the actual inmate population exceeded projections by more than 1,000 inmates.<sup>1</sup>

The Department of Corrections still expects the inmate population to fall according to projections because of new programs now being instituted. But the Corrections Independent Review Panel found that because of the severe overcrowding in the institutions— and until significant declines are realized—the State cannot close any of its adult prisons. Instead, as declines begin to occur, the department should concentrate its efforts on relieving overcrowding by doing away with “ugly beds” to make the prisons safer, improve living conditions, help to satisfy constitutional standards for conditions of confinement, and save money in the process.

If—and only if—the inmate population falls according to projections, the department could gradually deactivate almost 78 percent of the ugly beds —7,343 beds in triple bunks and gymnasiums. The panel recommends that the state give first priority to deactivating triple bunks. After that, and again only if population declines according to projections, the state should gradually deactivate beds in gymnasiums and dayrooms.

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<sup>1</sup> California Department of Corrections, Offender Information Services Branch, “Weekly Comparison of Actual and Projected Population,” May 10, 2004.

## Recommendations

If the adult inmate population declines according to projections, the new Department of Correctional Services should deactivate prison beds in the following priority:

- All emergency triple bunk beds by June 2005.
- 2,219 gymnasium beds in Level III and IV institutions.
- Up to 4,200 additional gymnasium beds in Level IV, III, and II institutions through 2009.

## Fiscal Summary

Implementing the recommended bed deactivations as the inmate population declines would save the state \$45 million between fiscal years 2005-06 and 2008-09 and would eliminate the need for 639 budgeted correctional officer positions.

## Background

The Department of Corrections is constitutionally mandated to provide inmates with acceptable conditions of confinement and access to adequate health care services. Over the past several years, a succession of lawsuits challenging the department's performance in these areas have resulted in numerous court orders and settlements, ongoing court-ordered monitoring, and an evolving definition of minimum standards for inmates. The most important cases defining conditions of confinement are the following:

*Hoptowit v. Ray* (U.S. Court of Appeals, Ninth Circuit, 1980). The case established constitutional minimum standards for correctional entities in providing inmates with food, clothing, shelter, sanitation, medical care, and personal safety.

*Toussaint v. Rushen*, (U.S. Court of Appeals, Ninth Circuit, 1980). The case concerned conditions of confinement and due process requirements for inmates housed in administrative segregation units.

*Madrid v. Wilson* (US District Court, Northern District of California, 1990). The case concerned conditions of confinement, medical care, and mental health services for inmates at the Pelican Bay State Prison security housing unit.

*Coleman v. Wilson* (U.S. District Court, Eastern District of California, 1990). The case concerned mental health care for seriously mentally ill inmates.

*Armstrong v. Wilson* (US District Court, Northern District of California, 1994). The case concerned access to programs, services, and activities for inmates with disabilities.

*Clark v. Davis*, (U.S. District Court, Northern District of California, 1996). The case concerned access to programs, services and activities for inmates with developmental disabilities.

*Plata v. Davis*, (U.S. District Court, Northern District of California, 2001). The case concerned timely access to adequate medical care and treatment.

In most instances, court orders resulting from these cases have required modification of the physical plant and consequent higher costs for prison operations. Changes to make conditions of confinement consistent with constitutional minimum standards, therefore, are not only legally necessary and compelling from a humanitarian standpoint, but also fiscally prudent.

Department of Corrections institutions are presently rated at 197.7 percent occupied,<sup>2</sup> with almost 9,500 inmates housed in so-called “ugly beds” — triple bunks in dorm settings and beds in gyms and dayrooms. Inmate housing units are classified into four security levels, with Level I the least restrictive and Level IV the most secure. Table 1 in the Appendix shows the number of inmate beds by institution, security level, and housing type, including more than 8,500 beds presently in gyms and day rooms.<sup>3</sup> Another 924 “ugly beds,” not shown in the table, are represented by triple bunks in Level I and Level II facility dorms.

***Projected population decline.*** The Department of Corrections projects that the inmate population will decline by 3,308 inmates over the next five fiscal years and that the mix of inmates will shift. Table 2 in the Appendix illustrates the projected system-wide inmate population decline by year for the years 2004 to 2009.<sup>4</sup> Specifically, the department projects a decline by 2009 in the lowest custody levels (Level I, II), with a decrease of 4,930 Level I inmates and a decrease of 1,344 Level II inmates. The number of female inmates is also projected to decline by 866. At the same time, the projections reflect an increase of 184 Level III inmates, an increase of 3,608 Level IV and security housing unit inmates, and an increase of 40 reception center inmates by 2009.<sup>5</sup> Table 3 in the Appendix shows the expected change in population by custody level through 2009. Delano II, a new Level IV institution with a potential double-cell capacity of 4,190, scheduled for activation in May 2005, will help house some of the increased Level IV population reflected in Table 3.

***Accuracy of the population projections.*** The population projection model used by the Department of Corrections is generally regarded as the best available, but it is accurate only in the short term, with long-term projections much less reliable.<sup>6</sup> To make the long-term

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<sup>2</sup> California Department of Corrections, Weekly Report of Population as of March 24, 2004.

<sup>3</sup> California Department of Corrections, Population Projection Unit, “Weekly Population Summary,” March 12, 2004.”

<sup>4</sup> California Department of Corrections, Population Projection Unit, “Projections Report,” Spring 2004.

<sup>5</sup> *Ibid.*

<sup>6</sup> The model, which takes into account more than 100 variables, was developed by the Department of Corrections and has been adopted by several other states. The U.S. Bureau of Prisons has also used it to develop a similar model.

projections as accurate as possible, the department adjusts the model every six months to reflect changes in sentencing laws, revisions to internal operations and procedures, and analyses of actual incoming inmate population. Yet, projections as long as five years out are still not as accurate as short-term projections. A comparison of the department's projections to actual inmate population over the past nine years shows that first-year projections were an average of .6 percent greater than the actual population and that fifth-year changes were 18 percent greater. The range of difference is presented in Table 4 (See Appendix).<sup>7</sup>

It is also important to note that the population decline projected by the Department of Corrections depends in part on the success of new programs presently in various stages of operation. The difficulty of accurately predicting population declines associated with the new programs is illustrated in Table 3 (See Appendix), which shows the inmate population on February 29, 2004 to be 1,300 greater than the population projected for June 30, 2004.

The Department of Corrections attributes the projected decline in the inmate population to the following programs.<sup>8</sup>

- Granting day-for-day credit to inmates assigned to education and vocational programs beginning with the inmate's arrival at the reception center. That change, which began in February 2004, allows inmates to receive day-for-day credit beginning on the first day of incarceration, in contrast to the previous practice, which provided one-third credit on arrival and day-for-day credit beginning at a later date.
- Expansion of the transitional case management program, which provides mental health services to parolees upon release from prison to ensure continuity of mental health care in the community.
- New pre-release and re-entry programs, which are designed to reduce parole revocations by providing programs and alternatives to incarceration for parolees.
- Substance abuse treatment programs in institutions and the community to provide alternative treatment and sanctions for parole violators instead of returning them to prison. These programs have been operating for several years.

*Population decline provides the opportunity to deactivate "ugly beds."* As the inmate population declines, the department could gradually deactivate ugly beds while continuing to make maximum use of existing resources and institution physical plants in a safe and

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<sup>7</sup> California Department of Corrections, Population Projection Unit, "Summary of Projection Errors, Spring 1993 – Fall 2003."

<sup>8</sup> California Department of Corrections, Population Projection Unit, "Spring 2004 Population Projection Report – Assumptions."

reasonable manner. The changes must be undertaken in a manner consistent with inmate custody level, disability designation, mental health care needs, health care status, behavior, safety and security, and physical plant limitations. Deactivation of beds must take into account inmates with specialized needs, such as those with disability placement restrictions, sensitive placement needs, and developmental disabilities. Some of the ugly beds throughout the state may also be relieved by the new Delano II prison, which will accommodate Level IV inmates presently in administrative segregation units, reception centers, and Level III beds in the state's other prisons.

### **Recommendations**

- To provide a sound foundation for future planning efforts, the new Department of Correctional Services should aggressively pursue improvements to the inmate population projection model.
- If the inmate population declines according to current projections, the department should begin to deactivate prison beds according to the following priority:
  - By June 2005, deactivate the emergency triple-bunk dorm beds at Avenal State Prison, California State Prison-Solano, and Chuckawalla Valley State Prison.

As shown in Table 5 (See Appendix), the deactivations would eliminate 924 Level I and II beds and approximately 116.5 correctional officer positions. The beds are scheduled to be deactivated as part of the department's May 2004 revised budget.

- If the inmate population continues to decline, deactivate gymnasium beds at the following 10 Level III and IV institutions:

California Correctional Institution  
 High Desert State Prison  
 Pelican Bay State Prison  
 Centinela State Prison  
 California State Prison, Corcoran  
 California State Prison, Los Angeles County  
 Mule Creek State Prison  
 California State Prison, Sacramento  
 Substance Abuse Treatment Facility and State Prison at Corcoran  
 Salinas Valley State Prison

Assuming inmate population declines according to projections, Table 6 shows that those deactivations will eliminate approximately 2,219 Level I and II beds and approximately 187 correctional officer positions.

- As the inmate population continues to decline, deactivate additional gymnasium beds in the following 12 Level IV, III, and II institutions:

Avenal State Prison  
California Correctional Center  
California Correctional Institution  
Centinela State Prison  
Correctional Training Facility  
Deuel Vocational Institution  
High Desert State Prison  
Ironwood State Prison  
Pleasant Valley State Prison  
Substance Abuse Treatment Facility and State Prison at Corcoran  
Sierra Conservation Center  
California State Prison, Solano

Depending on the actual decline in inmate population, the deactivations could eliminate approximately 4,200 additional Level I and II beds and 335 correctional officer positions. (See Table 7).

### Fiscal Impact

- *Elimination of triple bunks.* Deactivation of the emergency triple bunk dorm beds at Avenal State Prison, California State Prison-Solano, and Chuckawalla Valley State Prison by June 2005 would result in full-year savings of \$8,155,000 beginning in fiscal year 2005-06.
- *Elimination of gymnasium beds, phase I.* Deactivation of gymnasium beds in 10 Level III and IV institutions by June 2005, assuming the population declines according to projections, would result in a savings of \$12,873,000.
- *Elimination of gymnasium beds, phase II.* Deactivation of additional gymnasium beds in twelve Level II, III, and IV institutions as the inmate population continues to decline according to the department's projections would result in a savings of \$24,136,000.

### Summary

Implementation of all recommendations would eliminate the need for 639 budgeted correctional officer positions and would result in a savings of \$45 million between fiscal years 2005-06 and 2008-09. (See Table 8, Appendix) The estimate is based on an average of \$70,000 in salary and benefits per correctional officer position and assumes that the staffing reductions would be achieved through normal attrition, rather than through layoffs.

The implementation by June 2005 of the first two recommendations — as the inmate population declines — would result in the elimination of 303.8 correctional officer positions and cumulative savings of \$21,028,000. It should be noted that the deactivation of gymnasiums as inmate housing units would allow reactivation of gymnasiums as inmate recreation areas, which would require re-staffing for supervision of inmate gymnasium activities during second and third watches. The savings estimate includes this factor.

Implementation of the third recommendation depends upon a significant reduction in the inmate population, which may not be achieved according to the estimate time-frame.

## California Youth Authority

While California's adult prisons are overcrowded, the opposite is true at the California Youth Authority. From a high of 10,114 in June 1996, the youth population at the Youth Authority has now fallen by more than half and is expected to continue to drop. In June 2003, the population stood at 4,879, and by June 2009 is projected to fall to 3,740. At the same time, those sent to the Youth Authority now include a much higher percentage of violent offenders and youths who need mental health care, drug treatment, and other specialized services.

As a result of these changes, California Youth Authority facilities are presently a poor fit for the population. About 40 percent of the existing facilities consist of dormitories built in the 1960s, when only a small percentage of the Youth Authority population consisted of violent offenders and many of the rest were "incurrables" and status offenders, such as runaways. Living units are also too big. The average living unit size in California Youth Authority institutions is 50 beds—about double the accepted standard of 25-30 beds for juvenile facilities. And the ratio of staff to "wards," as youths committed to the Youth Authority are called, is between 1:16 and 1:25, which is much too large for effective programming and treatment and is also contrary to recent federal case law. The wide age diversity among those in Youth Authority institutions presents an additional challenge. Under present law, Youth Authority wards range from age 11 to age 25, making California one of only four states that incarcerate youths over age 21 in youth facilities. The broad age span makes programming difficult, complicates security, and affects every other aspect of the department's overall facility operations.

California was once the undisputed national leader in juvenile corrections, providing a model for the treatment and training of youthful offenders committed by the courts. Now, with the change in the types of wards sent to the Youth Authority — and in order for the Youth Authority to regain its former excellence in providing services to incarcerated youths — the need is for individual rooms in well-designed facilities with smaller living units, a lower staff-to-ward ratio, good mental health treatment and other program services, and improved surveillance capability.

Because of the drop in the number of youths sent to the California Youth Authority, and partly as the result of legislative mandate, the Youth Authority is presently closing five of its facilities. With these changes underway, and with the needs of the present ward population in mind, the Corrections Independent Review Panel considered how the California Youth Authority could make better use of its facilities by consolidating wards into fewer institutions.

As a result of that study, the panel recommends that the department close several other older facilities with high repair and maintenance costs and move wards into facilities better matched to population size and needs. Programs at the closed facilities would be transferred to other California Youth Authority institutions. Underlying the recommendations is

the fundamental goal of improving services to youthful offenders. Making the change in facilities while retaining the same staffing levels will make it possible for the department to reduce living unit size to 25 beds within five years, bringing California Youth Authority institutions into line with accepted national standards for youth correctional facilities. The recommendations are also aimed at reducing the staff-to-ward ratio to the recognized standard of 1: 8. Overall, the changes will reduce the number of Youth Authority beds by 1,985.

### Fiscal Impact

Implementing the recommendations would result in an estimated net savings of \$5,991,000 in fiscal year 2005-06; an estimated net savings of \$11,627,000 in fiscal year 2006-07; and an estimated net savings of \$11,627,000 in each subsequent fiscal year.

### Background

The official mission of the California Youth Authority is to protect the public by providing education, training, and treatment services to youthful offenders. Because of the declining ward population, the department is in the process of closing five of its youth correctional facilities, for a net reduction of 1,763 beds. Four of the closures result from legislative mandates. In 2002, with the enactment of AB 3000 (Chapter 1124, Statutes of 2002), the department was required to develop a consolidation plan and to close three of its facilities by June 2007. Subsequent legislation (AB 1758, Chapter 158, Statutes of 2003) required the department to close one additional facility.

Before the facility closures began in September 2003, the department was operating eleven institutions and four conservation camps, with a total bed capacity of 6,505. Table 9 (See Appendix) shows the distribution of beds by type in Youth Authority facilities as of June 30, 2003. Table 10 (See Appendix) lists the facilities the department has closed or is in the process of closing.

After June 30, 2004, when the planned closures are completed, the Youth Authority will be operating a total of eight institutions and three conservation camps, with a combined design bed capacity of 4,742 beds — a net reduction of 1,763 beds from June 30, 2003. Table 11 illustrates the number and type of beds that will remain at all facilities under the department's plan after June 30, 2004. The change in the number and type of beds remaining at the affected facilities is depicted in bold type.

*Cost of housing female wards has escalated.* In part to alleviate the problems caused by housing female wards in the same facility with more criminally oriented male wards, the Youth Authority's plans have called for moving all male wards from the 750-bed Ventura Youth Correctional Facility and converting the institution to an all-female facility for the State's 218 female wards. But the mismatch between the size of the Ventura facility and the size of the female ward population substantially increased the State's cost for housing female wards. Because of the change, the annual per-ward cost for housing female wards

has increased from approximately \$100,000 to \$143,000, compared to \$80,000 for male wards.<sup>9,10</sup>

***California Youth Authority living unit size conflicts with established standards.*** The number of beds in a typical California Youth Authority living unit is inconsistent with accepted standards for youth correctional facilities. The California Board of Corrections limits living unit size in youth correctional facilities to 30 beds,<sup>11</sup> and American Correctional Association guidelines recommend no more than 25 beds per living unit. Most California Youth Authority living units, in contrast, whether open dormitories or single-room units, are designed to house 50 wards or more — a size that makes effective programming more difficult and impairs the safety of staff and wards.

Numerous studies have shown living unit size, crowding, treatment success, and violence in youth correctional institutions to be inextricably linked. As one study noted:

*Evidence research indicates that incarcerating young offenders in large, congregate care juvenile institutions does not effectively rehabilitate and may actually harm them...A century of experience with training schools and youth prisons demonstrates that they constitute the one extensively evaluated and clearly ineffective method to treat delinquents.<sup>12</sup>*

Similarly, studies conducted for the California Youth Authority in the 1980s showed that reducing the size of living units and increasing staff resources both significantly reduced violence and improved treatment outcomes for incarcerated youths.<sup>13</sup> Barry Krisberg, Ph.D., president of the National Council on Crime and Delinquency, has reported that the research conducted by the Youth Authority has been influential in the design of youth correctional facilities across the country and in the establishment of national professional standards. Ironically, the standards resulting from that research have not been applied to California Youth Authority facilities.<sup>14</sup>

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<sup>9</sup> California Youth Authority, “2004 Governor’s Budget – Salaries of staff plus average staff benefits and OE&E divided by number of wards.”

<sup>10</sup> The difference in annual per-ward costs between female and male wards also reflects the greater need of female wards for mental health services. A recent Stanford University study found that females committed to the California Youth Authority exhibit a significantly greater number of mental health disorders than male wards. (Hans Steiner and Keith Humphreys, “The Assessment of the Mental Health System of the California Youth Authority: Report to Governor Gray Davis,” December 2001.

<sup>11</sup> California Board of Corrections, “Minimum Standards for Local Juvenile Facilities,” Title 24, Section 460A.1.5.

<sup>12</sup> Barry C. Feld, “Juvenile and Criminal Justice Systems’ Responses to Youth Violence,” in Tonry, Michael, and Moore (editors), *Youth Violence: Crime and Justice, a Review of Research, Vol. 2* (Chicago, IL:University of Chicago Press, 1998), pp.2-27.

<sup>13</sup> Joe Seckel and James Turner, “Institutional Violence Reduction: The Impact of Changes in Living Unit Size and Staffing,” January, 1980; Carolyn Davis, “DeWitt Nelson reduced staff ward Ratio Program: Final Report,” April 1981.

<sup>14</sup> Barry Krisberg, Ph.D., President, National Council on Crime and Delinquency, “General Corrections Review of the California Youth Authority,” December 23, 2003.

*Staff-to-ward ratios are also inconsistent with accepted standards.* California Youth Authority formulas prescribe a staff-to-ward ratio of 1:25 on morning shifts and 1:16 on afternoon shifts. That ratio deviates substantially from the standard of 1:8 used in many other states and with a similar 1:8 ratio specified in a recent federal case involving juvenile facilities in Arizona.<sup>15</sup> Recent federal cases in Nevada, Maryland, and Los Angeles County have defined the same 1:8 standard.

*Ward population projections.* The California Youth Authority ward population has been dropping since 1996 and is projected to continue to decline. As Table 12 illustrates, the population fell from a high of 10,144 in June 1996 to 4,879 in June 2003 and, according to California Youth Authority projections, is expected to drop to 3,740 by June 2009.<sup>16</sup> Table 13 illustrates the changes in actual and projected ward populations by gender for the same period. As Table 13 shows, the California Youth Authority population will remain predominately male, with the number of female wards remaining at approximately 200 through the year 2009.

*Reasons for the decline in ward population.* The ward population decline can be attributed to the following: a significant decrease in youth arrests for violent offenses; an increase in county incarceration and treatment options, allowing many youthful offenders to be handled in their own communities; and SB 681 (Chapter 66, Statutes of 1996). SB 681 requires counties to reimburse the State for specified juvenile court commitments to the Youth Authority based on a sliding-scale percentage of per capita costs. The legislation was intended to encourage counties to retain custody of all but the most dangerous wards and appears to have had that effect. In the six years since the enactment of SB 681, ward commitments to the California Youth Authority have decreased by an average of 8 percent a year.

*Accuracy of the population projections.* A comparison of projected and actual ward populations from June 1990 to June 2003 shows the projections to be accurate at between 5.7 and +9.4 percent over one year, -7.3 to +25 percent over two years, and -10.2 to +61.5 percent over five years.<sup>17</sup> The variation in accuracy can be attributed to a number of factors, including changing commitment laws; lower rates of youth arrests; implementation of release criteria based on a case-by-case review of the wards' education and treatment progress and behavior, as determined by politically appointed Youth Authority Board members; and the impact of the county reimbursement sliding scale.

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<sup>15</sup> Civil Rights Division, U.S. Department of Justice, "Civil Rights of Institutionalized Persons Act (CRIPA). Investigation of Adobe Mountain School and Black Canyon School in Phoenix Arizona; and Catalina Mountain School in Tucson, Arizona," January 23, 2004.

<sup>16</sup> California Youth Authority, "Male and Female Institution Population, Actual and Projected, 1996-2009."

<sup>17</sup> California Youth Authority, "Comparison of Actual and Projected CYA Institution Population – June 30, 1990 through June 30, 2003."

*Ward characteristics.* California Youth Authority facilities were initially designed as schools for boys and have never been modified to accommodate today's more violent ward population. Many of the facilities were built in the 1960s when the proportion of violent offenders was much smaller. On June 30, 1962, for example, only 14.8 percent of the Youth Authority population was made up of violent offenders. But with the implementation of the sliding-scale county reimbursement, and as more non-violent youthful offenders are retained in community-based programs, the proportion of violent offenders in the California Youth Authority has increased. On December 31, 2003, violent offenders made up 58.9 percent of the Youth Authority population.<sup>18</sup>

Wards committed to the Youth Authority also now tend to have other serious problems, including mental illness, substance abuse, and gang alliances. According to a 2001 Stanford University study, 71 percent of male wards and 82 percent of female wards incarcerated in California Youth Authority institutions have been diagnosed with between three and nine mental disorders, demonstrating a critical need for access to specialized programs.<sup>19</sup>

In a May 2004 report, the California Legislative Analyst's Office noted that the California Youth Authority's building configurations are no longer suited to the ward population:

*While the declining ward population has reduced the overall need for institutions and facilities, the changed nature of the current ward population and mandates to provide mental health and education programs have resulted in the department having facilities that are in many ways functionally obsolete....*

When the large majority of Youth Authority buildings were designed and constructed, there was significantly less need for many security features. The basic configuration of many buildings reflects the Youth Authority's heritage as reform schools rather than correctional facilities. For instance, the reform school dormitory layout is not secure or efficient for programming and housing a significant portion of the existing population.<sup>20</sup>

The wide age range of California Youth Authority wards also affects institution programming and operations. California is one of just four states (in addition to Montana, Oregon, and Wisconsin) that handle offenders up to age 25 in the youth justice system. Under Welfare and Institutions Code Section 1769, youths between the ages of 11 and 25 may be committed to the Youth Authority. At present, the average age of a California Youth Authority ward is 19.4 years. Table 14 shows the age breakdown of the Youth Authority institution population as of March 31, 2004.<sup>21</sup>

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<sup>18</sup> Interview with Sue Pannell, Research Program Specialist II, California Youth Authority, April 2004.

<sup>19</sup> Hans Steiner and Keith Humphreys, "The Assessment of the Mental Health System of the California Youth Authority: Report to Governor Gray Davis," December 2001.

<sup>20</sup> Elizabeth C. Hill, Legislative Analyst, "A Review of the California Youth Authority's Infrastructure," Legislative Analyst's Office, May 2004.

<sup>21</sup> California Youth Authority, "All Wards In Youth Authority Facilities By Current Age," - March 31, 2004.

## Recommendations

The Corrections Independent Review Panel recommends that the state take the actions listed below. Making these changes while keeping the same staffing levels will enable the state to reduce living unit size to 25 beds within five years and reduce staff-to-ward ratios to the recognized standards of 1:8. The changes will enable California to better meet the programming, education, and treatment needs of the projected ward population consistent with the state's statutory and court-ordered obligations. The recommendations will also produce a safer living environment by enabling staff to interact more effectively with wards and will lower the per-ward cost for female wards from \$143,000 to \$100,000 — equivalent to the cost of male wards in specialized programs.

- Effective January 1, 2005, amend Welfare and Institutions Code Section 1769 to restrict the California Youth Authority ward population to those under age 21 and provide judges with the option of imposing “blended” sentences — both juvenile and suspended adult sanctions— for certain categories of serious offenders. The change would result in a net decrease of 105 wards by June 2009 as follows: 25 wards by June 2006; 30 wards by June 2007; 90 wards by June 2008 and 105 wards by June 2009.

The age adjustment will improve the overall treatment environment of the remaining youthful offenders by making it easier to develop age-compatible education, treatment, and training programs. The change will also result in fiscally sound efforts to provide constitutionally mandated services to the remaining wards in accordance with the expected terms of a consent decree presently being negotiated in the *Farrell v. Harper* lawsuit, which challenged the adequacy of the California Youth Authority's performance in providing training and treatment to wards.

Blended sentencing is used in 15 states. Under a blended sentence, youthful offenders are conditionally confined in a juvenile facility under the threat of a suspended criminal sentence and transfer to an adult institution in order to encourage cooperation and discourage misconduct. When the youth confinement period or jurisdiction ends, the ward is returned to court for a determination by a judge of whether further confinement in an adult institution is warranted.

The ward population estimate assumes that the new law would not apply retroactively, but rather would apply only to new sentences. Wards previously sen-

tenced who have already reached age 21 would continue to age out of the California Youth Authority at 25. Wards committed to the California Youth Authority after the new law takes effect would be either released at age 21 or transferred at age 21 to a Department of Corrections facility to complete their sentence.

- By June 30, 2004, close the Fred C. Nelles Youth Correctional Facility and the Mt. Bullion Conservation Camp according to the existing California Youth Authority plan.
- By June 30, 2005, transfer all female wards from the Ventura Youth Correctional Facility to the Karl Holton Youth Correctional Facility and transfer Ventura's intensive treatment program, special counseling program, formalized drug program, and other gender-specific programs to the new facility to serve the female ward population.

The Karl Holton Youth Correctional Facility, which is presently vacant because of the legislative mandate for the Youth Authority to close institutions in response to the ward population decline, is one of four California Youth Authority institutions comprising the Northern California Youth Correctional Center complex in Stockton. With a design capacity of 388 beds, the institution more closely matches the projected female ward population than the Ventura Youth Correctional Facility, while providing the advantage of shared services, central kitchen, medical support, and access to a new on-site hospital planned for completion in 2005.<sup>22</sup> The female wards would be housed in a separate facility consistent with California Youth Authority gender-separation policy.<sup>23</sup> To accommodate the female population, it would be necessary to convert 122 dry rooms (rooms without sinks or toilets) to wet rooms.

- By June 30, 2005, re-establish the Ventura Youth Correctional Facility as an all-male institution and fill with male wards from the El Paso de Robles Youth Correctional Facility.

The changes will make Ventura an all-male institution with a population close to its approximate design capacity of 650 beds. Ventura has approximately 82 percent wet rooms and the physical plant is in average condition, with lower pending capital outlay, special repair, and deferred maintenance needs relative to other California Youth Authority institutions.

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<sup>22</sup> California Youth Authority, "Bed Utilization Plan," March 2004.

<sup>23</sup> Department of Youth Authority, "Consolidation Plan, Report to the Legislature," November 2002

- Close El Paso de Robles Youth Correctional Facility.

El Paso de Robles Youth Correctional Facility is in a remote location inland from the central coast of California, making it problematic to recruit and retain professional staff and difficult for families of wards to visit, since most of the families reside in Southern California. Living units are a combination of dry rooms and dormitory construction with numerous blind spots where wards can hide undetected, creating safety and security problems. The institution houses a number of programs, including a specialized counseling program, a specialized management program, and two drug treatment programs, all of which could be relocated to other institutions.

- By June 30, 2006, close the Preston Youth Correctional Facility and transfer the wards to the Northern California Women's Facility, a former Department of Corrections institution, which is presently closed.

Built in 1894, the Preston Youth Correctional Facility is the second-oldest California Youth Authority institution and has unmet capital outlay, special repair, and deferred maintenance needs of \$31 million. Approximately 65 percent of the ward housing consists of open dormitory beds. The facility houses a number of specialized programs, including a drug treatment program, special management program, specialized counseling program, a 41-bed intensive treatment program, and a 35-bed specialized behavior treatment program, all of which could be relocated to other institutions.

Relocating the wards from Preston to the vacant Department of Corrections Northern California Women's Facility in Stockton, which is adjacent to the Northern California Youth Correctional Center, would create a consolidated northern California complex for youthful offenders. The change would allow for centralized support services functions, including administration, food service, plant operations, warehouse, staff training, accounting, personnel, ward transportation, and an on-site hospital. Wards would be housed in single rooms, significantly improving living conditions for the special program population now housed at Preston. As an additional benefit, the reception center clinic now at Preston could be relocated to one of the four institutions in the Northern California Youth Correctional Center complex, thereby reducing ward transportation costs.

Although not required to do so, the Youth Authority should inform the local community of the conversion of the Northern California Women's Facility from an adult women's institution to a male institution for youthful offenders and address any concerns. It should be noted that the new use of the facility would be consistent with that of the other four facilities at the Northern Youth Correctional

Center complex, and would also provide opportunity for increased employment. The conversion of the facility would require expenditures for alterations, renovations, and other improvements to the Northern California Women's Facility to reduce living unit size, enhance education corridor and special program areas, and construct space for education, treatment, and program support.

Following the closure of Preston and the transfer of wards to the former Northern California Women's Facility, the California Youth Authority would have a total of 4,520 beds, as shown in Table 16.

The recommended changes would leave the Youth Authority with 760 more beds than wards on June 30, 2006. The bed surplus would provide the California Youth Authority with the opportunity to reduce the size of living units closer to the American Correctional Association recommendation and the Board of Corrections standard of 25 to 30 wards. As the ward population declines, 29 single-room living units could be reduced to 35-ward living units, resulting in a net decrease of 435 beds. In addition, the 21 open dormitories at the O.H. Close Youth Correctional Facility, the Karl Holton Youth Correctional Facility, and the DeWitt Nelson Youth Correctional Facility could be reduced to 35 wards each, resulting in an additional decrease of 315 beds and a net decrease of 750 beds.

- Between June 30, 2004 and June 30, 2006, and beginning with open dormitories, reduce the number of wards in living units from 50 to 35.
- By June 30, 2009, reduce the number of wards in living units to 25 and decrease staff-to-ward ratio to 1:8.

After all of the recommendations have been implemented, the total number of beds would remain at 4,520 through June 2009, as shown in Table 18.

It is important to note that after the Fred C. Nelles Youth Correctional Facility closes in June 2004, the families of wards from many Southern California counties will be obliged to travel long distances to visit family members in California Youth Authority institutions. The San Diego area in particular, has no Youth Authority institutions. The panel suggests that any future facilities be sited in that area.

### **Fiscal Impact**

Implementing these recommendations would result in an estimated net savings of \$5,991,000 in fiscal year 2005-06; an estimated net savings of \$11,627,000 in fiscal year 2006-07; and an estimated net savings of \$11,627,000 in each subsequent fiscal year.

The recommendations are expected to reduce system costs by consolidating wards into institutions with capacities more closely matched to the populations and by closing facilities with significant capital outlay for special repair and deferred maintenance costs. Administrative and overhead costs will also decrease.

Potential one-time costs may offset some of the long-term savings. Those costs include the following:

- Payment of accrued leave to employees who leave the department due to layoff, retirement, and other separations instead of transferring to other facilities.
- Moving and relocation expenses for key employees who the department transfers to other institutions.
- Moving expenses for transfer of records and equipment.
- Physical plant adaptations required to accommodate wards and programs.

These one-time costs may be offset by the sale and ultimate disposition of the Nelles, El Paso de Robles, Preston, and Northern Reception institutions. Neither the potential one-time costs nor the potential revenue from the sale of properties has been included in this fiscal estimate. The estimate reflects only the full-year savings that will begin to accrue in the first full fiscal year after each step of the consolidation is completed.

The Youth Authority completed a consolidation plan in November 2002 as a result of the requirements of Assembly Bill 3000, but the plan did not consider the fiscal impact of closing either El Paso de Robles or Preston, the two institutions proposed for permanent closure in the panel's recommendation. More recently, in March 2004, the Youth Authority developed a draft bed utilization plan that made a variety of recommendations and estimates of costs and savings for various closure and re-activation scenarios. The Corrections Independent Review Panel has reviewed the Youth Authority estimates and found them to be realistic. The panel has therefore used the Youth Authority estimates to calculate general fund savings resulting from these recommendations. It should be noted, however, that the Youth Authority should achieve budgetary savings as a result of the decline in the ward population regardless of the efficiencies created by the consolidation plan.

Table 19 illustrates the cumulative costs and savings resulting from these recommendations, using fiscal detail from the Youth Authority's 2004 draft bed utilization plan. As the table shows:

- In fiscal year 2005-06, the closures of El Paso de Robles will result in savings of

\$19,149,000, and the reopening of Karl Holton will cost \$13,158,000, resulting in net savings of \$5,991,000 in fiscal year 2006-07 and continuing each year thereafter.

- Additional savings will occur in fiscal year 2006-07 when the closure of Preston will result in savings of \$22,922,000, and the reopening of the Northern California Women's Facility will cost \$17,286,000, resulting in net savings of \$5,636,000 in fiscal year 2006-07 and each year thereafter.

As shown in Table 19, the combined result of these recommendations is a net savings of \$5,991,000 in fiscal year 2005-06 and net savings of \$11,627,000 in fiscal year 2006-07 and each year thereafter.

**TABLE 1**  
**Department of Corrections Beds by Security Level in All Facilities**

Facility	Beds in Areas Intended for Housing by Security Level						Gym & Miscellaneous Beds by Security Level				Total Beds
	RC	I	II	III	IV	Female	RC	I	II	III	
Avenal State Prison			6,378						700		7,078
Calif. State Prison - Calipatria		408			3,910						4,318
Calif. Correctional Center		3,164	1,093	935					300	150	5,642
Calif. Correctional Institution	760	1,062	1,303		1,859		266	175	175		5,600
Central Calif. Women's Facility						3,507					3,507
Calif. State Prison - Centinela		408		2,460	1,500					480	4,848
Calif. Institution for Men	3,576	2,810		279							6,665
Calif. Institution for Women						1,806					1,806
Calif. Men's Colony		408	2,446	3,750							6,604
Calif. Medical Facility		177	410	2,814							3,401
Calif. State Prison - Corcoran		876	0	0	4,166				121	242	5,405
Calif. Rehabilitation Center			3,952			680					4,632
Calif. Training Facility		970	3,187	2,384				120	280		6,941
Chuckawalla Valley State Prison		408	3,500								3,908
Deuel Vocational Institution	2,578	231	242				100		300		3,451
Folsom State Prison		753	1,852	1,440							4,045
High Desert State Prison	380	400	0	570	2,820				120	360	4,650
Ironwood State Prison		400		3,785						480	4,665
Calif. State Prison - Los Angeles County		400	0	950	2,880				120	240	4,590
Mule Creek State Prison		392		1,520	1,305					480	3,697
North Kern State Prison	3,846	408		935							5,189
Pelican Bay State Prison		296	0		3,188				160		3,644
Pleasant Valley State Prison		408		2,860						480	3,748
RJ Donovan Correctional Facility	1,000	392		2,595			456				4,443
California State Prison - Sacramento		384	0		2,798			50	140		3,372
Substance Abuse Treatment Facility			1,754	2,238	2,273				480	240	6,985
Sierra Conservation Center		3,258	1,334	935		320			300	150	6,297
California State Prison - San Quentin	2,941	265	1,827		730						5,763
Salinas Valley State Prison		400	0	0	3,878			50	120	120	4,568
California State Prison - Solano			3,239	2,265					225	225	5,954
Valley State Prison						3,657					3,657
Wasco State Prison	4,606	392		840			120				5,958
Contract Jail Beds		2,092									2,092
Contract Community Beds		5,018									5,018
<b>TOTALS BY BED TYPE</b>	<b>19,687</b>	<b>26,580</b>	<b>32,517</b>	<b>33,555</b>	<b>31,307</b>	<b>9,970</b>	<b>942</b>	<b>395</b>	<b>3,541</b>	<b>3,647</b>	<b>162,141</b>

**Table 1 Explanatory Notes**

- a) Table created from data reported in the California Department of Corrections "Weekly Population Summary," March 12, 2004.
- b) The number of inmates per custody level is based on the staffed capacity of each institution.
- c) Administrative segregation unit and security housing unit inmates were added to the institutions' highest custody level number.
- d) Medical-designed beds, (HIV, EOP, DMH) were added to the institution's highest custody level number.
- e) U.S. Immigration and Naturalization Service inmates at Centinela and RJ Donovan, were added to the institutions' highest custody level number.
- f) Youthful Offender Program inmates at the California Correctional Institution were added to the institution's highest custody level number.
- g) Substance abuse program inmates at the Substance Abuse Treatment Facility were added to the institution's level III custody level number.
- h) Condemned inmates at the Central California Women's Facility and San Quentin were added to the institutions' highest custody level number
- i) Camp inmates (male and female) at the Sierra Conservation Center were added to the institution's Level I beds.
- j) Source documents did not delineate triple bunking. Triple bunk totals will increase gymnasium and miscellaneous beds total s and decrease and regular bed totals.

**TABLE 2**  
**Department of Corrections Spring 2004 Population Projections**

<b>Date</b>	<b>Inmate Population</b>	<b>Annual Net Change</b>	<b>Annual Percentage Change</b>
6/30/2003	160,931		
6/30/2004	160,122	-809	-0.5%
6/30/2005	157,218	-2,904	-1.8%
6/30/2006	156,952	-266	-0.2%
6/30/2007	156,889	-63	0.0%
6/30/2008	156,884	-5	0.0%
6/30/2009	157,623	739	0.5%
<b>TOTAL NET CHANGE</b>		<b>-3,308</b>	

**TABLE 3**  
**Projected Inmate Population by Custody Level**  
**Including Changes from Previous Year**

Date	Reception	Male Inmate Custody Levels				Level IV & PHU/SHU	Male Subtotal	Female Subtotal	Total Inmates
		Level I	Level II	Level III					
Actual 6/30/2003	19,285	33,984	31,909	38,061	27,612	150,851	10,080	160,931	
Actual 2/29/2004	19,342	32,222	33,660	40,285	25,686	151,195	10,254	161,449	
6/30/2004	18,580	32,057	32,625	36,405	28,942	148,609	11,513	160,122	
Changes	-705	-1,927	+716	1,656	+1,330	-2,242	+1,433	-809	
6/30/2005	19,245	30,128	31,185	36,420	29,285	146,263	10,955	157,218	
Changes	+665	-1,929	-1,440	+15	+343	-2,346	-558	-2,904	
6/30/2006	17,975	29,797	31,105	37,125	29,870	145,872	11,080	156,952	
Changes	-1,270	-331	-80	+705	+585	-391	+125	-266	
6/30/2007	17,415	29,441	30,865	37,595	30,380	145,696	11,193	156,889	
Changes	-560	-356	-240	+470	+510	-176	+113	-63	
6/30/2008	17,450	29,054	30,550	37,895	30,800	145,749	11,135	156,884	
Changes	+35	-387	-315	+300	+420	+53	-58	-5	
6/30/2009	19,325	29,054	30,565	38,245	31,220	148,409	9,214	157,623	
Changes	+1,875	+0	+15	+350	+420	+2,660	-1,921	+739	
<b>Net Changes 2003 to 2009</b>	<b>+40</b>	<b>-4,930</b>	<b>-1,344</b>	<b>+184</b>	<b>+3,608</b>	<b>-2,442</b>	<b>-866</b>	<b>-3,308</b>	

**TABLE 4**  
**Average Variance Between Projected Population and Actual Population**  
**Fall 1996 to Spring 2003 Projections**

	F 1996	S 1997	F 1997	S 1998	F 1998	S 1999	F 1999	S 2000	F 2000	S 2001	F 2001	S 2002	F 2002	S 2003	AVG
1st year	-1.0%	-1.9%	2.3%	2.0%	2.3%	-0.1%	1.9%	0.5%	1.5%	0.2%	1.0%	0.1%	0.2%	0.2%	0.6%
2nd year	1.0%	-0.1%	5.6%	4.7%	6.4%	3.2%	3.4%	0.9%	5.3%	0.2%	3.3%	2.3%			2.4%
3rd year	4.9%	2.8%	10.8%	9.5%	11.1%	6.3%	6.9%	1.8%	5.4%	1.4%					6.5%
4th year	10.9%	8.8%	15.9%	14.1%	17.1%	11.4%	7.0%	1.4%							11.8%
5th year	16.4%	14.2%	22.1%	19.8%	19.2%	13.0%									18.7%

F= Fall Projection      S= Spring Projection

**TABLE 5**  
**Fiscal Year 2005-06**

<b>Institution</b>	<b>Inmates</b>	<b>Officers</b>	<b>Savings</b>
Avenal State Prison	-300	-28.4	\$1,988,000
California State Prison - Solano	-192	-32.9	\$1,365,000
Chuckawalla Valley State Prison	-432	-55.2	\$3,864,000
<b>TOTAL</b>	<b>-924</b>	<b>-116.5</b>	<b>\$8,155,000</b>

**TABLE 6**  
**Fiscal Year 2005-06**

<b>Institution</b>	<b>Inmates</b>	<b>Officers</b>	<b>Savings</b>
Pelican Bay State Prison	-160	-13.4	\$938,000
California State Prison - Sacramento	-140	-11.3	\$791,000
Substance Abuse Treatment Facility	-120	-14.8	\$798,000
California Correctional Institution	-266	-25.3	\$1,771,000
California State Prison - Centinela	-120	-7.8	\$546,000
California State Prison - Corcoran	-363	-25.1	\$1,757,000
High Desert State Prison	-360	-24.5	\$1,715,000
California State Prison – Los Angeles County	-360	-36.8	\$2,576,000
Mule Creek State Prison	-160	-8.2	\$574,000
Salinas Valley State Prison	-170	-20.1	\$1,407,000
<b>TOTAL</b>	<b>-2,219</b>	<b>-187.3</b>	<b>\$12,873,000</b>

**TABLE 7**  
**Fiscal Year to be Determined by Actual Population Decline**

<b>Institution</b>	<b>Inmates</b>	<b>Housing Officers</b>	<b>Savings</b>
Avenal State Prison	-600	-65.0	\$4,550,000
California Correctional Center	-450	-20.8	\$1,456,000
California Correctional Institution	-350	-30.6	\$2,142,000
California State Prison - Centinela	-360	-23.4	\$1,638,000
California Training Facility	-360	-50.8	\$3,556,000
Deuel Vocational Institution	-300	-19.6	\$1,372,000
High Desert State Prison	-120	-11.2	\$784,000
Ironwood State Prison	-480	-26.2	\$1,834,000
Pleasant Valley State Prison	-360	-37.5	\$2,625,000
Substance Abuse Treatment Facility	-240	-25.3	\$1,771,000
Sierra Conservation Center	-150	-9.4	\$1,288,000
California State Prison - Solano	-450	-16.0	\$1,120,000
<b>TOTAL</b>	<b>-4,220</b>	<b>-335.8</b>	<b>\$24,136,000</b>

**TABLE 8**  
**General Fund Savings**  
**(in thousands)**

Fiscal Year	Savings	Costs	Net Savings	Change in Positions
2004/05	\$0	\$0	\$0	0
2005/06	-\$21,028	\$0	-\$21,028	-303.8
2006/07	-\$21,028	\$0	-\$21,028	-303.8
2007/08	-\$21,028	\$0	-\$21,028	-303.8
2008/09	-\$21,028	\$0	-\$21,028	-303.8
<b>Future Fiscal Years</b>	<b>-\$45,164</b>	<b>\$0</b>	<b>-\$45,164</b>	<b>-639.4</b>

**TABLE 9**  
**Youth Authority Beds by Type in All Facilities as of June 30, 2003**

Institutions	Living Units	Number of general units and beds				Special beds				Total Beds
		Dorm Beds	Dry Rooms	Wet Rooms	Sub Total	Detention <sup>(b)</sup>	Medical	Program	Sub Total	
O. H. Close	8	266	99		365	33		2	35	400
Karl Holton	8	266	122		388	28			28	416
N. A. Chaderjian	12			550	550	50			50	600
DeWitt Nelson <sup>(a)</sup>	8	400			400	8	10	1	19	419
Preston	14	500		202	702	42	6	20	68	770
Fred C. Nelles	14	380	150	110	640	30	23	10	63	703
El Paso De Robles	12	388	112	158	658	32	11		43	701
Ventura (Male)	7	100		250	350	23	8	2	33	383
Ventura (Female)	7		1	299	300	25	8	1	34	334
Heman G. Stark	12		16	1,132	1,148	84	12	28	124	1,272
SYCRCC	8		2	377	379	23	14	14	51	430
NYCRCC	7	12		293	305	23	17	1	41	346
Ben Lomond	1	80			80					80
Pine Grove	1	80			80					80
Washington Ridge	1	80			80					80
Mt. Bullion	1	80			80					80
<b>TOTALS</b>	<b>121</b>	<b>2,632</b>	<b>502</b>	<b>3,371</b>	<b>6,505</b>	<b>401</b>	<b>109</b>	<b>79</b>	<b>589</b>	<b>7,094</b>

(a) Includes 10 medical beds located as part of the central core facility of the entire complex.

(b) Total number of detention beds includes suicide resistant beds and beds solely dedicated for detention.

**TABLE 10**  
**California Youth Authority Facility Closure Plan**

<b>Institution</b>	<b>Location</b>	<b>Closure Date</b>	<b>Beds</b>
Karl Holton Youth Correctional Facility (Holton)	Stockton	September 28, 2003	388
Ventura Youth Correctional Facility (Ventura) – male only	Camarillo	March 1, 2004	350
Northern Youth Correctional Reception Center and Clinic (Northern Reception)	Sacramento	March 1, 2004	305
Fred C. Nelles Youth Correctional Facility (Nelles)	Whittier	June 30, 2004	640
Mt. Bullion Conservation Camp	Mariposa	June 30, 2004	80
		<b>Total beds closed</b>	<b>1,763</b>

**TABLE 11**  
**Change in Number and Type of Beds by Facility**  
**Effective June 30, 2004**

<b>Institutions</b>	<b>2003</b>	<b>Bed Change by Type</b>			<b>2004</b>
	<b>Beds</b>	<b>Dorm Beds</b>	<b>Dry Rooms</b>	<b>Wet Rooms</b>	<b>Beds</b>
O. H. Close	365	266	99	0	365
<b>Karl Holton</b>	<b>388</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-388</b>
N. A. Chaderjian	550	0	0	550	550
DeWitt Nelson	400	400	0	0	400
Preston	702	500	0	202	702
<b>Fred C. Nelles</b>	<b>640</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-640</b>
El Paso De Robles	658	388	112	158	658
<b>Ventura (Male)</b>	<b>350</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-350</b>
Ventura (Female)	300	0	1	299	300
Heman G. Stark	1,148	0	16	1,132	1,148
SYCRCC	379	0	2	377	379
<b>NYCRCC</b>	<b>305</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-305</b>
Ben Lomond	80	80	0	0	80
Pine Grove	80	80	0	0	80
Washington Ridge	80	80	0	0	80
<b>Mt. Bullion</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-80</b>
<b>TOTAL</b>	<b>6,505</b>	<b>1,794</b>	<b>230</b>	<b>2,718</b>	<b>4,742</b>

**TABLE 12  
Actual and Projected Ward Population  
June 30, 1996 through June 30, 2009**

<b>Actual population as of June 30</b>			
<b>Year</b>	<b>Population</b>	<b>Change</b>	<b>% change</b>
1996	10,144		
1997	8,790	-1,354	-13.3%
1998	8,122	-668	-7.6%
1999	7,618	-504	-6.2%
2000	7,380	-238	-3.1%
2001	6,776	-604	-8.2%
2002	5,847	-929	-13.7%
2003	4,879	-968	-16.6%
<b>Projected population as of June 30</b>			
<b>Year</b>	<b>Population</b>	<b>Change</b>	<b>% change</b>
2004	4,090	-789	-16.2%
2005	3,895	-195	-4.8%
2006	3,760	-135	-3.5%
2007	3,755	-5	-0.1%
2008	3,750	-5	-0.1%
2009	3,740	-10	-0.3%

**TABLE 13  
Actual and Projected Ward Population by Gender  
June 30, 2003 through June 30, 2009**

<b>Date</b>	<b>Male Sub-total</b>	<b>Female Sub-total</b>	<b>Total Wards</b>
6/30/2003	4,644	235	4,879
6/30/2004	3,870	220	4,090
6/30/2005	3,685	210	3,895
6/30/2006	3,555	205	3,760
6/30/2007	3,555	200	3,755
6/30/2008	3,555	195	3,750
6/30/2009	3,550	190	3,740

**TABLE 14**  
**Ward Population by Age as of March 31, 2004**

Age	# of Wards	Age	# of Wards	Age	# of Wards
12	2	17	706	22	192
13	6	18	953	23	145
14	31	19	810	24	100
15	108	20	640	25	1
16	304	21	222	32	1
Total	451 (10.9%)	Total	3,331 (79%)	Total	439 (10.4%)

NOTE: Under Welfare and Institutions Code Section 1800 the sentencing court may extend a ward's jurisdiction up to two additional years when a ward is shown to be a danger to self and others. A sex offender in one of the YA institutions has been extended four times using these criteria and is now age 32.

**TABLE 15**  
**Number and Type of Beds Eliminated from Youth Authority Facilities as of June 30, 2005**  
**Under This Proposal**

Institutions	2004	Bed Change by Type			2005
	Beds	Dorm Beds	Dry Rooms	Wet Rooms	Beds
O. H. Close	365	266	99	0	365
<b>Karl Holton (Female)</b>	<b>0</b>	<b>+266</b>	<b>0</b>	<b>+122</b>	<b>+388</b>
N. A. Chaderjian	550	0	0	550	550
DeWitt Nelson	400	400	0	0	400
Preston	702	500	0	202	702
Fred C. Nelles	0	0	0	0	0
<b>El Paso De Robles (Male)</b>	<b>658</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-658</b>
<b>Ventura (Male)</b>	<b>0</b>	<b>+100</b>	<b>0</b>	<b>+250</b>	<b>+350</b>
Ventura (Male)	300	0	1	299	300
Heman G. Stark	1,148	0	16	1,132	1,148
SYCRCC	379	0	2	377	379
NYCRCC	0	0	0	0	0
Ben Lomond	80	80	0	0	80
Pine Grove	80	80	0	0	80
Washington Ridge	80	80	0	0	80
Mt. Bullion	0	0	0	0	0
<b>TOTAL</b>	<b>4,742</b>	<b>1,772</b>	<b>118</b>	<b>2,932</b>	<b>4,822</b>

**TABLE 16**  
**Number and Types of Beds Eliminated from Youth Authority Facilities**  
**As of June 30, 2006**

<b>Institutions</b>	<b>2005</b>	<b>Bed Change by Type</b>			<b>2006</b>
	<b>Beds</b>	<b>Dorm Beds</b>	<b>Dry Rooms</b>	<b>Wet Rooms</b>	<b>Beds</b>
O. H. Close	365	266	99	0	365
Karl Holton	388	266	122	0	388
N. A. Chaderjian	550	0	0	550	550
DeWitt Nelson	400	400	0	0	400
<b>Preston</b>	<b>702</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-702</b>
Fred C. Nelles	0	0	0	0	0
El Paso De Robles	0	0	0	0	0
Ventura (Male)	350	100	0	250	350
Ventura (Male)	300	0	1	299	300
Heman G. Stark	1,148	0	16	1,132	1,148
SYCRCC	379	0	2	377	379
NYCRCC	0	0	0	0	0
Ben Lomond	80	80	0	0	80
Pine Grove	80	80	0	0	80
Washington Ridge	80	80	0	0	80
Mt. Bullion	0	0	0	0	0
<b>NCWF</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>+400</b>	<b>+400</b>
<b>TOTAL</b>	<b>4,822</b>	<b>1,272</b>	<b>240</b>	<b>3,008</b>	<b>4,520</b>

**TABLE 17**  
**Number and Types of Beds Eliminated from Youth Authority Facilities**  
**Through June 30, 2009**

Institutions	2006	Bed Change by Type			2009
	Beds	Dorm Beds	Dry Rooms	Wet Rooms	Beds
O. H. Close	365	266	99	0	365
Karl Holton	388	266	122	0	388
N. A. Chaderjian	550	0	0	550	550
DeWitt Nelson	400	400	0	0	400
Preston	0	0	0	0	0
Fred C. Nelles	0	0	0	0	0
El Paso De Robles	0	0	0	0	0
Ventura (Male)	350	100	0	250	350
Ventura (Male)	300	0	1	299	300
Heman G. Stark	1,148	0	16	1,132	1,148
SYCRCC	379	0	2	377	379
NYCRCC	0	0	0	0	0
Ben Lomond	80	80	0	0	80
Pine Grove	80	80	0	0	80
Washington Ridge	80	80	0	0	80
Mt. Bullion	0	0	0	0	0
NCWF	400	0	0	400	400
<b>TOTAL</b>	<b>4,520</b>	<b>1,272</b>	<b>240</b>	<b>3,008</b>	<b>4,520</b>

**TABLE 18**  
**Summary of Youth Authority Institution Bed Consolidation Recommendations,**  
**2003 through 2009**

Date	Dorm Beds	Dry Rooms	Wet Rooms	Total	Bed Reduction	Annual Change
6/30/2003	2,632	502	3,371	6,505		
6/30/2004	1,794	230	2,718	4,742	-1,763	-27.1%
6/30/2005	1,772	118	2,932	4,822	80	1.7%
6/30/2006	1,272	240	3,008	4,520	-302	-6.3%
6/30/2007	1,272	240	3,008	4,520	0	0.0%
6/30/2008	1,272	240	3,008	4,520	0	0.0%
6/30/2009	1,272	240	3,008	4,520	0	0.0%
<b>Net Change</b>	<b>-1,360</b>	<b>-262</b>	<b>-363</b>	<b>-1,985</b>	<b>-1,985</b>	<b>31.7%</b>

**TABLE 19**  
**General Fund Savings**

<b>Fiscal Year</b>	<b>Savings</b>	<b>Costs</b>	<b>Net Savings</b>
2004 - 05	\$0	\$0	\$0
2005 - 06	-\$19,149,000	+\$13,158,000	-\$5,991,000
2006 - 07	-\$42,071,000	+\$30,444,000	-\$11,627,000
2007 - 08	-\$42,071,000	+\$30,444,000	-\$11,627,000
2008 - 09	-\$42,071,000	+\$30,444,000	-\$11,627,000

## Labor Contract

In any organization, there must exist a balance between management's obligation to direct the activities of the department to achieve operational goals and a union's obligation to ensure that its members receive just wages and work in a safe and fair environment. Historically, influence and power has shifted between these two entities in the California correctional system. The agreement between the state and the California Correctional Peace Officers Association, which is in effect from July 1, 2001 until July 2, 2006, clearly has resulted in an unfair and unworkable tilt toward union influence. The Department of Personnel Administration, which negotiated the contract, did not adequately represent the interests of the Youth and Adult Correctional Agency and its departments. The Secretary of the Youth and Adult Correctional Agency had little, if any, influence on matters that affect department operations.

The agreement contains numerous provisions that seriously undermine the ability of management to direct and control the activities of existing correctional departments and the new Department of Correctional Services. It is unclear whether adjustments can be made to the current agreement, but at the very least, the following should be considered in negotiating a new agreement.

### Recommendations

- **The Secretary of the Department of Correctional Services should be responsible for negotiating all matters that involve the management of the department.**

Wages and benefits are clearly negotiation rights that should be reserved for the Governor and the Legislature. However, the Secretary of the Department of Correctional Services must be involved in any negotiations that affect the efficient operation of the department. Only management is in a position to ascertain how proposed concessions or agreements in this area could effect long-range planning and goals.

- **Management personnel should have their own bargaining unit.**

At present management personnel receive no longevity or education bonus. As a result, qualified personnel are reluctant to attempt to promote because by doing so they would lose benefits available at the lower ranks. Giving management personnel their own bargaining unit would also enable them to negotiate increased benefits, which would make it more desirable to join management ranks.

- **The California Correctional Peace Officers Association should not be guaranteed a seat on management committees just because an employee the union represents is on the committee.**

It is management's prerogative to staff a committee as it sees fit. Arbitrary rules that dictate membership on a committee do not serve the best interests of the organization.

- **The California Correctional Peace Officers Association should not be a member of any committee that reviews staff assaults.**

Management may choose to have peer representation on the committee but it is management's prerogative to review such matters without union participation. The current contract gives the California Correctional Peace Officers Association two bites of the apple. First, it sits on the committee that makes recommendations as to whether or not an assault is within policy, and then it defends officers in punitive actions that result from inappropriate use of force.

- **The Correctional Peace Officer apprenticeship program should be eliminated.**

The apprenticeship program has not produced qualified candidates in significant numbers. Entry-level cadets should be on probation for one year after their graduation from the academy. Their training, mentoring, and final decision as to permanent employment is a management right. Management should designate a field training officer employment classification, whose members will be specially selected and trained to oversee a probationer's progress. It is management's decision to terminate a probationary employee and that employee should have no appeal rights other than a "liberty" hearing before the Director of Training to ascertain whether the decision to terminate is justified.

- **Training lesson plans should be formulated and implemented by management without prior approval from any outside entity, such as the Correctional Peace Officers Standards and Training Commission.**

At present, training lesson plans can be delayed for years because of disagreements between the members of the Correctional Peace Officers Standards and Training Commission, on which the California Correctional Peace Officers Association enjoys 50 percent membership. Training is also a management right and is based on organizational needs. Under the reorganization plan proposed by the Corrections Independent Review Panel, an independent Office of Personnel and Training would have the department-wide responsibility for all training.

- **Adverse action and citizen complaint documents should not be purged from an employee's files.**

Safeguards should be established to ensure that not-sustained complaints cannot be used for the purposes of promotion and transfer, but management must retain a record of all incidents for risk-management purposes.

- **Seniority should not be used for transfers, overtime, and assignments.**

In order to fulfill its mission, it is crucial that management have the ability to post its best employees in the most critical assignments. The union should have no say in this matter. In addition, granting permission to work overtime based on seniority ensures that the highest paid employees will get that assignment. This does not guarantee that the best employee will be selected, but it does guarantee that it will cost more money. Using seniority for transfers greatly impinges on management's right to assign employees based on need and competency. It is permissible to use seniority for the selection of vacations.

- **Longevity pay should be based on time in the department, and not time in the California Correctional Peace Officers Association.**

Employees should be rewarded for longevity in the department. The state should neither discourage nor reward union membership.

- **The present 70-30 percent rule for assignments and overtime should be eliminated.**

Only management should be responsible for the posting of employees, and posting should be based on merit without union participation. A fundamental obligation for management is to deploy the best personnel in the most critical assignments. It is unacceptable to have the union make these decisions.

- **The present sick leave policy should be revisited to ensure that management has the right to inquire and take corrective action relative to sick leave abuse.**

Present contract provisions make it difficult for management to investigate sick leave abuses, such as chronic use of Friday and Monday sick leave to correspond with a weekend off. The result has been a surge in sick leave use at great expense to the state.

- **The contract section on personnel investigations (9.09 and related side letters) should be revisited.**

The present contract mandates that management give an employee pertinent information relative to an investigation before the first interview. It makes no sense to give an employee a copy of the investigation BEFORE the investigation is completed. This practice encourages the “code of silence” afflicting the state correctional system and could contribute to retaliation against “whistle-blowers.”

## Information Technology

Information technology at the Department of Corrections has been consistently underfunded, overlooked and neglected. In examining the state correctional system, the Corrections Independent Review Panel found a loosely connected organization that evolved as independent components lacking centralized control. Not surprisingly, the same is true of the correctional system's information technology structure—independent growth resulting in inconsistent systems not supportable by a centralized authority. Consequently, information technology in the state correctional system is inadequate to allow the correctional system to fulfill its current responsibilities or those envisioned by the objectives presented in this report.

A November 2002 report of the Senate Advisory Commission on Cost Control in State Government concluded that the Department of Corrections is technologically antiquated. The report observed that since the late 1980s, the Department of Corrections has invested most of its attention into “providing new prisons, hiring and training the thousands of correctional employees to operate them,” but that “one important item was forgotten—a similar commitment to build new information capabilities” and capacity.<sup>1</sup>

Efforts to correct the department's information technology capacity have been thwarted by competing crisis demands and priorities external to corrections, apparently killing the messenger rather than addressing the message. The Senate Advisory Commission report noted:

*[D]epartmental managers directly responsible for the IT systems time and again have requested funds to replace aging equipment, to complete an unfinished infrastructure, and to take advantage of inexpensive prison management software developed by other states. But the requests have been ignored. 'Budgetary Constraints' have been invoked year after year by the state Administration as the reason for failing to provide funds needed to develop an up-to-date CDC information system.<sup>2</sup>*

Information is essential in managing an organization the size of the correctional system. The Senate Advisory Commission determined that, “A modern management information system must be a critical goal for CDC in terms of improving efficiency, reducing costs, and supporting the department's mission of public safety.”<sup>3</sup> The lack of information relative to inmate care and treatment has been a significant factor in lawsuits against state correctional agencies. The legal cases *Madrid v. Gomez*, *Clark v. State of California*, *Coleman v. Davis*, *Plata v. Wilson*, and *Farrell v. Harper*, all identify poor records systems as indicators of negligent

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<sup>1</sup> Senate Advisory Commission on Cost Control in State Government, *Utilizing Technology in the Department of Corrections*, Sacramento, California, August 2002, pp.13, 15.

<sup>2</sup> *Ibid.*, pp. 63-64.

<sup>3</sup> *Ibid.*, p.63.

conduct on the part of corrections and demonstrative of the failures to properly care for or protect inmates.<sup>4</sup>

Attorney Donald Specter, Director of the Prison Law Office, the primary legal advocacy group initiating class action suits against the state correctional system, commented about the California Department of Corrections:

*[I]t is too big and much too diverse; without information there is no management.*<sup>5</sup>

The Corrections Independent Review Panel reaffirms those observations.

The objective to be pursued is not unknown to the state or to corrections officials. J. Clark Kelso, Chief Information Officer, State of California, in a May 12, 2004 speech to the Government Technology Conference, in Sacramento, set out three major goals:

*[M]y vision for the immediate future of IT in state government is re-establishing effective IT governance within the State, agreeing upon a 5-year strategic plan for IT developments in the areas of back office systems, smart services on the Internet, infrastructure rationalization, and IT security, and establishing and enforcing statewide policies and standards through an enterprise architecture.*<sup>6</sup>

Corrections Independent Review Panel concludes that the core technology needs of the Department of Correctional Services parallel this vision. An effective information technology enterprise requires the establishment of a centralized highly placed information technology leadership in corrections; a five-year strategic plan for infrastructure implementation and enforcing corrections-wide policies and standards through an enterprise architecture.

### Fiscal Impact

The costs associated with personnel enhancements and standardization of information technology will increase expenditures for technology over present levels. This budget area has been restrained in past years with the consequence of accumulated maintenance costs and deferred expansion. New personnel costs must be accepted if minimum base levels of support are to be provided.

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<sup>4</sup> Youth and Adult Correctional Agency, "Transition Document," November 4, 2003, pp. 23-28.

<sup>5</sup> Donald Specter, Director, Prison Law Office, comments to the Corrections Independent Review Panel, Sacramento, California, April 15, 2004.

<sup>6</sup> J. Clark Kelso, Chief Information Officer, State of California, "21<sup>st</sup> Century Government," Government Technology Conference Sacramento, California May 12, 2004,

## Background

The information technology arena of each entity of the Youth and Adult Correctional Agency has evolved on its own, scaled to its own operation. The two largest components, California Department of Corrections and California Youth Authority, both addressing incarceration and parole issues but on different scales, have mirror-image information technology components, varying only in size. The duty statements of the technology staff, regardless of employing department, authority, or board are identical and validate that similar duties are carried out.

Entities within the Youth and Adult Correctional Agency are capable of supporting different information needs. Indicative of this is that the California Department of Corrections, Information Systems Division has responsibility for both institution and parole support and is presently supporting the Board of Prison Terms in development of a parolee hearing tracking database ordered by the federal courts.<sup>7</sup>

*All technology staff should be accountable to one central authority.* At present, 100 Department of Corrections employees are assigned in 32 institutions for technology purposes, but they are not supervised by the Information Systems Division, which is responsible for technology management. Christy Quinlan, Chief Information Officer, California Department of Corrections, Information Systems Division, advised that during recent 2004 department information technology training in Galt, California on April 6 and 7, the most prominent voiced request was to change the information technology organization to centralized personnel management.<sup>8</sup> Conference attendees who work in institutions provided examples of problems resulting from the absence of centralized personnel management. The problems cited include: the inability to gain local compliance with departmental policy and report non-compliance in accordance with policy; the inability to report or stop security breaches; being assigned tasks out of information technology classification; non-information technology managers over-riding departmental priorities; and the inability of non-information technology managers to grasp information technology-related issues.<sup>9</sup> In an environment of understaffing, the fragmentation of resource control not only compounds the staffing issue, but undermines the morale of those properly and improperly utilized.

*Support of technology has not kept pace with other staffing.* In an agency of 52,000 employees—about one-sixth of all state employees—approximately 250 people are directly accountable for supporting the department's information systems development, communi-

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<sup>7</sup> Heidi Trimarchi, Manager of Application Development and Maintenance Section, Information Systems Division, California Department of Corrections, interview Folsom, California, June 2, 2004.

<sup>8</sup> Christy Quinlan, Deputy Director and Chief Information Officer, California Department of Corrections, interview, Sacramento, California, May 19, 2004.

<sup>9</sup> Dan Marshall, Staff Information System Analyst, California Department of Corrections, San Quentin, California.

cation, and associated storage and service requirements.<sup>10</sup> The 100 additional technology employees assigned to Department of Corrections institutions are responsible to the institution hiring authority and can be diverted to non-information technology local duties as determined by institution supervisors. Assigned at a specific institution, some of which are quite remote, these employees are not readily available to assist each other or headquarters. Also, institutions operate twenty-four hours a day, seven days a week, 365 days a year. Often these employees have the highest ratio of support to users—as much as 1:600.<sup>11</sup> The Gartner Group, an industry-recognized expert on information technology personnel ratios, conducted a staffing study for the California Youth Authority, which is similar to California Department of Corrections, and recommended a support ratio of staff to personal computers of 1:45. If all of the technology employees within the agency were used only for computer support, the ratio, at best, would be 1:150. But if that were the case, no other information technology services could be delivered, including application development, network and server support, data communications, database, security, help desk and implementation and control of production systems.<sup>12</sup> Adequate staffing levels are needed if correctional personnel are to rely upon and trust the technology environment to support their needs.

In addition, the current structure allows for candidates who lack even the most basic required qualifications to be hired into technology positions; indeed, the majority of the institution and field interview panels do not include a member from the information technology classifications. The department must change its hiring practices for information technology personnel.<sup>13</sup>

**Budget.** Budget centralization is critical to uniformity of applications, prioritization of projects, and accountability. In the past, wardens had autonomy over institution budgets, which has contributed to overspending the corrections budget by 1.6 billion dollars since 1999.<sup>14</sup> As has been the case with many agencies, much of the early technology applications in the corrections system occurred from the ground up. In the absence of headquarters capability to provide support that kept pace with correctional growth, local ingenuity was applied. A consequence of self-initiative and local budgeting at institutions resulted in diverse software programs and hardware. Local institutions used available programmable software to implement local solutions. Standardization was a victim. These numerous

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<sup>10</sup> Christy Quinlan, Deputy Director and Chief Information Officer, California Department of Corrections, interview, Sacramento, California, May 19, 2004, and Heidi Trimarchi, Manager of Application Development and Maintenance Section, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

<sup>11</sup> Dan Marshall, Staff Information System Analyst, California Department of Correction, San Quentin, California.

<sup>12</sup> California Department of Corrections, Information Systems Division, "Youth and Correctional Agency Information Technology Statement Form," pp. 2-3. (Supplied by Christy Quinlan, Deputy Director and Chief Information Officer, California Department of Corrections, Sacramento, California, January 2003).

<sup>13</sup> Senate Advisory Commission on Cost Control in State Government, *Utilizing Technology in the Department of Corrections*, Sacramento, California, August 2002, p. 41.

<sup>14</sup> Associated Press, "Prison spending reforms approved by state assembly," May 27, 2004.

single purpose, stand-alone systems in today's networking environments and information demands, cannot communicate with one another, are too slow, are outmoded, or are no longer supported by the manufacturer. These inherited systems, or legacy systems, dilute technical support resources; can no longer perform the tasks undertaken; cannot be supported; or are antiquated.<sup>15</sup>

This autonomy of expenditure has also resulted in some institutions implementing major technology infrastructure developments on their own and others not.<sup>16</sup> A consequence is a fragmented level of development and a failure to anticipate the continuing cost of maintaining systems after they are established. The fragmentation is also generated by several major settlements in federal court cases that have mandated specific actions to include databases and the technology to achieve them,<sup>17</sup> some local in nature<sup>18</sup> and others division-wide.<sup>19</sup> These court mandates have re-prioritized projects, often with great administrative expense. One special master received \$600,000<sup>20</sup> and another is even more costly.<sup>21</sup>

The methodology of financing is also affected by practices imposed by the Department of Finance. Presently, all technology projects costing over \$500,000 must be justified to and approved by the Department of Finance, a generic process applied regardless of risk involved and seen by technology staff as wasteful. The Department of Finance requires that each project include its own infrastructure development and costs, regardless of whether a general infrastructure project alone would be more economical in the long run.<sup>22</sup> This also encourages piecemeal development.

While issues of budget impact all project activity, project development and management determines success or failure. The ghosts of projects failed haunt the state technology departments. Every technology administrator is familiar with the failed Department of Motor Vehicles computer project, the Oracle licensing contract debacle, and other technology-related failures and scandals. These technology graves create suspicions toward all major technology projects proposed for state government. The California Department of Corrections suffers from a failed Correctional Management Information System.<sup>23</sup> Begun in

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<sup>15</sup> Heidi Trimarchi, Manager of Application Development and Maintenance, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

<sup>16</sup> Heidi Trimarchi, Manager of Application Development and Maintenance, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

<sup>17</sup> Joe Panora, Chief Information Officer, California Youth Authority, interview, Sacramento, California, May 17, 2004.

<sup>18</sup> "Madrid Remedial Plan, Pelican Bay State Prison, Use of Force Policy," revised July 2003, pp. 45-46.

<sup>19</sup> Darrel Ballard, Major, California Youth Authority, interview, March 24, 2004.

<sup>20</sup> Youth and Adult Correctional Agency, "Transition Document, *Madrid v. Alameida*," November 4, 2003, page 26

<sup>21</sup> *Ibid.*, *Coleman v. Wilson*, p. 24.

<sup>22</sup> Heidi Trimarchi, Manager of Application Development and Maintenance, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

<sup>23</sup> *Ibid.*

1994 with great hopes for propelling the department into an automated inmate information era, the project focus froze all existing older systems it was to replace, until it sputtered to a litigated halt in 1998. In its wake it left even more outdated and under-maintained old systems, a paranoia as to undertaking anything whose beginning and end could not be absolutely guaranteed, and a Legislature skeptical of funding any new projects.<sup>24</sup>

The ability to manage a technology project of the magnitude appropriate for the new Department of Correctional Services or a consolidated correctional entity should give rise to cautious deliberation; not only as to the need, but as to selecting the correct resources to initiate and undertake the endeavor. Government technology resources generally can be fully tasked in the maintenance of the existing architecture, service calls, and coordinating the various connectivity of networks. The complexity of project development and the balancing of the responsibilities of the corrections internal units should require corrections administrators to seek competent expert advice and guidance. Technology project management is a specialized skill not naturally nurtured in the technology domain of state government or businesses in general. A new project can drain and overwhelm the normal supporting function provided by technology staff to an agency, harming its core operations and at the same time failing to produce the desired project results. Executive support of a project requires an objective assessment of both program and technical staff capabilities to internally undertake a major project task, or to contract out the task. This is not to diminish the talents of many corrections personnel, but to acknowledge that the size of the agency alone equals and surpasses many other state governments. Other options in technology choices are similarly important, such as using commercial off-the-shelf systems or choosing between purchasing or leasing various types of hardware. No clear formula exists for making these determinations, but the issues must be addressed objectively with each project.

The current budgeting practice requires program technology projects to be funded by the affected institution or program. Institution budgets can be expended for technology purposes, but procurement procedures in the Department of Corrections and the California Youth Authority now require sign-off on procurement requests by the chief information officer. The culture of institution autonomy still prevails—an occasional technology argument concludes with “the wardens have to run their institutions, you can’t tell them what to do!”<sup>25</sup>

**Standardization.** Control of technology development is essential. As noted above, fiscal control can provide standardization of systems and hardware. The technology authority must be adequately empowered to do this. Replacing the older antiquated systems not compatible with current technology will require discipline and a long-term strategy. New

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<sup>24</sup> Senate Advisory Commission on Cost Control in State Government, *Utilizing Technology in the Department of Corrections*, Sacramento, California, August 2002, p. 26.

<sup>25</sup> Heidi Trimarchi, Manager of Application Development and Maintenance, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

Department of Corrections policy applies the industry practice of requiring a written charter between the department technology staff and the program staff in the development of a technology project for operational use. These project management relationships are formally documented with specific responsibilities assigned.<sup>26</sup> The operational program establishes the business need, and technology determines the process. But not every program person is suited to or, more likely, even trained in the manager role.<sup>27</sup> Standardization of systems can be maintained by allowing technology to determine the process.

Many projects affecting corrections have been court-imposed, which can undermine standardization. The settlement outcomes are negotiated between program staff and the court-appointed representative and experts. The understanding of the corrections program staff may not realistically encompass technology concerns.<sup>28</sup> Likewise, the capacity of the technology staff may not be adequate to fulfill the operational need.<sup>29</sup> In either instance, this can result in settlements that create expensive or inefficient results. Further, executive management must consider the global impact of these settlements on the resulting technology demands and ensure that negotiations do not undermine standardization.

**Executive support.** The executive leadership must support a technology strategy of centralized authority and standardized process.<sup>30</sup> That support is essential to the effective use of technology capable of supporting the operational program activity of the agency. Information is the key to accountability. The executive must understand that information capture, flow, and use are essential to all aspects of the correctional mission. Adequately implemented, information technology can support the external initiatives foreseen by the proposed Correctional Standards Authority in the coordination of state and local corrections systems. Implementation of technology strategic policy must be aggressively enforced, whether resisted by institution executives, affected by union policy concerning work rules, or infringed upon by proposed settlement agreements.

The chief information officer must have adequate authority to prevent dilution of resources through budget and personnel diversion, to control development of infrastructure and to enforce a focused strategy.<sup>31</sup> The Department of Corrections has implemented an Information Technology Executive Committee composed of all major division executives. It is the role of the Technology Executive Committee to consider and prioritize projects and monitor their progress. Greater involvement and representation of wardens is desired and is being

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<sup>26</sup> *Ibid.*

<sup>27</sup> Joe Panora, Chief Information Officer, California Youth Authority, interview, Sacramento, California, May 17, 2004.

<sup>28</sup> *Ibid.*

<sup>29</sup> Warden Joe McGrath, Pelican Bay State Prison, letter to Special Master John Hagar, in re *Madrid v. Gomez*, April 2, 1999.

<sup>30</sup> Joe Panora, Chief Information Officer, California Youth Authority, interview, Sacramento, California, May 17, 2004.

<sup>31</sup> Joe Sogge, Chief Information Officer, Department of General Services, interview, Sacramento, California, May 7, 2004.

sought.<sup>32</sup> This concept is consistent with the proposed Department of Correctional Services elevation of the information technology executive to report directly to the Secretary.

*Infrastructure and database development.* Robust enterprise-wide systems addressing core matters are essential. A consolidated Department of Correctional Services will require enhanced wide-area networks. A strong regional authority will require reliable connectivity; hence, a robust enterprise wide infrastructure is essential. In recent years the technology components have worked toward that end within budget restraints, but much still remains. The California Youth Authority is concluding a phasing out of Macintosh hardware and implementing a unified e-mail.<sup>33</sup> The Department of Corrections just completed the installation of the last local area network in an institution.<sup>34</sup>

In recent years, the Department of Corrections and the California Youth Authority have identified needed new and replacement data collection systems and these are being developed. Several of these major systems are court-ordered. A business information system, an offender data system, and a global data system encompassing all inmate medical history are some of the major endeavors, and are just a few of many in stages of development or under consideration. As identified and justified elsewhere in this report, the Corrections Independent Review Panel has found the need for developing enterprise-wide data collection applications and for enhancing or consolidating currently developed systems or systems under development, based upon anticipated needs of the new Department of Correctional Services.

In summary the Corrections Independent Review Panel found need for the following:

- An offender data system to consolidate all intake, history, and tracking of all inmates, wards or parolees.
- An inmate education program database accessible by institutions and parole for all needs.
- Data systems that would support “evidence-based” decision making to measure the effectiveness of parole policies and programs to reduce the rate of recidivism.
- A health care data system to capture all individual inmate, ward, and parolee medical activity and records and to allow for global analysis of corrections medical treatment, costs, and impacts.
- The development of a state-wide system for tracking and analysis of inmate/parolee appeals.

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<sup>32</sup> *Ibid.*

<sup>33</sup> Joe Panora, Chief Information Officer, California Youth Authority, interview, Sacramento, California, May 17, 2004.

<sup>34</sup> Heidi Trimarchi, Manager of Application Development and Maintenance, Information Systems Division, California Department of Corrections, interview, Folsom, California, June 2, 2004.

- A business information system to support all management tasks and provide for accountability within the Department of Correctional Services.
- Creation of a personnel information system to track all employee-related matters and issues and to provide employee access to those aspects that facilitate career and training development while maintaining adequate record security.
- Creation of a case management system for managing internal affairs cases state-wide.
- Creation of a data system for gathering and analysis of information regarding use-of-force incidents.

## Recommendations

The Corrections Independent Review Panel recommends that the following actions be taken to improve information technology in the state correctional system:

- Consolidate all correctional information technology into one major organizational structure under the direction of a Deputy Secretary for Information Technology, who will act as the chief information officer of the Department of Correctional Services.
- Establish and incorporate into budget and personnel planning a strategic plan for information technology infrastructure development, maintenance, and replacement.
- The Secretary of the Department of Correctional Services must adequately support the Deputy Secretary for Information Technology in implementing a strategic technology plan through personnel and budgetary discipline.
- The Secretary of the Department of Correctional Services must require a global assessment of all settlement agreements relative to technology strategic plan impact.
- Authorization of new or amended technology projects must identify all costs associated with establishing programs, supporting infrastructure, and maintenance.
- Department of Correctional Services information technology and financial management components should establish criteria for determining the need for contracted expertise in technology projects.
- Require technology project management training for corrections operations staff involved in chartered technology projects.

- All personnel servicing and implementing information technology systems must be hired by and assigned to the Deputy Secretary for Information Technology.
- Establish and maintain proper levels of technology support staffing for both existing and new systems.
- Establish specific core enterprise-wide databases to facilitate the effective operation of the Department of Correctional Services.

### **Fiscal Impact**

Implementation of the recommendation will increase costs for technology infrastructure and personnel. The dollar cost of the recommendations will be determined by the creation of and compliance with a strategic plan. A strategic plan can minimize the unanticipated consequences that can arise in technology development and implementation that inflate expenses. User acceptance by compliance with standards of input of data, consideration of database content, and management application of data to decision making can reduce the events and incidents that generate crisis costs for the correctional entity. Business information systems allow the executive to control costs consistent with planning and require accountability and consequences for failure. Systems that document the medical treatment of inmates, wards, and parolees professionalize and enhance medical treatment and provide proof of action needed for medical and legal purposes. Failure to provide that proof in the past has led to legal claims alleging mistreatment, followed by subsequent damages and remediation costs.