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15 Attorneys for Plaintiffs

16
 17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19

20 JOHN ARMSTRONG, et al.,
 21 Plaintiffs,
 22 v.
 23 GAVIN NEWSOM, et al.,
 24 Defendants.
 25

Case No. C94 2307 CW

**DECLARATION OF GAY
 CROTHWAIT GRUNFELD IN
 SUPPORT OF MOTION TO STOP
 DEFENDANTS FROM ASSAULTING,
 ABUSING AND RETALIATING
 AGAINST PEOPLE WITH
 DISABILITIES**

Judge: Hon. Claudia Wilken
 Date: July 21, 2020
 Time: 2:30 p.m.
 Crtrm.: TBD

1 I, Gay Crosthwait Grunfeld, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner
3 in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for Plaintiffs. I
4 have personal knowledge of the facts set forth herein, and if called as a witness, I could
5 competently so testify. I make this declaration in support of Plaintiffs’ Motion to Stop
6 Defendants From Assaulting, Abusing and Retaliating Against People With Disabilities
7 (“Motion”). I incorporate by reference my declaration filed February 28, 2020 in support
8 of Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing, and Retaliating
9 Against Persons With Disabilities at R.J. Donovan Correctional Facility (“RJD Motion”),
10 Docket No. 2922-1.

11 2. On February 28, 2020, Plaintiffs filed the RJD Motion, prior to receiving
12 investigative reports requested in discovery related to the allegations of violence and abuse
13 at R.J. Donovan Correctional Facility (“RJD”) and prior to obtaining declarations from
14 prisoners at other CDCR prisons. The purpose of this declaration is to update the Court on
15 relevant events since the February 28 filing. Based on the evidence amassed in the ensuing
16 three months, Plaintiffs have expanded their request for relief beyond RJD.

17 **The Current Hearing Schedule was Necessitated by Multiple Extensions of Time and**
18 **the Need to Review the Investigative Files**

19 3. Prior to filing the RJD Motion, Defendants’ counsel asked us to agree to an
20 extension of time to file their opposition. We negotiated a briefing schedule that provided
21 59 days to oppose the motion, instead of the usual 14 days allowed under Northern District
22 Rule 7-3. The Court approved this schedule. *See* Docket No. 2917.

23 4. After the Governor issued the Shelter in Place order, on March 27, 2020,
24 Defendants’ counsel requested additional time to oppose the RJD Motion and we agreed to
25 a new briefing schedule that provided Defendants almost three months to respond to the
26 RJD Motion. The Court approved this schedule. *See* Docket No. 2938. On April 24,
27 2020, at the suggestion of the Court Expert, the parties conducted a meet-and-confer call in
28 part to check in again on the briefing schedule. At that time, Defendants’ counsel requested

1 another 30 days for their opposition. Given the seriousness of the allegations and ongoing
2 concerns about retaliation against class member declarants, we declined such a lengthy
3 extension but did agree to seven additional days.

4 5. On May 12, 2020, Defendants' counsel accepted our offer of a seven days
5 extension. Attached hereto as **Exhibit A** is a true and correct copy of my May 13, 2020
6 letter to Joanna Hood regarding the requested extension. The letter informed Defendants'
7 counsel of ongoing incidents of retaliation being experienced by class members at RJD.
8 Further discussions between the parties occurred with the assistance of the Court Expert,
9 resulting in a new briefing schedule that was submitted to this Court on May 20, 2020. On
10 May 21, this Court modified the briefing schedule to set Defendants' opposition for June 9,
11 2020, and the hearing for July 21, 2020. *See* Docket Number 2942.

12 6. By May 24, 2020 Plaintiffs' expert on disciplinary systems had completed
13 his review of the investigative files produced after the February 28 filing. The expert
14 report, as well as declarations from people with disabilities gathered since February 28,
15 2020 and shared with Defendants in April, May, and June 2020, made clear the need for
16 statewide relief. On May 27, 2020, I sent Defendants' attorney Joanna Hood an email, a
17 true and correct copy of which is attached hereto as **Exhibit B**, describing our intention to
18 file the expert report and a revised proposed order and informing Ms. Hood and her
19 colleagues that their opposition would no longer be due on June 9, 2020. On May 29,
20 2020, I spoke by telephone with Tamiya Davis, an attorney for Defendants with CDCR's
21 Office of Legal Affairs, who confirmed that Defendants' counsel had received my May 29
22 email.

23 7. On June 1, 2020 I received an email from Trace Maiorino, one of the
24 attorneys for Defendants, a true and correct copy of which is attached hereto as **Exhibit C**.
25 I responded to Mr. Maiorino's email and set up a time to speak with him and his
26 colleagues and the Court's Expert. In that telephone conversation on June 1, I suggested
27 that the Court consider the RJD Motion and our additional pleadings together and that
28 Defendants produce a consolidated opposition. However, Defendants' counsel expressed

1 that they had already provided their draft opposition to their stakeholders and they
 2 preferred not to explore a consolidated opposition. I informed them that after we filed this
 3 motion, we could discuss a briefing schedule with them.

4 **Since the Filing of the RJD Motion, Discovery and Declaration Gathering Have**
 5 **Continued, Showing Ongoing Abuse of and Retaliation Against People**
 6 **With Disabilities**

7 8. As discussed in Plaintiffs' RJD Motion, staff misconduct against people with
 8 disabilities is not limited to RJD. *See* Declaration of Gay Crosthwait Grunfeld in Support
 9 of Plaintiff's Motion to Stop Defendants from Assaulting, Abusing, and Retaliating
 10 Against Persons With Disabilities at R.J. Donovan Correctional Facility ("Grunfeld RJD
 11 Decl."), Docket No. 2922-1, ¶¶ 68-69. Beginning on May 7, 2020, we uploaded to a
 12 ShareFile for review by Defendants, the Court Expert, and the *Coleman* Special Master's
 13 team declarations describing the problem that exists at California State Prison – Los
 14 Angeles County ("LAC") and that has been brought to Defendants' attention many times.
 15 *See* Declaration of Thomas Nolan in Support of Motion to Stop Defendants from
 16 Assaulting, Abusing, and Retaliating Against People With Disabilities ("Nolan Decl."),
 17 filed herewith under seal. We continued to upload declarations from *Armstrong* and
 18 *Coleman* class members to the ShareFile from LAC, RJD, California Correctional
 19 Institution ("CCI"), California State Prison – Corcoran ("COR"), Kern Valley State Prison
 20 ("KVSP"), and California Substance Abuse Treatment Facility ("SATF") on May 7, 14,
 21 15, 19, 21, 22, 26, 29, and June 1, 2020.

22 9. With the ShareFile uploads, Plaintiffs' counsel provided Defendants with
 23 letters asking them to investigate the allegations at each of the named prisons, to prevent
 24 retaliation against the declarants, and to only interview the declarants with Plaintiffs'
 25 counsel present. Attached hereto as **Exhibit D** are true and correct copies of those letters.
 26 In addition, on April 23, 2020 Plaintiffs' counsel uploaded to the ShareFile three
 27 declarations from *Armstrong* and *Coleman* class members related to the death of an RJD
 28 class member declarant, as well as a declaration from a former social worker at RJD.

1 10. On November 21, 2020, Plaintiffs served a Notice of Deposition of CDCR's
2 Person Most Knowledgeable and Request for Production of Documents ("RFPD"). See
3 Grunfeld RJD Decl., Ex. L. The RFPD requested, *inter alia*, all documents related to staff
4 complaints, investigations, and discipline at RJD in which the victim of the misconduct
5 was an *Armstrong* class member. *Id.* at 9-11 (Document Requests 1-11).

6 11. As of the filing of Plaintiffs' RJD Motion on February 28, 2020, Defendants
7 had only produced a few investigative and disciplinary documents responsive to the RFPD.
8 In particular, at that time, Defendants had produced almost no requests by RJD for
9 investigations by the Office of Internal Affairs ("OIA") (commonly referred to as 989 form
10 or 989 packages); investigation reports drafted by OIA; findings, following an OIA
11 investigation, by the RJD warden regarding whether to sustain allegations of misconduct
12 (Form 402); decisions by the RJD warden regarding what, if any, discipline to impose
13 when sustaining allegations of misconduct (Form 403); Notices of Adverse Action;
14 documents related to *Skelly* hearings; or documents from proceedings before the State
15 Personnel Board. Many of the few files that Defendants had produced as of February 28,
16 2020 were incomplete. Plaintiffs had intended to have an expert review investigation and
17 disciplinary documents and submit a declaration in support of the RJD Motion.
18 Defendants' failure to make a complete production of documents by that date made it
19 impossible to conduct a meaningful review.

20 12. Following the filing of the RJD Motion, the parties continued to meet and
21 confer regarding Defendants' production of investigation and disciplinary documents. See
22 Decl. of Michael Freedman in Supp. of Motion ("Freedman Decl."), filed herewith under
23 seal, Exs. 65-74.

24 13. It was only after Defendants' 12th production of documents on April 20,
25 2020 that Plaintiffs had a sufficient sample of mostly complete staff complaint,
26 investigation, and discipline files to conduct a meaningful review of CDCR's investigative
27 and disciplinary processes.
28

1 14. Defendants' document production has continued weekly since the filing of
 2 the RJD Motion with a total of 19 productions as of the filing of this declaration.
 3 However, Defendants' production of documents remains incomplete. For example, the
 4 current production of documents is missing: electronically stored information belonging to
 5 many key custodians identified by Defendants on December 24, 2019; video interviews
 6 conducted by RJD staff following use of force incidents; and a number of institution-level
 7 inquiries into allegations of staff misconduct. *See* Freedman Decl., Ex. 74.

8 15. Most of the investigative files related to the original RJD declarations have
 9 now been produced. Due to a number of factors, the production has required many hours
 10 to sort through and compile and to connect the files with the incidents in question. The
 11 majority of video-recorded interviews have still not been produced.

12 **Defendants Have Been Unable to Answer the Basic Question of How Many**
 13 **Employees CDCR Has Terminated at RJD for Misconduct that Victimized an**
 14 **Incarcerated Person**

15 16. On February 6, 2020, Plaintiffs served Defendants with a set of special
 16 interrogatories. Grunfeld RJD Decl., Ex. Q. The interrogatories requested, *inter alia*,
 17 information regarding the number of instances since January 1, 2017 where the hiring
 18 authority at RJD sustained an allegation of misconduct in which the victim of the
 19 misconduct was an incarcerated person and terminated the employee as a penalty. *Id.* The
 20 purpose of the special interrogatories was to determine how many times CDCR has fired
 21 an employee since January 1, 2017 for harming an incarcerated person at RJD. As set
 22 forth below, over the next four months, Defendants served on Plaintiffs a response and
 23 multiple revisions and amendments to the response. CDCR's ever-changing answers
 24 suggest that its system for tracking misconduct and discipline is inadequate and
 25 ineffective.

26 17. On March 13, 2020, Defendants served a Response to Plaintiffs' special
 27 interrogatories ("Response"), a true and correct copy of which is attached hereto as
 28 **Exhibit E**. Defendants represented that, since January 1, 2017, the RJD hiring authority
 had terminated ten employees for misconduct at RJD in which the victim of the

1 misconduct was an incarcerated person. This response did not specify which of the
2 terminations involved misconduct against *Armstrong* class members.

3 18. On April 30, 2020, Defendants' served an Amended Response to their
4 March 13, 2020 Response, a true and correct copy of which is attached hereto as **Exhibit F**
5 ("Amended Response"). In the Amended Response, Defendants represented that they
6 "became aware of a discrepancy in previously provided information." *See* Ex. E, at 2. In
7 the Amended Response, Defendants represented that the RJD hiring authority had
8 terminated twelve employees for misconduct at RJD in which the victim of the misconduct
9 was an incarcerated person.

10 19. Finally, on May 27, 2020, Sean Lodholz, counsel for Defendants,
11 represented in a letter to my co-counsel Michael Freedman, a true and correct copy of
12 which is attached hereto as **Exhibit G**, that Defendants intended to amend their
13 interrogatory responses yet again, this time to reflect that the RJD hiring authority had
14 terminated only nine, rather than twelve, employees for misconduct at RJD in which the
15 victim of the misconduct was an incarcerated person. *Id.* at 3.

16 20. Defendants have also provided constantly shifting information regarding the
17 number of terminations that involved misconduct in which the victim was an *Armstrong*
18 class member. On April 9, 2020, Defendants served a Supplemental Response to
19 Plaintiffs' Special Interrogatories ("Supplemental Response"), a true and correct copy of
20 which is attached hereto as **Exhibit H**, in which they represented that six of the
21 terminations since January 1, 2017 involved misconduct in which the victim was an
22 *Armstrong* class member. On April 30, 2020, Defendants' served an Amended
23 Supplemental Response to Plaintiffs' Special Interrogatories ("Amended Supplemental
24 Response"), a true and correct copy of which is attached hereto as **Exhibit I**, in which they
25 represented that eight terminations, rather than six, involved misconduct in which the
26 victim was an *Armstrong* class member.

27
28

1 **Defendants Have Not Produced Any Documents Responsive to Plaintiffs' Second**
2 **Request for Production of Documents**

3 21. On April 2, 2020, Plaintiffs served their Second Request for Production of
4 Documents, seeking, *inter alia*, investigative files and other documents related to
5 incidents of staff misconduct at LAC, as well as memoranda written by CDCR
6 psychologists regarding staff misconduct against class members at RJD.

7 22. On May 4, 2020, Defendants served their responses to the Second Request
8 for Production of Documents. On May 12, 2020, I informed Defendants' counsel via
9 email that their responses did not comply with Federal Rule 34, and requested a meet-and-
10 confer call to discuss the responses. In a meet-and-confer call on May 18, 2020,
11 Defendants agreed to inform us no later than May 27, 2020 whether they would in fact
12 produce responsive documents. Defendants' counsel Sean Lodholz's May 27, 2020, letter
13 to Michael Freedman, clarified that, notwithstanding the objections raised, Defendants
14 would produce investigative files related to incidents against *Coleman* class members. *See*
15 *Ex. F*, at 2. As of the date of this declaration, Defendants have not produced any
16 documents responsive to Plaintiffs' Second Request for Production.

17 **Defendants Did Not Produce Their Final Person Most Knowledgeable for Deposition**
18 **Until May 15, 2020**

19 23. It was not until March 20, 2020, after the filing of the RJD Motion, that
20 Defendants responded to requests to designate a deponent for Topic 27 of the 30(b)(6)
21 deposition. This topic involved the new Allegation Inquiry Management Section
22 ("AIMS") and related regulations. On March 20, 2020, Ms. Hood informed us that
23 Amy E. Miller would serve as CDCR's person most knowledgeable on the AIMS
24 regulations for this topic. Defendants' counsel initially stated they were reluctant to allow
25 a remote deposition, which was necessary due to COVID-19 restrictions, but finally agreed
26 to produce Ms. Miller on May 15.

27 24. On May 15, 2020, Michael Freedman took the remote deposition of
28 Ms. Miller. Attached hereto as **Exhibit J** is a true and correct copy of the transcript of the
deposition, without the exhibits.

1 **Defendants Have Declined to Make Additional Changes to Address Plaintiffs’**
2 **Concerns and Have Withdrawn Their Modest Proposal for Cameras**

3 25. On April 29, 2020, Plaintiffs’ counsel provided Defendants with an agenda
4 for the upcoming all parties’ meet-and-confer. Attached hereto as **Exhibit K** is a true and
5 correct copy of an excerpt of that agenda. In item 19, on page 7, I requested that
6 Defendants discuss steps they were taking to address the serious allegations of staff
7 misconduct raised by the RJD Motion.

8 26. During the May 12, 2020 all parties’ meet-and-confer, which was conducted
9 telephonically due to COVID-19, Defendants and their attorneys declined to discuss any
10 efforts they were making to address staff misconduct against *Armstrong* class members
11 and other people with disabilities.

12 27. Again in a telephone call on May 18, 2020, I asked Defendants’ counsel to
13 investigate the allegations that were being provided to them through continual uploads of
14 declarations to the ShareFile. I also asked Defendants’ counsel to look into issues of
15 retaliation. Defendants’ attorneys declined to discuss the remedial relief requested or the
16 allegations being made in the declarations, other than to say they were investigating the
17 incidents.

18 28. Defendants still have not produced any written remedial plan in response to
19 the November 13, 2019 demand letter. From the time I sent the demand letter on
20 November 13, 2019 to the present, I have been provided with little to no information on
21 efforts by CDCR to stop the rampant abuse and retaliation documented in Plaintiffs’ RJD
22 Motion, other than the issuance of the AIMS emergency regulations, discussed below, and
23 the now withdrawn camera BCP.

24 29. On May 14, 2020, Governor Newsom issued the May Revise, an annual
25 adjustment to the proposed state budget. The May Revise canceled the previous plan to
26 install cameras at RJD and two other prisons. Attached hereto as **Exhibit L** are true and
27 correct copies of excerpts of the May Revise related to the withdrawn proposal for video
28 surveillance at three facilities (RJD, Salinas Valley State Prison (“SVSP”) and California

1 Institute for Women (“CIW”). *See id.* at 87. Following the May Revise, Defendants have
2 not informed us of any plans or funding for installing surveillance cameras at RJD or any
3 other additional CDCR prison.

4 **Notwithstanding Testimony About the RJD Motion Before an Assembly**
5 **Subcommittee, Defendants Issued Their Flawed AIMS Regulations**

6 30. On March 2, 2020, the California Assembly Budget Subcommittee Number
7 Five on Public Safety held a hearing on two issues: (1) Population Overview and the
8 Governor’s prison closure proposal and (2) Update on Staff Complaint Process—AIMS.
9 A true and correct copy of the agenda for that subcommittee hearing is attached hereto as
10 **Exhibit M**. The agenda summarizes letters from Plaintiffs’ counsel to CDCR’s Office of
11 Legal Affairs, to the *Coleman* Special Master, and to the Warden of the California
12 Institution for Women (“CIW”) describing abuse of and retaliation against *Armstrong* and
13 *Coleman* class members. *Id.* at 9-11. The agenda concludes with: “... [s]taff recommends
14 requiring CDCR to follow up with the Subcommittee (prior to the implementation of the
15 new AIMS process) as to how it will address the need for independence regarding use of
16 force and PREA complaints, including the consideration of moving these types of
17 complaints into the existing Office of Internal Affairs.” *Id.* at 12.

18 31. The hearing occurred on March 2 as planned. Complete video and audio
19 recordings of the hearing are available at [https://www.assembly.ca.gov/media-](https://www.assembly.ca.gov/media-archive/default?title=&startdate=03%2F02%2F2020&enddate=03%2F02%2F2020)
20 [archive/default?title=&startdate=03%2F02%2F2020&enddate=03%2F02%2F2020](https://www.assembly.ca.gov/media-archive/default?title=&startdate=03%2F02%2F2020&enddate=03%2F02%2F2020). A
21 skilled word processor working under my supervision prepared a partial transcript of the
22 portions of the hearing that addressed AIMS. A true and correct copy of that partial
23 transcript is attached hereto as **Exhibit N**. During the hearing, Plaintiffs’ counsel Donald
24 Specter read portions of Plaintiffs’ RJD Motion, including the emails cited there from the
25 Chief Ombudsman and Ombudsman for the Secretary of Corrections, into the record. Mr.
26 Specter also shared with the Subcommittee the dark history of staff abuse at CDCR
27 prisons. *Id.* at 3-4.

1 32. In response, Subcommittee Chair Shirley N. Weber stated that “... I find it
2 very alarming that these things are still taking place in our prisons, and I read a lot of the
3 stories and they’re absolutely horrible, absolutely horrible, that they are committed by our
4 staff I find it totally unacceptable” *Id.* at 6.

5 33. During the hearing, the Subcommittee Chair asked CDCR Secretary
6 Ralph Diaz to provide a draft of the AIMS regulations to the Subcommittee prior to issuing
7 them. *Id.* at 12-13. However, Secretary Diaz decided to issue emergency regulations on
8 AIMS without showing them to the subcommittee. Attached hereto as **Exhibit O** is a true
9 and correct copy of a letter from Chair Weber and Philip Y. Ting, Chair of the Assembly
10 Budget Committee, to CDCR Secretary Ralph Diaz dated March 10, 2020. The
11 Subcommittee called the lack of response to the request to review the regulations “deeply
12 troubling and disrespectful” *Id.* The Subcommittee letter also observed that “Recent
13 reports of allegations of violent acts by staff against prisoners with disabilities, female
14 prisoners, and mentally ill prisoners serve as further examples of the necessity of a process
15 that provides an appropriate review and response that is unbiased.” *Id.* The letter further
16 criticized CDCR’s Secretary for submitting flawed regulations pursuant to which “[t]he
17 most serious allegations of staff misconduct will not be handled by the Office of Internal
18 Affairs” and “[d]iscretion for a referral to an investigation lies with the prison leadership,
19 rather than the Office of Internal Affairs, leading to serious concerns of bias.” *Id.*

20 34. Attached hereto as **Exhibit P** is a true and correct copy of the AIMS
21 Emergency Regulations submitted to the Office of Administrative Law on March 9, 2020,
22 filed on March 25, 2020, and effective June 1, 2020.

23 35. Attached hereto as **Exhibit Q** are true and correct copies of flow charts from
24 CDCR regarding the AIMS process, produced in discovery.

25 36. Attached hereto as **Exhibit R** is a true and correct copy of a May 5, 2020
26 letter, with most of the exhibits removed to avoid duplication, from my co-counsel Penny
27 Godbold to Defendants’ counsel Tamiya Davis and Joanna Hood describing Plaintiffs’
28 concerns with the AIMS Emergency regulations.

**Other Potential Methods of Addressing Staff Misconduct Against
People with Disabilities**

1
2
3 37. Attached hereto as **Exhibit S** is a true and correct copy of the Office of the
4 Inspector General’s (“OIG”) 2019 annual report, issued in May 2020. In that report, the
5 OIG found that CDCR “hiring authorities’ overall performance was *poor* in processing the
6 employee discipline cases, and the department’s attorneys’ performance was *poor* in
7 providing legal representation during litigation.” (*Id.* at 6)(emphasis in original) The OIG
8 further pointed out that “staff were fully compliant with departmental policies in only 55%
9 of the use of force incidents.” *Id.* at 9. “The department continues to garner low
10 compliance with its procedures for video-recorded interviews required of inmates in use of
11 force cases.” *Id.* at 10. With regard to the Salinas Valley special review cited in the RJD
12 Motion, the OIG stated: “Although this special review reported only on Salinas Valley,
13 the process we reviewed prevails at prisons statewide.” *Id.* at 23. The OIG then made a
14 number of recommendations to improve the staff misconduct investigative process, the
15 vast majority of which have not been implemented by CDCR. *Id.* at 23-24, 26-27.

16 38. As part of the May Revision, the Governor significantly cut the Inspector
17 General’s Budget. Attached hereto as **Exhibit T** is a true and correct copy excerpts of the
18 Legislative Analyst’s Office Overview of Major Public Safety Proposals in the 2020-21
19 May Revision discussing removal of funding that would have allowed the OIG to conduct
20 investigations, audits, and reviews of CDCR policies, practices and procedures. *Id.* at 10.

21 39. At the time of filing of Plaintiffs’ RJD Motion on February 28, 2020, we had
22 only received *Armstrong* accountability logs from Defendants through December 2019.
23 We have now received accountability logs for January and February 2020, which are
24 attached as Exhibit 75 to the Freedman Declaration. As described in the Grunfeld RJD
25 Declaration, we shared with Defendants all 54 declarations from incarcerated people at
26 RJD ultimately filed in support of the RJD Motion between January 13, 2020 and
27 February 5, 2020. Grunfeld RJD Decl., ¶ 57. Defendants did not log any new allegations
28 of custody staff non-compliance based on any of the information contained in the

1 declarations shared with them in January and February 2020. Moreover, Defendants’
2 January and February 2020 logs include only three new allegations of custody staff
3 misconduct of the type that is the subject of the RJD Motion and the instant Motion. *See*
4 Freedman Decl., Ex. 75.

5 40. Attached hereto as **Exhibit U** are true and correct copies of a letter dated
6 April 4, 2018 from Donald Specter to Scott Kernan, then Secretary of CDCR, and a
7 document presenting “OIA’s Response to PLO’s April 4, 2018, Letter to Secretary
8 Kernan,” produced in discovery. Over two years ago, Mr. Specter’s letter objected to the
9 way CDCR is handling its Central Intake Unit at the Office of Internal Affairs. As
10 Mr. Specter states, “the current process is undermining the CDCR’s ability to impose
11 discipline in cases of serious employee misconduct and to exonerate employees suspected
12 of misconduct.” *Id.* The letter also discusses the OIG’s criticism of the Central Intake
13 Unit’s rejection of multiple cases of officer misconduct. Mr. Specter’s letter concludes:
14 “It has been over twenty years since the internal affairs process was put into place through
15 the *Madrid* litigation It is time now to also improve the central intake process by
16 instituting the OIG’s recommendations and instituting other measures that will ensure that
17 investigations and interviews are initiated when the facts warrant such actions.” *Id.* In
18 response, the Office of Internal Affairs defended its practices and claimed it is “the
19 industry standard for law enforcement managers to make investigative decisions, with
20 advice from their legal counsel OIA’s philosophy is to positively effect change to the
21 culture of CDCR staff through training, not by opening more Internal Affairs
22 investigations to investigate ‘potential’ misconduct.... CDCR cannot discipline itself into
23 a new culture and ... should only investigate our staff when there is a reasonable belief
24 they have committed misconduct.” *Id.*

25 41. Attached hereto as **Exhibit V** is a true and correct copy of the OIG’s June 2,
26 2020 Initial Report entitled “Complaint Intake and Field Inquiries: Addressing Complaints
27 of Improper Governmental Activities Within the California Department of Corrections and
28 Rehabilitation.” As the report cover letter states, this is the first OIG report “dedicated to

1 the work we perform in response to complaints we receive from inmates, family members,
 2 interest groups, and other concerned individuals.” The report summarizes the work
 3 performed in response to complaints received between July 1, 2017 and June 30, 2019.
 4 The OIG reviewed the Department’s response to 36 complaints the OIG forwarded to
 5 hiring authorities statewide that involved allegations of staff misconduct. The OIG
 6 determined that the “hiring authorities performed inadequate inquiries into 21 of these
 7 complaints, finding concerns similar to those [the OIG] raised in [its] January 2019 report
 8 titled *Special Review of Salinas Valley State Prison’s Processing of Inmate Allegations of*
 9 *Staff Misconduct.*” *Id.* The OIG discovered that hiring authorities “did not perform
 10 inquiries into four complaints and did not document the inquiries performed into another
 11 three complaints.... [The OIG] also found inquiries that were untimely, incomplete, and
 12 lacking independence.” *See id.* at i-ii (preceding table of contents of report); *see also id.* at
 13 36-52, 76-81.

14 **CDCR Correctional Officers Need Anti-Discrimination and Cultural Training**

15 42. Plaintiffs’ counsel has identified a public Instagram account that openly
 16 mocks and threatens incarcerated people with disabilities and mental health issues from the
 17 perspective of a CDCR correctional officer. Called “The Late Relief,” the account was
 18 discovered by searching the hashtag “CDCR” on Instagram. On March 1, 2020, “The Late
 19 Relief” posted a video to Instagram from a movie, “Major Payne,” depicting an officer
 20 yelling at an soldier who is deaf and making a vulgar threat if he fails to answer the officer.
 21 “The Late Relief” posted the video with the caption “I can’t tell if some of these inmates
 22 are actually ‘hearing impaired’ or just have selective hearing when it’s only convenient for
 23 them.” The post includes the hashtags “Iknowyoucanhear me” “listenup” “lyingass” “ada”
 24 “cdcr.” A true and correct copy of a screenshot of the Instagram post and the
 25 accompanying video is attached hereto as **Exhibit W**. On October 12, 2019, “The Late
 26 Relief” posted to Instagram about prompting incarcerated people with developmental
 27 disabilities to “wipe their asses.” The caption states, “I’m still convinced that most DD1
 28 and DD2 inmates are literally and figuratively full of shit” and includes the hashtags

1 “developmentally disabled inmates” “california prison” “i wipemy own ass.” A true and
2 correct copy of a screenshot of the Instagram post is also attached hereto as **Exhibit W**.
3 On January 6, 2020, “The Late Relief” posted to Instagram stating, “When you release
4 crazy inmates to get their meds but they get lost on the yard and come back just as crazy.”
5 The post refers to an attached video depicting a person who appears to be mentally ill
6 walking out of a subway car and then walking right back in. The post includes the
7 hashtags “CCCMS,” “eop,” “Vacaville,” “Stockton,” “crazy as fuck,” and “cmf.” A true
8 and correct copy of a screenshot of the Instagram post is also attached hereto as
9 **Exhibit W**.

10 43. Attached hereto as **Exhibit X** is a true and correct copy of an article
11 describing racist and demeaning social media posts from CDCR correctional officers
12 following the murder of George Floyd by the Minneapolis Police Department. Nate
13 Gartrell, *California prison staff posted ‘racist’ and ‘extremely hurtful’ comments about*
14 *George Floyd’s killing, CDCR secretary says*, THE MERCURY NEWS, May 29, 2020,
15 [https://www.mercurynews.com/2020/05/29/ca-prison-staff-posted-racist-and-extremely-](https://www.mercurynews.com/2020/05/29/ca-prison-staff-posted-racist-and-extremely-hurtful-comments-about-george-floyds-killing-cdcr-secretary-says/)
16 [hurtful-comments-about-george-floyds-killing-cdcr-secretary-says/](https://www.mercurynews.com/2020/05/29/ca-prison-staff-posted-racist-and-extremely-hurtful-comments-about-george-floyds-killing-cdcr-secretary-says/).

17 I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct, and that this declaration is executed at San Francisco,
19 California this 3rd day of June, 2020.

20
21 
22 Gay Crosthwait Grunfeld
23
24
25
26
27
28

EXHIBIT A



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Gay Crosthwait Grunfeld
Email: ggrunfeld@rbgg.com

May 13, 2020

VIA ELECTRONIC MAIL ONLY

Joanna B. Hood
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom*: Defendants' Request for a Further Extension of Time to Oppose Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People With Disabilities at R.J. Donovan Correctional Facility
Our File No. 0581-03

Dear Joanna:

On February 28, 2020, Plaintiffs filed their Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People With Disabilities at R.J. Donovan Correctional Facility ("Plaintiffs' Motion"). We have previously agreed to two extensions of time totaling 90 days to respond to Plaintiff's Motion, with the opposition currently due May 26, 2020.

During our April 24, 2020 telephone call, as a courtesy and in response to your request, we offered Defendants an additional seven-day extension on their opposition. At that time, we had hoped that conditions at R.J. Donovan Correctional Facility ("RJD") had improved or at least stabilized. Over two weeks have passed since that conversation. We heard nothing from you regarding the hearing schedule until yesterday. In that same time period, we have conducted interviews with our clients and have learned of significant ongoing abuse, including:

- Officers breaking an EOP, DD1, DLT person's nose and foot in a use of force incident that could have been avoided and in which the officers beat the person while he was unconscious.

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Joanna B. Hood

May 13, 2020

Page 2

- An officer lying about a person's commitment offense in an effort to get him assaulted by other incarcerated people, then setting the person up to be killed when he filed a 602 complaining about the provision of false commitment offense information.
- An officer shoving an incarcerated person with a walker to the ground in his cell because the person complained that staff were not engaging in social distancing.
- An officer kicking an incarcerated person in the head three times even though the person was already restrained by multiple other officers.
- Multiple officers assaulting a person having a seizure and then trying to cover it up; one of the officers discussed at length in Plaintiffs' Motion also trapped this person in the cell door very recently.
- Officers failing to respond to a serious suicide attempt for thirty minutes and then, when the person complained to a sergeant about the slow response, the sergeant called him a "rat."
- A control tower officer repeatedly closing the cell door on a person in a wheelchair.

We will shortly be sharing declarations with you that provide more detail regarding these serious abuses. We have also already uploaded declarations to the ShareFile for your review regarding serious and similar incidents at LAC.

Our clients are still in great peril. Officers throughout the system continue to assault and abuse people with disabilities, including *Armstrong* class members.

Notwithstanding the serious risks facing our clients, we will abide by our previous offer for a one-week extension for Defendants' opposition, which would now be due on June 2, under certain conditions. We request that Defendants agree that Plaintiffs' Reply will be due on June 23 and that Defendants will immediately investigate all of the incidents we have already presented or will shortly be presenting to you. We also request that, wherever possible, Defendants remove the officers who are accused of abuse from direct supervision of our clients. We further request that the proposed stipulation ask the Court if we can conduct the hearing on June 30 and that the reply page limit be expanded from 15 to 25 pages.

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Joanna B. Hood

May 13, 2020

Page 3

We will shortly be noticing the deposition of [REDACTED], a nurse at RJD. We request a virtual meeting with you and the Court Expert in the next day or two to discuss these issues and to meet and confer regarding your responses to the Second Request for Production of Documents.

As always, thank you for your ongoing courtesy and cooperation in this matter.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg

cc: Ed Swanson
Damon G. McClain
Sean Lodholz
Trace Maiorino
Tamiya Davis
Co-Counsel

EXHIBIT B

From: [Gay C. Grunfeld](#)
To: [Joanna Hood](#); [Ed Swanson](#); [Trace Maiorino](#); [Armstrong Team - RBG only](#); [rlomio](#); [Margot Mendelson](#); [Donald Specter](#)
Cc: [Damon McClain](#); [Sean Lodholz](#); ["Davis, Tamiya@CDCR"](#); [Penny Godbold](#); [Michael Freedman](#)
Subject: RE: Armstrong - Defendants" Request for Additional Time [IWOV-DMS.FID3579]
Date: Wednesday, May 27, 2020 4:52:05 PM

Dear Joanna et al.,

We will be filing a supplemental Notice of Motion with an expert report analyzing the investigative materials produced to us after we filed our original motion on February 28, 2020. As part of the Notice, we will be filing the class member declarations we have been uploading to the Share file since April 23, 2020 and a few additional documents not available when we filed our original motion.

We anticipate filing these pleadings on June 2. Once we do so, we will be happy to discuss a new briefing schedule with you. While we seek to maintain the July 21 hearing date, we wanted to let you know as soon as possible that your opposition pleadings will no longer be due June 9.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

EXHIBIT C

From: [Gay C. Grunfeld](#)
To: [Trace Maiorino](#)
Cc: [Damon McClain](#); [Sean Lodholz](#); "[Davis, Tamiya@CDCR](#)"; [Penny Godbold](#); [Michael Freedman](#); [Anthony Tartaglio](#); [Jeremy Duggan](#); [Joanna Hood](#); [Ed Swanson](#); [Armstrong Team - RBG only](#); [rlomio](#); [Margot Mendelson](#); [Donald Specter](#)
Subject: RE: Armstrong - Defendants" Request for Additional Time [IWOV-DMS.FID3579]
Date: Monday, June 1, 2020 12:25:51 PM

Dear Trace,

We disagree with your statements below, and would be happy to discuss these issues with you. I suggest we convene at 4 pm if that works for you and Ed.

Best, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
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(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Monday, June 1, 2020 12:06 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; rliomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Donald Specter <dspecter@prisonlaw.com>
Subject: RE: Armstrong - Defendants' Request for Additional Time [IWOV-DMS.FID3579]

Gay,

It was incumbent upon Plaintiffs to submit their supporting evidence when they filed their motion—not after. Civ. L.R. 7. Neither the Local Rules nor the Federal Rules provide the right to supplement a motion that has already been filed to broaden its scope with additional evidence, argument, or requests for relief. See Civ. L.R. 7-1, 7-3 (providing for a motion, an opposition, and a reply); see also Fed. R. Civ. P. 78 (courts may establish rules for submission of motions on briefs); *United States v. Hernandez*, 251 F.3d 1247, 1251 (9th Cir. 2001) (“Local rules are laws of the United States.” [internal quotations and citation omitted]). And while Rule 15(d) permits supplemental pleadings “setting out any transaction, occurrence, or event that happened after the date of the pleading to be

supplemented[,]” that rule does not apply to Plaintiffs’ motion because it is not a pleading under the Federal Rules. Fed. R. Civ. P. 7(a). Instead, if Plaintiffs do not wish to proceed on their motion as filed, their recourse is to withdraw the motion. See Civ. L.R. 7-7. (“Within the time for filing and serving a reply, the moving party may file and serve a notice of withdrawal of the motion.... Otherwise, the Court may proceed to decide the motion.” [emphasis added]).

Plaintiffs’ stated intention to supplement their already voluminous motion regarding Richard J. Donovan Correctional Facility (RJD), so close to the hearing date, also significantly prejudiced Defendants, who have already expended a substantial amount of time and money preparing their response to the motion, and would not have sufficient time to address an even broader motion or new evidence. See *M.H. v. Cty. of Alameda*, 90 F. Supp. 3d 889, 894-95 (N.D. Cal. 2013) (defendants violated Court rules by filing a subsequent motion before withdrawing the first, but were allowed to proceed only because there was no prejudice to plaintiff).

Furthermore, Defendants’ response addresses the threshold question of whether Plaintiffs’ claims regarding RJD are properly before the *Armstrong* Court. That is an issue that should be resolved before moving on to other facilities. We also believe it would be to the benefit of both parties, and the Court, to address RJD first because, at a minimum, an order regarding RJD would be instructive as to how the parties should proceed in addressing the other institutions Plaintiffs have expressed concerns over.

Because Plaintiffs’ proposal is procedurally improper and would prejudice Defendants, and because Plaintiffs have no authority to unilaterally change the briefing schedule, Defendants will file their response to Plaintiffs’ motion regarding RJD on or before June 9, as required by the Court’s order. If Plaintiffs file a supplement to their motion in the interim, Defendants will move to strike it.

We are free today to discuss these issues if you would like. In fact, we encourage you to discuss these issues with us and Ed Swanson before filing any supplement to your motion before our response is timely filed.

Thank you, Trace

Trace O. Maiorino

Deputy Attorney General
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455 Golden Gate Ave., Suite 11000
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(415) 510-3594

(415) 703-5843 facsimile

trace.maiorino@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>

Sent: Wednesday, May 27, 2020 4:52 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; rlomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Donald Specter <dspecter@prisonlaw.com>

Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>

Subject: RE: Armstrong - Defendants' Request for Additional Time [IWOV-DMS.FID3579]

Dear Joanna et al.,

We will be filing a supplemental Notice of Motion with an expert report analyzing the investigative materials produced to us after we filed our original motion on February 28, 2020. As part of the Notice, we will be filing the class member declarations we have been uploading to the Share file since April 23, 2020 and a few additional documents not available when we filed our original motion.

We anticipate filing these pleadings on June 2. Once we do so, we will be happy to discuss a new briefing schedule with you. While we seek to maintain the July 21 hearing date, we wanted to let you know as soon as possible that your opposition pleadings will no longer be due June 9.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
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From: Joanna Hood <Joanna.Hood@doj.ca.gov>

Sent: Tuesday, May 26, 2020 1:08 PM

To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>; Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; rlomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>

Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>

Subject: RE: Armstrong - Defendants' Request for Additional Time [IWOV-DMS.FID3579]

All,

EXHIBIT D



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May 7, 2020

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND
CONFIDENTIAL**
**SUBJECT TO
PROTECTIVE ORDERS**

Tamiya Davis
Nicholas Weber
CDCR Office of Legal Affairs
P.O. Box 94283-0001
Tamiya.Davis@cdcr.ca.gov
Nicholas.Weber@cdcr.ca.gov

Damon McClain
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Damon.McClain@doj.ca.gov

Re: *Armstrong v. Newsom; Coleman v. Newsom*
Declarations Demonstrating Disability-related Staff Misconduct at
California State Prison – Los Angeles County
Our File Nos. 0581-03; 0489-03

Dear Counsel:

We will shortly upload the first 9 declarations from *Armstrong* and *Coleman* class members regarding staff misconduct at California State Prison – Los Angeles County (“LAC”) to the ShareFile which we have previously used to share declarations from class members regarding Richard J. Donovan Correctional Facility (“RJD”). We expect to upload additional declarations from class members at LAC in the near future. These declarations demonstrate that the abuse of class members at the hands of CDCR custody staff is unfortunately not limited to RJD. *See* Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities at Richard J. Donovan Correctional Facility, Dkt. 2922, at 35-37. Defendants should immediately investigate all allegations contained in the declarations using staff from outside the prison and should place the allegations related to *Armstrong* class members on the *Armstrong* accountability log.

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Tamiya Davis
Nicholas Weber
Damon McClain
May 7, 2020
Page 2

As is the case at RJD, the situation at LAC is intolerable and directly undermines the Department's efforts to comply with the Americans with Disabilities Act. In order to keep the court apprised of the scope of these problems within CDCR, especially in its high security institutions, we intend to file these and other declarations in support of our reply to your opposition to our motion.

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective order in the case and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations.

We also ask that one of the declarants, [REDACTED], not be returned to LAC under the standard "psych and return" procedure in *Coleman*. Mr. [REDACTED] is currently housed in a Psychiatric Inpatient Program ("PIP") at Salinas Valley State Prison, largely due to the abuse and assault he suffered at the hands of custody staff at LAC. We are concerned about the risk of further retaliation and mental health decompensation should Mr. [REDACTED] be transferred back to LAC. For that reason, we respectfully request that Mr. [REDACTED] not be transferred to LAC once he is discharged from the PIP.

Given the dangerous environment at LAC, we also want to emphasize Defendants' obligation to protect the declarants and other incarcerated people referenced in the declarations from retaliation. Plaintiffs' counsel will bring any instances of retaliation to the attention of the Court.

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Tamiya Davis
Nicholas Weber
Damon McClain
May 7, 2020
Page 3

Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg
Enclosures

cc: *(via email only)*

Coleman Special Master Team
Adam Fouch
Elise Thorn
Melissa Bentz
Eureka Daye
Adriano Hvartin

Ed Swanson
Roy Wesley *(w/o encls.)*
Bruce Beland
Alexander Powell
Patricia Ferguson
Tamiya Davis
Armstrong OLA
Dillon Hockerson
Kyle Lewis
Dawn Lorey
Katie Riley

Tyler Heath
Lucas Hennes
Sean Lodholz
Jeremy Duggan
Anthony Tartaglio
Trace Maoirino
Joanna Hood
Armstrong Co-Counsel
Coleman Co-Counsel



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May 21, 2020

VIA ELECTRONIC MAIL ONLY

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**SUBJECT TO
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Damon McClain
Joanna Hood
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1300 I Street
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Damon.McClain@doj.ca.gov
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom; Coleman v. Newsom*
Declarations Demonstrating Disability-related Staff Misconduct at
Multiple CDCR Prisons
Our File Nos. 0581-03; 0489-03

Dear Counsel:

We will shortly upload to the ShareFile declarations from *Armstrong* and *Coleman* class members regarding staff misconduct at three California state prisons: California Correctional Institution – Tehachapi (“CCI”), California State Prison – Corcoran (“COR”), and California Substance Abuse Treatment Facility (“SATF”). We have previously used the ShareFile to share declarations from class members regarding Richard J. Donovan Correctional Facility (“RJD”) and California State Prison – Los Angeles County (“LAC”).

As is the case with LAC, these declarations demonstrate that the abuse of class members at the hands of CDCR custody staff is unfortunately not limited to RJD. *See* Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities at Richard J. Donovan Correctional Facility, Dkt. 2922, at 35-37. Defendants should immediately investigate all allegations contained in the declarations

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Tamiya Davis
Nicholas Weber
Damon McClain
Joanna Hood
May 21, 2020
Page 2

using staff from outside the prison and should place the allegations related to *Armstrong* class members on the *Armstrong* accountability log.

The situations at RJD, LAC, CCI, COR, and SATF are intolerable and directly undermine the Department's efforts to comply with the Americans with Disabilities Act. In order to keep the Court apprised of the scope of these problems within CDCR, especially in its high security institutions, we intend to file these and other declarations in support of our reply to your opposition to our Motion.

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective order in the case and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations.

Given the dangerous environment at CCI, COR, and SATF, we also want to emphasize Defendants' obligation to protect the declarants and other incarcerated people referenced in the declarations from retaliation. Plaintiffs' counsel will bring any instances of retaliation to the attention of the Court.

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Tamiya Davis
Nicholas Weber
Damon McClain
Joanna Hood
May 21, 2020
Page 3

Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg
Enclosures

cc: *(via email only)*

Coleman Special Master Team
Adam Fouch
Elise Thorn
Melissa Bentz
Eureka Daye
Adriano Hvartin
Kyle Lewis
Dawn Lorey

Ed Swanson
Roy Wesley *(w/o encls.)*
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May 26, 2020

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND
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**SUBJECT TO
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Nicholas.Weber@cdcr.ca.gov

Damon McClain
Joanna Hood
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
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Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom; Coleman v. Newsom*
Declarations Demonstrating Disability-related Staff Misconduct at
Multiple CDCR Prisons
Our File Nos. 0581-03; 0489-03

Dear Counsel:

We will shortly upload to the ShareFile a declaration from an *Armstrong* and *Coleman* class member regarding staff misconduct at Kern Valley State Prison (“KVSP”). We have previously used the ShareFile to share declarations from class members regarding Richard J. Donovan Correctional Facility (“RJD”), California State Prison – Los Angeles County (“LAC”), California Correctional Institution – Tehachapi (“CCI”), California State Prison – Corcoran (“COR”), and California Substance Abuse Treatment Facility (“SATF”).

As is the case with LAC, CCI, COR and SATF, this declaration demonstrates that the abuse of class members at the hands of CDCR custody staff is unfortunately not limited to RJD. *See* Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities at Richard J. Donovan Correctional Facility, Dkt. 2922, at 35-37. Defendants should immediately investigate all allegations contained

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Tamiya Davis
Nicholas Weber
Damon McClain
Joanna Hood
May 26, 2020
Page 2

in the declarations using staff from outside the prison and should place the allegations related to *Armstrong* class members on the *Armstrong* accountability log.

The situations at RJD, LAC, CCI, COR, SATF, and KVSP are intolerable and directly undermine the Department's efforts to comply with the Americans with Disabilities Act. In order to keep the Court apprised of the scope of these problems within CDCR, especially in its high security institutions, we intend to file these and other declarations with the Court.

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective orders in the cases and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations.

Given the dangerous environment at KVSP, we also want to emphasize Defendants' obligation to protect the declarants and other incarcerated people referenced in the declarations from retaliation. Plaintiffs' counsel will bring any instances of retaliation to the attention of the Court.

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Tamiya Davis
Nicholas Weber
Damon McClain
Joanna Hood
May 26, 2020
Page 3

Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg
Enclosures

cc: *(via email only)*

Coleman Special Master Team
Adam Fouch
Elise Thorn
Melissa Bentz
Eureka Daye
Adriano Hvartin
Kyle Lewis
Dawn Lorey

Ed Swanson
Roy Wesley *(w/o encls.)*
Bruce Beland
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Patricia Ferguson
Tamiya Davis
Armstrong OLA
Dillon Hockerson
Katie Riley

Tyler Heath
Lucas Hennes
Sean Lodholz
Jeremy Duggan
Anthony Tartaglio
Trace Maoirino
Armstrong Co-Counsel
Coleman Co-Counsel

EXHIBIT E

1 XAVIER BECERRA
 Attorney General of California
 2 DAMON G. McCLAIN
 Supervising Deputy Attorney General
 3 JOANNA B. HOOD
 Acting Supervising Deputy Attorney General
 4 ANNAKARINA DE LA TORRE-FENNELL
 Deputy Attorney General
 5 State Bar No. 301862
 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 94244-2550
 7 Telephone: (916) 210-7361
 Fax: (916) 324-5205
 8 E-mail: Annakarina.Fennell@doj.ca.gov
Attorneys for Defendants
 9 *Gavin Newsom and the California Department of*
Corrections and Rehabilitation

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

15 **JOHN ARMSTRONG, et al.,**

16 Plaintiffs,

17 v.

18 **GAVIN NEWSOM, et al.,**

19 Defendants.

C 94-2307 CW

**DEFENDANTS' RESPONSE TO
 PLAINTIFFS' SPECIAL
 INTERROGATORIES**

Judge: The Honorable Claudia Wilken

22 **PROPOUNDING PARTY: PLAINTIFFS JOHN ARMSTRONG ET AL.**

23 **RESPONDING PARTY: DEFENDANTS GAVIN NEWSOM ET AL.**

24 **SET NO.: ONE**

25 **PRELIMINARY STATEMENT**

26 The information provided in these responses is true and correct, according to Defendants'
 27 best knowledge at this time, but it is subject to future correction for omissions, errors, or
 28 mistakes. Defendants reserve the right to produce evidence of any subsequently discovered facts

1 or interpretations thereof, and to amend, modify, or otherwise change the responses, in
2 accordance with applicable discovery rules. Defendants make this response to Plaintiff's
3 interrogatories in accordance with Federal Rule of Civil Procedure 33. The interrogatories are
4 reproduced exactly as drafted by Plaintiffs. Under the agreement between the parties on February
5 6, 2020, Defendants do not need to respond to Interrogatory Requests Nos. 1-3, thus not requiring
6 a response to Request No. 4, at this time. Without waiving any objections, Defendants respond as
7 follows:

8 **INTERROGATORY REQUEST NO. 5:**

9 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
10 indicate the number of STAFF MISCONDUCT allegations in which an incarcerated person at
11 RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring authority (a)
12 sustained or (b) did not sustain in which an incarcerated person at RJD was an alleged victim of
13 the STAFF MISCONDUCT.

14 **RESPONSE TO INTERROGATORY REQUEST NO. 5:**

15 The request to provide information regarding all sustained and not sustained allegations of
16 staff misconduct is burdensome. Allegations of staff misconduct come to the attention of the
17 Hiring Authority in a variety of ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR
18 Form 1824s, use of force incident reports, advocacy from outside of the institution, and the
19 Armstrong Non-Compliance Log. The allegations and corresponding responses and outcomes are
20 maintained by different sections of the prison (e.g. Inmate Appeals Office, Investigative Services
21 Unit, and Employee Relations Office) or by the Office of Internal Affairs. The purpose of each
22 log is unique to the particular functions of the respective section maintaining the log. The
23 Department tracks allegations of staff misconduct by the subject of the allegations, not the
24 reporting individual or alleged victim. Each file must be pulled and reviewed in order to
25 determine whether the incident central to an allegation of staff misconduct involved an inmate.
26 Once that determination is made, the Department can identify which allegations were referred to
27 the Office of Internal Affairs and were sustained or not sustained.

28 ///

1 The information regarding sustained allegations is limited to those cases that were referred
 2 to the Office of Internal Affairs and subsequently sustained by the hiring authority and resulted in
 3 either adverse action or corrective action. The information regarding unsustained allegations is
 4 limited to those that were reviewed by the Office of Internal Affairs and were not sustained by the
 5 hiring authority. However, corrective action may be imposed without an investigation by the
 6 Office of Internal Affairs. For each year summarized below, cases that were rejected by the
 7 Office of Internal Affairs are considered unsustained. Information regarding sustained allegations
 8 does not include allegations that were rejected by the Office of Internal Affairs and returned to
 9 the hiring authority, who then chose to impart corrective action rather than adverse action. The
 10 number of incidents and allegations include custody, non-custody, and medical staff. This
 11 information is limited to on-duty incidents involving an inmate.

12 In 2017 there were twenty-seven (27) incidents of staff misconduct involving an inmate that
 13 were referred to the Office of Internal Affairs. Within the twenty-seven incidents, there were
 14 seventy-five (75) allegations. Out of the seventy-five (75) allegations, twenty-five (25) were
 15 sustained and fifty (50) were not sustained.

| 2017 Incidents Involving Inmates | 2017 Allegations Involving Inmates |
|---|---|
| 27 | 75 |
| 2017 Sustained Allegations | 2017 Unsustained Allegations |
| 25 | 50 |

20 In 2018, there were twenty-eight (28) incidents of staff misconduct involving an inmate that
 21 were referred to the Office of Internal Affairs. Within the twenty-eight (28) incidents, there were
 22 sixty (60) allegations. Out of the sixty (60) allegations, nineteen (19) were sustained and thirty-
 23 nine (39) were not sustained. As of March 3, 2020, two (2) of the allegations made in 2018
 24 remain open.

| 2018 Incidents Involving Inmates | 2018 Allegations Involving Inmates | |
|---|---|------------------------------|
| 28 | 60 | |
| 2018 Sustained Allegations | 2018 Unsustained Allegations | 2018 Allegations Open |
| 19 | 39 | 2 |

1 In 2019, there were thirty-five (35) incidents of staff misconduct that involved an inmate
 2 and that were referred to the Office of Internal Affairs. Within the thirty-five (35) incidents, there
 3 were ninety-two (92) allegations. Out of the ninety-two (92) allegations fifteen (15) of the
 4 allegations were sustained and forty (40) were not sustained. As of March 3, 2020, thirty-seven
 5 (37) of the allegations made in 2019 remain open.

| | |
|---|---|
| 2019 Incidents Involving Inmates | 2019 Allegations Involving Inmates |
| 35 | 92 |

| | | |
|-----------------------------------|-------------------------------------|------------------------------|
| 2019 Sustained Allegations | 2019 Unsustained Allegations | 2019 Allegations Open |
| 15 | 40 | 37 |

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10 **INTERROGATORY REQUEST NO. 6:**

11 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
 12 indicate the number of STAFF MISCONDUCT allegations in which an incarcerated person at
 13 RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring authority
 14 sustained and imposed (a) corrective action or (b) disciplinary action.

15 **RESPONSE TO INTERROGATORY REQUEST NO. 6:**

16 The request to provide information regarding all instances in which the hiring authority
 17 imposed correction action or disciplinary action is unduly burdensome. Allegations of staff
 18 misconduct come to the attention of the Hiring Authority in a variety of ways, not limited to the
 19 CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force incident reports, advocacy
 20 from outside of the institution, and the Armstrong Non-Compliance Log. The allegations and
 21 corresponding responses and outcomes are maintained by different sections of the prison (e.g.
 22 Inmate Appeals Office, Investigative Services Unit, and Employee Relations Office) or by the
 23 Office of Internal Affairs. The purpose of each log is unique to the particular functions of the
 24 respective section maintaining the log.

25 The Department tracks allegations of staff misconduct by the subject of the allegations, not
 26 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in
 27 order to determine whether the incident central to an allegation of staff misconduct involved an

28 ///

1 inmate. The same must be done to determine whether the allegation was sustained or not
 2 sustained and whether there was resulting corrective action or adverse action.

3 Regarding corrective action, each individual subject’s personnel file must be pulled to
 4 identify what allegation prompted the corrective action to determine if the incident involved an
 5 inmate. The official personnel and supervisory files must be reviewed to determine what
 6 corrective action may have been taken. This requires review of physical files and countless hours
 7 for review of all personnel files for all types of corrective action. Further, review of the official
 8 personnel files may not be able to provide the requested information because an employee may
 9 request to remove the letter of instruction within a year of its placement in their personnel file.
 10 Without the letter of instruction, the Department cannot readily determine the basis of the letter of
 11 instruction to evaluate whether it was issued because of an incident involving an inmate.

12 Notwithstanding the above explanation and per the parties’ agreement limiting the current
 13 response to information regarding adverse action, the Defendants respond as follows:

14 In 2017, RJD had twenty-five (25) sustained allegations of staff misconduct involving an
 15 inmate. Of the twenty-five (25) sustained allegations, adverse action was imposed on twenty (20)
 16 and corrective action was imposed on five (5). Although corrective action was not readily
 17 available, corrective action was found for these five particular allegations because the allegations
 18 were initially reviewed by the Office of Internal Affairs. Following investigation by the Office of
 19 Internal Affairs, the Hiring Authority determined that the staff misconduct warranted corrective
 20 action rather than adverse action. The number of incidents and allegations include custody, non-
 21 custody and medical staff. This information is limited to on-duty incidents involving an inmate.

| 2017 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|---|------------------------|---------------------------|
| 25 | 20 | 5 |

24
 25 In 2018 RJD had nineteen (19) sustained allegations of staff misconduct that involved an
 26 inmate. Of the nineteen (19) sustained allegations, adverse action was imposed on thirteen (13)
 27 and corrective action was imposed on six (6). As noted for 2017, corrective action was found for
 28 these six particular allegations because the allegations were initially reviewed by the Office of

1 Internal Affairs. Following investigation by the Office of Internal Affairs, the Hiring Authority
 2 determined that the staff misconduct warranted corrective action rather than adverse action. As of
 3 March 3, 2020, two (2) of the allegations made in 2018 remain open. The number of incidents
 4 and allegations include custody, non-custody and medical staff. This information is limited to on-
 5 duty incidents involving an inmate.

| 2018 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 19 | 13 | 6 |

8
 9 In 2019, RJD had fifteen (15) sustained allegations of staff misconduct that involved an
 10 inmate. Of the fifteen (15) sustained allegations, adverse action was imposed on fourteen (14)
 11 and corrective action was imposed on one (1). Corrective action was found for this one particular
 12 case because the allegations were initially reviewed by the Office of Internal Affairs. Following
 13 investigation by the Office of Internal Affairs, the Hiring Authority determined that the staff
 14 misconduct warranted corrective action rather than adverse action. As of March 3, 2020, thirty-
 15 seven (37) of the allegations made in 2019 remain open. The number of incidents and allegations
 16 include custody, non-custody and medical staff.

| 2019 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 15 | 14 | 1 |

17
 18
 19
 20 **INTERROGATORY REQUEST NO. 7:**

21 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
 22 please indicate the number of STAFF MISCONDUCT allegations in which an incarcerated
 23 person at RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring
 24 authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty
 25 (1-2 day suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction or
 26 suspension without pay), (d) a Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as
 27 those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual,
 28 § 33030.16.

1 **RESPONSE TO INTERROGATORY REQUEST NO. 7:**

2 Allegations of staff misconduct come to the attention of the Hiring Authority in a variety of
3 ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force
4 incident reports, advocacy from outside of the institution, and the Armstrong Non-Compliance
5 Log. The allegations and corresponding responses and outcomes are maintained by different
6 sections of the prison (e.g. Inmate Appeals Office, Investigative Services Unit, and Employee
7 Relations Office) or by the Office of Internal Affairs. The purpose of each log is unique to the
8 particular functions of the respective section maintaining the log.

9 The Department tracks allegations of staff misconduct by the subject of the allegations, not
10 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in
11 order to determine whether the incident central to an allegation of staff misconduct involved an
12 inmate. The same must be done to determine whether the allegation was sustained or not
13 sustained and whether there was resulting corrective action or adverse action. A further level of
14 review is then required to determine and verify the type of discipline issued.

15 Notwithstanding the above explanation, adverse action penalty Levels 1 through 9, per
16 year, from 2017 to present are as follows:

17 In 2017, RJD had twenty (20) sustained allegations of staff misconduct involving an inmate
18 in which adverse action was imposed. The number of incidents and allegations include custody,
19 non-custody and medical staff. This information is limited to on-duty incidents involving an
20 inmate. Below is a list of the Employee Disciplinary Matrix from the California Department of
21 Corrections and Rehabilitation's Department Operations Manual followed by how many times the
22 penalty was imposed on sustained allegations for 2017.

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| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 8 |
| 4 | 2 |
| 5 | 3 |
| 6 | 3 |
| 7 | 1 |
| 8 | 0 |
| 9 | 1 |

In 2018 RJD had thirteen (13) allegations of staff misconduct involving and inmate in which adverse action was imposed. As of March 2, 2020, two (2) of the allegations made in 2018 remain open. The number of incidents and allegations include custody, non-custody and medical staff. This information is limited to on-duty incidents involving an inmate. Below is a list of the Employee Disciplinary Matrix from the California Department of Corrections and Rehabilitation’s Department Operations Manual followed by how many times the penalty was imposed on sustained allegations for 2018.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 6 |
| 4 | 2 |
| 5 | 0 |
| 6 | 1 |
| 7 | 0 |
| 8 | 0 |
| 9 | 2 |

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///
///

1 In 2019, RJD had fourteen (14) allegations of staff misconduct involving an inmate in
 2 which adverse action was imposed. As of March 3, 2020, thirty-seven (37) of the allegations
 3 made in 2019 remain open. The number of incidents and allegations include custody, non-
 4 custody and medical staff. This information is limited to on-duty incidents involving an inmate.
 5 Below is a list of the Employee Disciplinary Matrix from the California Department of
 6 Corrections and Rehabilitation’s Department Operations Manual followed by how many times the
 7 penalty was imposed on sustained allegations for 2019.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|-----------------------------------|-----------------------|
| 1 | 6 |
| 2 | 0 |
| 3 | 1 |
| 4 | 0 |
| 5 | 0 |
| 6 | 0 |
| 7 | 0 |
| 8 | 0 |
| 9 | 7 |

14
 15 Dated: March 13, 2020

Respectfully submitted,

XAVIER BECERRA
 Attorney General of California
 DAMON G. MCCLAIN
 Supervising Deputy Attorney General

JOANNA B. HOOD
 Acting Supervising Deputy Attorney General
*Attorneys for Defendants Gavin Newsom and
 the California Department of Corrections
 and Rehabilitation*

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 24 14441040

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

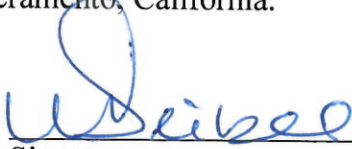
I have read the foregoing Response to Plaintiffs' Special Interrogatories and know its contents.

I am the Deputy Director of Facility Operations – Division of Adult Institutions for the California Department of Corrections and Rehabilitation, a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed on March 13, 2020, at Sacramento, California.

Kimberly Seibel
Print Name of Signatory


Signature

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **John Armstrong, et al. v. Newsom, et al.**

No.: **C 94-2307 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On **March 13, 2020**, I served the attached

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' SPECIAL INTERROGATORIES
(with Verification)**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Gay Crosthwait Grunfeld
Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105-1738

Prison Law Office
Attn: Armstrong Counsel
1917 Fifth Street
Berkeley, CA 94710-1916

Russa Boyd
Tamiya Davis
Office of Legal Affairs
California Department of Corrections and Rehabilitation
1515 "S" Street, Suite 314S
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 13, 2020**, at Sacramento, California.

K. Jeffers
Declarant


Signature

EXHIBIT F

1 XAVIER BECERRA
 Attorney General of California
 2 DAMON G. MCCLAIN
 Supervising Deputy Attorney General
 3 JOANNA B. HOOD
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Attorneys for Defendants
 9 *Gavin Newsom and the California Department of*
Corrections and Rehabilitation

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

14
 15 **JOHN ARMSTRONG, et al.,**

16 Plaintiffs,

17 v.

18 **GAVIN NEWSOM, et al.,**

19 Defendants.

C 94-2307 CW

**DEFENDANTS' AMENDED RESPONSE
 TO PLAINTIFFS' SPECIAL
 INTERROGATORIES**

Judge: The Honorable Claudia Wilken

21
 22 **PROPOUNDING PARTY: PLAINTIFFS JOHN ARMSTRONG ET AL.**

23 **RESPONDING PARTY: DEFENDANTS GAVIN NEWSOM ET AL.**

24 **SET NO.: ONE**

25 **PRELIMINARY STATEMENT**

26 The information provided in these amended responses is true and correct, according to
 27 Defendants' best knowledge at this time, but it is subject to future correction for omissions,
 28 errors, or mistakes. Defendants reserve the right to produce evidence of any subsequently

1 discovered facts or interpretations thereof, and to amend, modify, or otherwise change the
2 responses, in accordance with applicable discovery rules. Defendants make this amended
3 response to Plaintiffs' interrogatories in accordance with Federal Rule of Civil Procedure 33.

4 Following the responses served on March 13, 2020, Defendants became aware of a
5 discrepancy in previously provided information. Two additional cases, one from 2017 and one
6 from 2018, concerning on-duty incidents involving an inmate, were identified. One case was not
7 previously identified because the subject of the investigation retired before notice of disciplinary
8 action was served, and the other was not identified on the list of matters referred to the Office of
9 Internal Affairs by the Investigative Services Unit. The below responses reflect the additional
10 information regarding two additional matters.

11 **INTERROGATORY REQUEST NO. 5:**

12 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
13 indicate the number of STAFF MISCONDUCT allegations in which an incarcerated person at
14 RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring authority (a)
15 sustained or (b) did not sustain in which an incarcerated person at RJD was an alleged victim of
16 the STAFF MISCONDUCT.

17 **RESPONSE TO INTERROGATORY REQUEST NO. 5:**

18 The request to provide information regarding all sustained and not sustained allegations of
19 staff misconduct is burdensome. Allegations of staff misconduct come to the attention of the
20 Hiring Authority in a variety of ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR
21 Form 1824s, use of force incident reports, advocacy from outside of the institution, and the
22 Armstrong Non-Compliance Log. The allegations and corresponding responses and outcomes are
23 maintained by different sections of the prison (e.g. Inmate Appeals Office, Investigative Services
24 Unit, and Employee Relations Office) or by the Office of Internal Affairs. The purpose of each
25 log is unique to the particular functions of the respective section maintaining the log. The
26 Department tracks allegations of staff misconduct by the subject of the allegations, not the
27 reporting individual or alleged victim. Each file must be pulled and reviewed in order to
28 determine whether the incident central to an allegation of staff misconduct involved an inmate.

1 Once that determination is made, the Department can identify which allegations were referred to
2 the Office of Internal Affairs and were sustained or not sustained.

3 The information regarding sustained allegations is limited to those cases that were referred
4 to the Office of Internal Affairs and subsequently sustained by the hiring authority and resulted in
5 either adverse action or corrective action. The information regarding unsustained allegations is
6 limited to those that were reviewed by the Office of Internal Affairs and were not sustained by the
7 hiring authority. However, corrective action may be imposed without an investigation by the
8 Office of Internal Affairs. For each year summarized below, cases that were rejected by the
9 Office of Internal Affairs are considered unsustained. Information regarding sustained allegations
10 does not include allegations that were rejected by the Office of Internal Affairs and returned to
11 the hiring authority, who then chose to impart corrective action rather than adverse action. The
12 number of incidents and allegations include custody, non-custody, and medical staff. This
13 information is limited to on-duty incidents involving an inmate.

14 In 2017 there were twenty-seven (27) incidents of staff misconduct involving an inmate that
15 were referred to the Office of Internal Affairs. Within the twenty-seven incidents, there were
16 seventy-five (75) allegations. Out of the seventy-five (75) allegations, twenty-five (25) were
17 sustained and fifty (50) were not sustained.

| 2017 Incidents Involving Inmates | 2017 Allegations Involving Inmates |
|---|---|
| 27 | 75 |

| 2017 Sustained Allegations | 2017 Unsustained Allegations |
|-----------------------------------|-------------------------------------|
| 25 | 50 |

22 In 2018, there were twenty-eight (28) incidents of staff misconduct involving an inmate that
23 were referred to the Office of Internal Affairs. Within the twenty-eight (28) incidents, there were
24 sixty (60) allegations. Out of the sixty (60) allegations, nineteen (19) were sustained and thirty-
25 nine (39) were not sustained. As of March 3, 2020, two (2) of the allegations made in 2018
26 remain open.

| 2018 Incidents Involving Inmates | 2018 Allegations Involving Inmates |
|---|---|
| 28 | 60 |

| 2018 Sustained Allegations | 2018 Unsustained Allegations | 2018 Allegations Open |
|-----------------------------------|-------------------------------------|------------------------------|
| 19 | 39 | 2 |

In 2019, there were thirty-five (35) incidents of staff misconduct that involved an inmate and that were referred to the Office of Internal Affairs. Within the thirty-five (35) incidents, there were ninety-two (92) allegations. Out of the ninety-two (92) allegations fifteen (15) of the allegations were sustained and forty (40) were not sustained. As of March 3, 2020, thirty-seven (37) of the allegations made in 2019 remain open.

| 2019 Incidents Involving Inmates | 2019 Allegations Involving Inmates |
|---|---|
| 35 | 92 |

| 2019 Sustained Allegations | 2019 Unsustained Allegations | 2019 Allegations Open |
|-----------------------------------|-------------------------------------|------------------------------|
| 15 | 40 | 37 |

AMENDED RESPONSE TO INTERROGATORY REQUEST NO. 5:

The request to provide information regarding all sustained and not sustained allegations of staff misconduct is burdensome. Allegations of staff misconduct come to the attention of the Hiring Authority in a variety of ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force incident reports, advocacy from outside of the institution, and the Armstrong Non-Compliance Log. The allegations and corresponding responses and outcomes are maintained by different sections of the prison (e.g. Inmate Appeals Office, Investigative Services Unit, and Employee Relations Office) or by the Office of Internal Affairs. The purpose of each log is unique to the particular functions of the respective section maintaining the log. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations were referred to the Office of Internal Affairs and were sustained or not sustained.

The information regarding sustained allegations is limited to those cases that were referred to the Office of Internal Affairs and subsequently sustained by the hiring authority and resulted in

1 either adverse action or corrective action. The information regarding unsustained allegations is
 2 limited to those that were reviewed by the Office of Internal Affairs and were not sustained by the
 3 hiring authority. However, corrective action may be imposed without an investigation by the
 4 Office of Internal Affairs. For each year summarized below, cases that were rejected by the
 5 Office of Internal Affairs are considered unsustained. Information regarding sustained allegations
 6 does not include allegations that were rejected by the Office of Internal Affairs and returned to
 7 the hiring authority, who then chose to impart corrective action rather than adverse action. The
 8 number of incidents and allegations include custody, non-custody, and medical staff. This
 9 information is limited to on-duty incidents involving an inmate.

10 In 2017 there were twenty-seven (27) incidents of staff misconduct involving an inmate that
 11 were referred to the Office of Internal Affairs. Within the twenty-seven incidents, there were
 12 seventy-five (75) allegations. Out of the seventy-five (75) allegations, twenty-six (26) were
 13 sustained and forty-nine (49) were not sustained.

| | |
|---|---|
| 2017 Incidents Involving Inmates | 2017 Allegations Involving Inmates |
| 27 | 75 |
| 2017 Sustained Allegations | 2017 Unsustained Allegations |
| 26 | 49 |

14
 15
 16
 17
 18 In 2018, there were twenty-nine (29) incidents of staff misconduct involving an inmate that
 19 were referred to the Office of Internal Affairs. Within the twenty-nine (29) incidents, there were
 20 sixty-two (62) allegations. Out of the sixty-two (62) allegations, twenty-one (21) were sustained
 21 and thirty-nine (39) were not sustained. As of March 3, 2020, two (2) of the allegations made in
 22 2018 remain open.

| | | |
|---|---|------------------------------|
| 2018 Incidents Involving Inmates | 2018 Allegations Involving Inmates | |
| 29 | 62 | |
| 2018 Sustained Allegations | 2018 Unsustained Allegations | 2018 Allegations Open |
| 21 | 39 | 2 |

23
 24
 25
 26
 27 In 2019, there were thirty-five (35) incidents of staff misconduct that involved an inmate
 28 and that were referred to the Office of Internal Affairs. Within the thirty-five (35) incidents, there

1 were ninety-two (92) allegations. Out of the ninety-two (92) allegations fifteen (15) of the
 2 allegations were sustained and forty (40) were not sustained. As of March 3, 2020, thirty-seven
 3 (37) of the allegations made in 2019 remain open.

| 2019 Incidents Involving Inmates | | 2019 Allegations Involving Inmates | |
|----------------------------------|--|------------------------------------|--|
| 35 | | 92 | |

| 2019 Sustained Allegations | 2019 Unsustained Allegations | 2019 Allegations Open |
|----------------------------|------------------------------|-----------------------|
| 15 | 40 | 37 |

7
 8 **INTERROGATORY REQUEST NO. 6:**

9 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
 10 indicate the number of STAFF MISCONDUCT allegations in which an incarcerated person at
 11 RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring authority
 12 sustained and imposed (a) corrective action or (b) disciplinary action.

13 **RESPONSE TO INTERROGATORY REQUEST NO. 6:**

14 The request to provide information regarding all instances in which the hiring authority
 15 imposed correction action or disciplinary action is unduly burdensome. Allegations of staff
 16 misconduct come to the attention of the Hiring Authority in a variety of ways, not limited to the
 17 CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force incident reports, advocacy
 18 from outside of the institution, and the Armstrong Non-Compliance Log. The allegations and
 19 corresponding responses and outcomes are maintained by different sections of the prison (e.g.
 20 Inmate Appeals Office, Investigative Services Unit, and Employee Relations Office) or by the
 21 Office of Internal Affairs. The purpose of each log is unique to the particular functions of the
 22 respective section maintaining the log.

23 The Department tracks allegations of staff misconduct by the subject of the allegations, not
 24 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in
 25 order to determine whether the incident central to an allegation of staff misconduct involved an
 26 inmate. The same must be done to determine whether the allegation was sustained or not
 27 sustained and whether there was resulting corrective action or adverse action.

28 ///

1 Regarding corrective action, each individual subject's personnel file must be pulled to
 2 identify what allegation prompted the corrective action to determine if the incident involved an
 3 inmate. The official personnel and supervisory files must be reviewed to determine what
 4 corrective action may have been taken. This requires review of physical files and countless hours
 5 for review of all personnel files for all types of corrective action. Further, review of the official
 6 personnel files may not be able to provide the requested information because an employee may
 7 request to remove the letter of instruction within a year of its placement in their personnel file.
 8 Without the letter of instruction, the Department cannot readily determine the basis of the letter of
 9 instruction to evaluate whether it was issued because of an incident involving an inmate.

10 Notwithstanding the above explanation and per the parties' agreement limiting the current
 11 response to information regarding adverse action, the Defendants respond as follows:

12 In 2017, RJD had twenty-five (25) sustained allegations of staff misconduct involving an
 13 inmate. Of the twenty-five (25) sustained allegations, adverse action was imposed on twenty (20)
 14 and corrective action was imposed on five (5). Although corrective action was not readily
 15 available, corrective action was found for these five particular allegations because the allegations
 16 were initially reviewed by the Office of Internal Affairs. Following investigation by the Office of
 17 Internal Affairs, the Hiring Authority determined that the staff misconduct warranted corrective
 18 action rather than adverse action. The number of incidents and allegations include custody, non-
 19 custody and medical staff. This information is limited to on-duty incidents involving an inmate.

| 2017 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|---|-------------------------------|----------------------------------|
| 25 | 20 | 5 |

22
 23 In 2018 RJD had nineteen (19) sustained allegations of staff misconduct that involved an
 24 inmate. Of the nineteen (19) sustained allegations, adverse action was imposed on thirteen (13)
 25 and corrective action was imposed on six (6). As noted for 2017, corrective action was found for
 26 these six particular allegations because the allegations were initially reviewed by the Office of
 27 Internal Affairs. Following investigation by the Office of Internal Affairs, the Hiring Authority
 28 determined that the staff misconduct warranted corrective action rather than adverse action. As of

1 March 3, 2020, two (2) of the allegations made in 2018 remain open. The number of incidents
 2 and allegations include custody, non-custody and medical staff. This information is limited to on-
 3 duty incidents involving an inmate.

| 2018 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 19 | 13 | 6 |

4
 5
 6
 7 In 2019, RJD had fifteen (15) sustained allegations of staff misconduct that involved an
 8 inmate. Of the fifteen (15) sustained allegations, adverse action was imposed on fourteen (14)
 9 and corrective action was imposed on one (1). Corrective action was found for this one particular
 10 case because the allegations were initially reviewed by the Office of Internal Affairs. Following
 11 investigation by the Office of Internal Affairs, the Hiring Authority determined that the staff
 12 misconduct warranted corrective action rather than adverse action. As of March 3, 2020, thirty-
 13 seven (37) of the allegations made in 2019 remain open. The number of incidents and allegations
 14 include custody, non-custody and medical staff.

| 2019 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 15 | 14 | 1 |

15
 16
 17 **AMENDED RESPONSE TO INTERROGATORY REQUEST NO. 6:**

18 The request to provide information regarding all instances in which the hiring authority
 19 imposed correction action or disciplinary action is unduly burdensome. Allegations of staff
 20 misconduct come to the attention of the Hiring Authority in a variety of ways, not limited to the
 21 CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force incident reports, advocacy
 22 from outside of the institution, and the Armstrong Non-Compliance Log. The allegations and
 23 corresponding responses and outcomes are maintained by different sections of the prison (e.g.
 24 Inmate Appeals Office, Investigative Services Unit, and Employee Relations Office) or by the
 25 Office of Internal Affairs. The purpose of each log is unique to the particular functions of the
 26 respective section maintaining the log.

27 The Department tracks allegations of staff misconduct by the subject of the allegations, not
 28 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in

1 order to determine whether the incident central to an allegation of staff misconduct involved an
 2 inmate. The same must be done to determine whether the allegation was sustained or not
 3 sustained and whether there was resulting corrective action or adverse action.

4 Regarding corrective action, each individual subject's personnel file must be pulled to
 5 identify what allegation prompted the corrective action to determine if the incident involved an
 6 inmate. The official personnel and supervisory files must be reviewed to determine what
 7 corrective action may have been taken. This requires review of physical files and countless hours
 8 for review of all personnel files for all types of corrective action. Further, review of the official
 9 personnel files may not be able to provide the requested information because an employee may
 10 request to remove the letter of instruction within a year of its placement in their personnel file.
 11 Without the letter of instruction, the Department cannot readily determine the basis of the letter of
 12 instruction to evaluate whether it was issued because of an incident involving an inmate.

13 Notwithstanding the above explanation and per the parties' agreement limiting the current
 14 response to information regarding adverse action, the Defendants respond as follows:

15 In 2017, RJD had twenty-six (26) sustained allegations of staff misconduct involving an
 16 inmate. Of the twenty-six (26) sustained allegations, adverse action was imposed on twenty-one
 17 (21) and corrective action was imposed on five (5). Although corrective action was not readily
 18 available, corrective action was found for these five particular allegations because the allegations
 19 were initially reviewed by the Office of Internal Affairs. Following investigation by the Office of
 20 Internal Affairs, the Hiring Authority determined that the staff misconduct warranted corrective
 21 action rather than adverse action. The number of incidents and allegations include custody, non-
 22 custody and medical staff. This information is limited to on-duty incidents involving an inmate.

| 2017 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|---|------------------------|---------------------------|
| 26 | 21 | 5 |

25
 26 In 2018 RJD had twenty-one (21) sustained allegations of staff misconduct that involved an
 27 inmate. Of the twenty-one (21) sustained allegations, adverse action was imposed on fifteen (15)
 28 and corrective action was imposed on six (6). As noted for 2017, corrective action was found for

1 these six particular allegations because the allegations were initially reviewed by the Office of
 2 Internal Affairs. Following investigation by the Office of Internal Affairs, the Hiring Authority
 3 determined that the staff misconduct warranted corrective action rather than adverse action. As of
 4 March 3, 2020, two (2) of the allegations made in 2018 remain open. The number of incidents
 5 and allegations include custody, non-custody and medical staff. This information is limited to on-
 6 duty incidents involving an inmate.

| 2018 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 21 | 15 | 6 |

9 In 2019, RJD had fifteen (15) sustained allegations of staff misconduct that involved an
 10 inmate. Of the fifteen (15) sustained allegations, adverse action was imposed on fourteen (14)
 11 and corrective action was imposed on one (1). Corrective action was found for this one particular
 12 case because the allegations were initially reviewed by the Office of Internal Affairs. Following
 13 investigation by the Office of Internal Affairs, the Hiring Authority determined that the staff
 14 misconduct warranted corrective action rather than adverse action. As of March 3, 2020, thirty-
 15 seven (37) of the allegations made in 2019 remain open. The number of incidents and allegations
 16 include custody, non-custody and medical staff.

| 2019 Sustained Allegations Involving Inmates | Adverse Action Imposed | Corrective Action imposed |
|--|------------------------|---------------------------|
| 15 | 14 | 1 |

19
 20 **INTERROGATORY REQUEST NO. 7:**

21 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
 22 please indicate the number of STAFF MISCONDUCT allegations in which an incarcerated
 23 person at RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring
 24 authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty
 25 (1-2 day suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction or
 26 suspension without pay), (d) a Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as
 27 those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual,
 28 § 33030.16.

RESPONSE TO INTERROGATORY REQUEST NO. 7:

Allegations of staff misconduct come to the attention of the Hiring Authority in a variety of ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force incident reports, advocacy from outside of the institution, and the Armstrong Non-Compliance Log. The allegations and corresponding responses and outcomes are maintained by different sections of the prison (e.g. Inmate Appeals Office, Investigative Services Unit, and Employee Relations Office) or by the Office of Internal Affairs. The purpose of each log is unique to the particular functions of the respective section maintaining the log.

The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each investigation must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. The same must be done to determine whether the allegation was sustained or not sustained and whether there was resulting corrective action or adverse action. A further level of review is then required to determine and verify the type of discipline issued.

Notwithstanding the above explanation, adverse action penalty Levels 1 through 9, per year, from 2017 to present are as follows:

In 2017, RJD had twenty (20) sustained allegations of staff misconduct involving an inmate in which adverse action was imposed. The number of incidents and allegations include custody, non-custody and medical staff. This information is limited to on-duty incidents involving an inmate. Below is a list of the Employee Disciplinary Matrix from the California Department of Corrections and Rehabilitation's Department Operations Manual followed by how many times the penalty was imposed on sustained allegations for 2017.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 8 |
| 4 | 2 |
| 5 | 3 |
| 6 | 3 |
| 7 | 1 |
| 8 | 0 |
| 9 | 1 |

1 In 2018 RJD had thirteen (13) allegations of staff misconduct involving and inmate in
 2 which adverse action was imposed. As of March 2, 2020, two (2) of the allegations made in 2018
 3 remain open. The number of incidents and allegations include custody, non-custody and medical
 4 staff. This information is limited to on-duty incidents involving an inmate. Below is a list of the
 5 Employee Disciplinary Matrix from the California Department of Corrections and
 6 Rehabilitation's Department Operations Manual followed by how many times the penalty was
 7 imposed on sustained allegations for 2018.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 6 |
| 4 | 2 |
| 5 | 0 |
| 6 | 1 |
| 7 | 0 |
| 8 | 0 |
| 9 | 2 |

15 In 2019, RJD had fourteen (14) allegations of staff misconduct involving an inmate in
 16 which adverse action was imposed. As of March 3, 2020, thirty-seven (37) of the allegations
 17 made in 2019 remain open. The number of incidents and allegations include custody, non-
 18 custody and medical staff. This information is limited to on-duty incidents involving an inmate.
 19 Below is a list of the Employee Disciplinary Matrix from the California Department of
 20 Corrections and Rehabilitation's Department Operations Manual followed by how many times the
 21 penalty was imposed on sustained allegations for 2019.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 6 |
| 2 | 0 |
| 3 | 1 |
| 4 | 0 |
| 5 | 0 |
| 6 | 0 |
| 7 | 0 |
| 8 | 0 |
| 9 | 7 |

1 **AMENDED RESPONSE TO INTERROGATORY REQUEST NO. 7:**

2 The request is unduly burdensome. Allegations of staff misconduct come to the attention of
3 the Hiring Authority in a variety of ways, not limited to the CDCR Inmate Appeal Form 602s,
4 CDCR Form 1824s, use of force incident reports, advocacy from outside of the institution, and
5 the Armstrong Non-Compliance Log. The allegations and corresponding responses and outcomes
6 are maintained by different sections of the prison (e.g. Inmate Appeals Office, Investigative
7 Services Unit, and Employee Relations Office) or by the Office of Internal Affairs. The purpose
8 of each log is unique to the particular functions of the respective section maintaining the log.

9 The Department tracks allegations of staff misconduct by the subject of the allegations, not
10 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in
11 order to determine whether the incident central to an allegation of staff misconduct involved an
12 inmate. The same must be done to determine whether the allegation was sustained or not
13 sustained and whether there was resulting corrective action or adverse action. A further level of
14 review is then required to determine and verify the type of discipline issued.

15 Notwithstanding the above explanation, adverse action penalty Levels 1 through 9, per
16 year, from 2017 to present are as follows:

17 In 2017, RJD had twenty-one (21) sustained allegations of staff misconduct involving an
18 inmate in which adverse action was imposed. The number of incidents and allegations include
19 custody, non-custody and medical staff. This information is limited to on-duty incidents
20 involving an inmate. Notably, in one incident, CDCR had decided to terminate an individual, but
21 the subject of the investigation retired before the notice of termination was served. This
22 particular case is included as one of the two terminated individual because CDCR had decided,
23 and prepared, to terminate this individual.

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27 ///

28 ///

1 Below is a list of the Employee Disciplinary Matrix from the California Department of
 2 Corrections and Rehabilitation's Department Operations Manual followed by how many times the
 3 penalty was imposed on sustained allegations for 2017.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 8 |
| 4 | 2 |
| 5 | 3 |
| 6 | 3 |
| 7 | 1 |
| 8 | 0 |
| 9 | 2 |

11 In 2018 RJD had fifteen (15) allegations of staff misconduct involving and inmate in which
 12 adverse action was imposed. As of March 2, 2020, two (2) of the allegations made in 2018
 13 remain open. The number of incidents and allegations include custody, non-custody and medical
 14 staff. This information is limited to on-duty incidents involving an inmate. Below is a list of the
 15 Employee Disciplinary Matrix from the California Department of Corrections and
 16 Rehabilitation's Department Operations Manual followed by how many times the penalty was
 17 imposed on sustained allegations for 2018.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 7 |
| 4 | 2 |
| 5 | 0 |
| 6 | 1 |
| 7 | 0 |
| 8 | 0 |
| 9 | 3 |

25 In 2019, RJD had fourteen (14) allegations of staff misconduct involving an inmate in
 26 which adverse action was imposed. As of March 3, 2020, thirty-seven (37) of the allegations
 27 made in 2019 remain open. The number of incidents and allegations include custody, non-
 28 custody and medical staff. This information is limited to on-duty incidents involving an inmate.

1 Below is a list of the Employee Disciplinary Matrix from the California Department of
 2 Corrections and Rehabilitation’s Department Operations Manual followed by how many times the
 3 penalty was imposed on sustained allegations for 2019.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|-----------------------------------|-----------------------|
| 1 | 6 |
| 2 | 0 |
| 3 | 1 |
| 4 | 0 |
| 5 | 0 |
| 6 | 0 |
| 7 | 0 |
| 8 | 0 |
| 9 | 7 |

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Dated: April 30, 2020

Respectfully submitted,

XAVIER BECERRA
 Attorney General of California
 DAMON G. MCCLAIN
 Supervising Deputy Attorney General

/s/ Annakarina De La Torre-Fennell

ANNAKARINA DE LA TORRE-FENNELL
 Deputy Attorney General
 Attorneys for Defendants

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**VERIFICATION OF KIMBERLY SEIBEL
TO PLAINTIFFS' SPECIAL INTERROGATORIES (SET 1)**

John Armstrong, et al. v. Gavin Newsom, et al.

USDC, Northern District, Case No. C 94-2307 CW

I, Kimberly Seibel, declare under penalty of perjury that I have read and reviewed the above amended responses to Plaintiffs' Special Interrogatories and that the response is true and correct based on my own knowledge, or based on information that is available to me.

Executed this 30 day of April, 2020, in Sacramento, California.



Kimberly Seibel

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **John Armstrong, et al. v. Newsom, et al.**

No.: **C 94-2307 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On **April 30, 2020**, I served the attached

**DEFENDANTS' AMENDED RESPONSE TO
PLAINTIFFS' SPECIAL INTERROGATORIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Gay Crosthwait Grunfeld
Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105-1738

Prison Law Office
Attn: Armstrong Counsel
1917 Fifth Street
Berkeley, CA 94710-1916

Tamiya Davis
Office of Legal Affairs
California Department of Corrections and Rehabilitation
1515 "S" Street, Suite 314S
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 30, 2020**, at Sacramento, California.

F. Stevenson
Declarant

/s/ F. Stevenson
Signature

EXHIBIT G



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

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Facsimile: (916) 324-5205
E-Mail: Sean.Lodholz@doj.ca.gov

May 27, 2020

VIA ELECTRONIC MAIL ONLY

Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738

RE: John Armstrong, et al. v. Gavin Newsom, et al.
United States District Court, Northern District of California, Case No. C 94-2307 CW

Dear Michael:

Please find Defendants' responses to outstanding discovery requests/issues below.

With respect to Plaintiffs' first set of requests for production, as requested, we will prioritize ESI for the custodians listed in Plaintiffs' May 22, 2020 letter. Additionally, we have located and produced all requested documents in Plaintiffs' April 2, 8, and 27, March 30, and May 6, 2020 letters, except:

1. We are continuing to search for inquiry or dispositional documents related to the class member allegations in your April 2, 2020 letter that have an unknown or no log number.
2. In response to your April 8 request for institutional level inquiry documents for appeal log number 17-03899, the appeal went to IERC for an allegation review, which we previously produced at DOJ00001381, but there was no confidential inquiry completed.
3. In response to your April 27 and May 6 request for OIA records for RJD-B-18-0644, RJD-X-18-00540, RJD-X-18-0540, RJD-C-18-05858, RJD-B-19-0516, and RJD-X-18-02511, there is no record of these cases being referred to OIA, nor are there any OIA records. However, ISU investigated RJD-X-18-00540, and we will produce that investigation (it is currently in the queue to be loaded into Relativity).
4. In response to your May 6 request for an update regarding S-RJD-129-19-R, we have confirmed that there is no record of any follow up inquiry into this case.

Page 2
May 27, 2020

5. In response to your May 6 request for transcripts from OIA investigations, there are no additional interview transcripts for the cases produced. OIA does not routinely request transcripts.
6. There are no rejection memos for the cases listed in your May 6, 2020 letter. OIA has not prepared written memos since approximately 2013. Instead, the special agent assigned to the case discusses their recommendation directly with the Hiring Authority.
7. During a telephone call on May 6, 2020, Plaintiffs' counsel asked whether there were any other documents created during the course of an OIA investigation that would not be included within the report. We do not have sufficient information to answer this question yet, and will provide an updated response soon.
8. In response to your May 6 request for an administrative investigation into S-RJD-370-17-D, no such investigation occurred. Instead, this case was changed from direct action to a subject only interview. Responsive documents were included in Defendants' May 11, 2020 production.
9. As discussed during our May 26 telephone call, we are in the process of collecting institutional level interviews, and it is our understanding that Plaintiffs will provide a list of cases they would like us to prioritize when producing these records.

With respect to Plaintiffs' second set of requests for production, several requests seek documents related exclusively to *Coleman* class members. Without waiving their objections, Defendants agree to produce documents in response to these requests. However, to avoid duplication of labor, we will not be responding to Plaintiffs' document request number 12, because our office has already produced these records through informal discovery in *Coleman*. Additionally, we will not be producing documents responsive to request numbers 10 and 11 because OIA has already produced responsive documents to Plaintiffs. Please let us know if you disagree.

With respect to document request number 13, we previously discussed whether Defendants would produce records related to dismissals for staff misconduct against prisoners who are not class members. However, it appears this will not be an issue because all of the dismissals involved either an *Armstrong* or *Coleman* class member. Specifically:

1. S-RJD-026-19-A, S-RJD-086-19-A, and S-RJD-144-18-A resulted in seven dismissals, and S-RJD-358-17-A resulted in a resignation prior to dismissal, for misconduct against *Armstrong* class members. Defendants previously produced responsive documents for these investigations.
2. S-RJD-435-18-A resulted in one dismissal for misconduct against a *Coleman* class member. We do not believe this case was previously produced during informal discovery in *Coleman*. Therefore, we have requested all records, including the 989, CIP decision,

Page 3
May 27, 2020

OIA investigation, 402/403, Skelly, and SBP documents for this case and, subject to review, will produce them.

In the process of gathering materials for the requested dismissals discussed above, CDCR also discovered an error in their logging of three cases. Specifically, CDCR previously reported 12 dismissals involving an inmate. However, after pulling the underlying records, it was discovered that the penalty in two of the cases was incorrectly reported as a dismissal, and another dismissal was unrelated to misconduct against an inmate. Therefore, there were only 9 dismissals (including a resignation prior to adverse action). We will amend Defendants' interrogatory responses to correct this error.

If you have any questions or would like to discuss the above matters, please let us know. And thank you again for your continued cooperation in this matter as we attempt to balance our time between preparing a response to Plaintiffs' motion concerning allegations of staff misconduct at Richard J. Donovan Correctional Facility, with our many other obligations in *Armstrong*, including ongoing document production, during the COVID-19 public health crisis and pandemic.

Sincerely,

/s/ Sean W. Lodholz

SEAN W. LODHOLZ
Deputy Attorney General

For XAVIER BECERRA
Attorney General

SWL:

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34105547.docx

EXHIBIT H

1 XAVIER BECERRA
 Attorney General of California
 2 DAMON G. MCCLAIN
 Supervising Deputy Attorney General
 3 JOANNA B. HOOD
 Acting Supervising Deputy Attorney General
 4 ANNAKARINA DE LA TORRE-FENNELL
 Deputy Attorney General
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 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 94244-2550
 7 Telephone: (916) 210-7361
 Fax: (916) 324-5205
 8 E-mail: Annakarina.Fennell@doj.ca.gov
Attorneys for Defendants
 9 *Gavin Newsom and the California Department of*
Corrections and Rehabilitation

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

| | |
|--|---|
| <p>15 JOHN ARMSTRONG, et al., 16 Plaintiffs, 17 v. 18 GAVIN NEWSOM, et al., 19 Defendants.</p> | <p>C 94-2307 CW DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES Judge: The Honorable Claudia Wilken</p> |
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21
 22 **PROPOUNDING PARTY: PLAINTIFFS JOHN ARMSTRONG ET AL.**
 23 **RESPONDING PARTY: DEFENDANTS GAVIN NEWSOM ET AL.**
 24 **SET NO.: ONE**

25 **PRELIMINARY STATEMENT**

26 The information provided in these supplemental responses is true and correct, according to
 27 Defendants' best knowledge at this time, but it is subject to future correction for omissions,
 28 errors, or mistakes. Defendants reserve the right to produce evidence of any subsequently

1 discovered facts or interpretations thereof, and to amend, modify, or otherwise change the
2 responses, in accordance with applicable discovery rules. Defendants make this supplemental
3 response to Plaintiff's interrogatories in accordance with Federal Rule of Civil Procedure 33.
4 Following the meet and confer with Plaintiff's on March 27, 2020, Defendants provide as
5 follows:

6 **INTERROGATORY REQUEST NO. 7:**

7 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
8 please indicate the number of STAFF MISCONDUCT allegations in which an incarcerated
9 person at RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring
10 authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty
11 (1-2 day suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction or
12 suspension without pay), (d) a Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as
13 those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual,
14 § 33030.16.

15 **RESPONSE TO INTERROGATORY REQUEST NO. 7:**

16 Allegations of staff misconduct come to the attention of the Hiring Authority in a variety of
17 ways, not limited to the CDCR Inmate Appeal Form 602s, CDCR Form 1824s, use of force
18 incident reports, advocacy from outside of the institution, and the Armstrong Non-Compliance
19 Log. The allegations and corresponding responses and outcomes are maintained by different
20 sections of the prison (e.g. Inmate Appeals Office, Investigative Services Unit, and Employee
21 Relations Office) or by the Office of Internal Affairs. The purpose of each log is unique to the
22 particular functions of the respective section maintaining the log.

23 The Department tracks allegations of staff misconduct by the subject of the allegations, not
24 the reporting individual or alleged victim. Each investigation must be pulled and reviewed in
25 order to determine whether the incident central to an allegation of staff misconduct involved an
26 inmate. The same must be done to determine whether the allegation was sustained or not
27 sustained and whether there was resulting corrective action or adverse action. A further level of
28 review is then required to determine and verify the type of discipline issued.

1 Notwithstanding the above explanation, adverse action penalty Levels 1 through 9, per
2 year, from 2017 to present are as follows:

3 In 2017, RJD had twenty (20) sustained allegations of staff misconduct involving an inmate
4 in which adverse action was imposed. The number of incidents and allegations include custody,
5 non-custody and medical staff. This information is limited to on-duty incidents involving an
6 inmate. Below is a list of the Employee Disciplinary Matrix from the California Department of
7 Corrections and Rehabilitation's Department Operations Manual followed by how many times the
8 penalty was imposed on sustained allegations for 2017.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 8 |
| 4 | 2 |
| 5 | 3 |
| 6 | 3 |
| 7 | 1 |
| 8 | 0 |
| 9 | 1 |

16 In 2018 RJD had thirteen (13) allegations of staff misconduct involving and inmate in
17 which adverse action was imposed. As of March 2, 2020, two (2) of the allegations made in 2018
18 remain open. The number of incidents and allegations include custody, non-custody and medical
19 staff. This information is limited to on-duty incidents involving an inmate. Below is a list of the
20 Employee Disciplinary Matrix from the California Department of Corrections and
21 Rehabilitation's Department Operations Manual followed by how many times the penalty was
22 imposed on sustained allegations for 2018.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|--|------------------------------|
| 1 | 2 |
| 2 | 0 |
| 3 | 6 |
| 4 | 2 |
| 5 | 0 |
| 6 | 1 |
| 7 | 0 |
| 8 | 0 |
| 9 | 2 |

1 In 2019, RJD had fourteen (14) allegations of staff misconduct involving an inmate in
 2 which adverse action was imposed. As of March 3, 2020, thirty-seven (37) of the allegations
 3 made in 2019 remain open. The number of incidents and allegations include custody, non-
 4 custody and medical staff. This information is limited to on-duty incidents involving an inmate.
 5 Below is a list of the Employee Disciplinary Matrix from the California Department of
 6 Corrections and Rehabilitation's Department Operations Manual followed by how many times the
 7 penalty was imposed on sustained allegations for 2019.

| Employee Disciplinary Matrix Code | Times Penalty Imposed |
|-----------------------------------|-----------------------|
| 1 | 6 |
| 2 | 0 |
| 3 | 1 |
| 4 | 0 |
| 5 | 0 |
| 6 | 0 |
| 7 | 0 |
| 8 | 0 |
| 9 | 7 |

14
 15 **SUPPLEMENTAL RESPONSE TO INTERROGATORY REQUEST NO. 7:**

16 During the January 29, 2020 deposition in the above-captioned case, Deputy Director of
 17 Operations Kimberly Seibel provided an approximate number of terminations that resulted from
 18 incidents involving an *Armstrong* class member. Defendants' response to Plaintiffs' Special
 19 Interrogatory No. 7 provided the number of terminations resulting from on-duty misconduct
 20 involving an inmate without limitation as to whether the inmate was an *Armstrong* class member.

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A total of six terminations resulted from on-duty conduct involving an *Armstrong* class member.

Dated: April 9, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAMON G. MCCLAIN
Supervising Deputy Attorney General



ANNAKARINA DE LA TORRE-FENNELL
Deputy Attorney General
Attorneys for Defendants

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**VERIFICATION OF KIMBERLY SEIBEL
TO PLAINTIFFS' SPECIAL INTERROGATORIES (SET 1)**

John Armstrong, et al. v. Gavin Newsom, et al.

USDC, Northern District, Case No. C 94-2307 CW

I, Kimberly Seibel, declare under penalty of perjury that I have read and reviewed the above supplemental response to Plaintiffs' Special Interrogatories and that the response is true and correct based on my own knowledge, or based on information that is available to me.

Executed this 9 day of April, 2020, in Sacramento, California.



Kimberly Seibel

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **John Armstrong, et al. v. Newsom, et al.**

No.: **C 94-2307 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On **April 9, 2020**, I served the attached

**DEFENDANTS' SUPPLEMENTAL RESPONSE TO
PLAINTIFFS' SPECIAL INTERROGATORIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Gay Crosthwait Grunfeld
Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105-1738

Prison Law Office
Attn: Armstrong Counsel
1917 Fifth Street
Berkeley, CA 94710-1916

Russa Boyd
Tamiya Davis
Office of Legal Affairs
California Department of Corrections and Rehabilitation
1515 "S" Street, Suite 314S
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 9, 2020**, at Sacramento, California.

F. Stevenson
Declarant

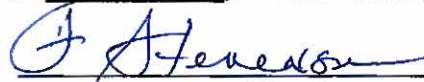

Signature

EXHIBIT I

1 XAVIER BECERRA
 Attorney General of California
 2 DAMON G. MCCLAIN
 Supervising Deputy Attorney General
 3 JOANNA B. HOOD
 Acting Supervising Deputy Attorney General
 4 ANNAKARINA DE LA TORRE-FENNELL
 Deputy Attorney General
 5 State Bar No. 301862
 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 94244-2550
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 Fax: (916) 324-5205
 8 E-mail: Annakarina.Fennell@doj.ca.gov
Attorneys for Defendants
 9 *Gavin Newsom and the California Department of*
Corrections and Rehabilitation

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

15 **JOHN ARMSTRONG, et al.,**

16 Plaintiffs,

17 v.

18 **GAVIN NEWSOM, et al.,**

19 Defendants.

C 94-2307 CW

**DEFENDANTS' AMENDED
 SUPPLEMENTAL RESPONSE TO
 PLAINTIFFS' SPECIAL
 INTERROGATORY NO. 7**

Judge: The Honorable Claudia Wilken

22 **PROPOUNDING PARTY: PLAINTIFFS JOHN ARMSTRONG ET AL.**

23 **RESPONDING PARTY: DEFENDANTS GAVIN NEWSOM ET AL.**

24 **SET NO.: ONE**

25 **PRELIMINARY STATEMENT**

26 The information provided in these amended responses is true and correct, according to
 27 Defendants' best knowledge at this time, but it is subject to future correction for omissions,
 28 errors, or mistakes. Defendants reserve the right to produce evidence of any subsequently

1 discovered facts or interpretations thereof, and to amend, modify, or otherwise change the
2 responses, in accordance with applicable discovery rules. Defendants make this response to
3 Plaintiffs' interrogatories in accordance with Federal Rule of Civil Procedure 33.

4 **INTERROGATORY REQUEST NO. 7:**

5 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the present,
6 please indicate the number of STAFF MISCONDUCT allegations in which an incarcerated
7 person at RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring
8 authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty
9 (1-2 day suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction or
10 suspension without pay), (d) a Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as
11 those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual,
12 § 33030.16.

13 **SUPPLEMENTAL RESPONSE TO INTERROGATORY REQUEST NO. 7:**

14 During the January 29, 2020 deposition in the above-captioned case, Deputy Director of
15 Operations Kimberly Seibel provided an approximate number of terminations that resulted from
16 incidents involving an *Armstrong* class member. Defendants' response to Plaintiffs' Special
17 Interrogatory No. 7 provided the number of terminations resulting from on-duty misconduct
18 involving an inmate without limitation as to whether the inmate was an *Armstrong* class member.

19 A total of six terminations resulted from on-duty conduct involving an *Armstrong* class
20 member.

21 **AMENDED SUPPLEMENTAL RESPONSE TO INTERROGATORY REQUEST NO. 7:**

22 During the January 29, 2020 deposition in the above-captioned case, Deputy Director of
23 Operations Kimberly Seibel provided an approximate number of terminations that resulted from
24 incidents involving an *Armstrong* class member. Defendants' response to Plaintiffs' Special
25 Interrogatory No. 7 provided the number of terminations resulting from on-duty misconduct
26 involving an inmate without limitation as to whether the inmate was an *Armstrong* class member.

27 A total of eight terminations resulted from on-duty conduct involving an *Armstrong* class
28 member. In one of those eight cases, the subject of the investigation retired before he was served

1 with notice of the termination, but CDCR had decided to move forward with sustaining the
2 dismissal charge as a result of the investigation.

3 Dated: April 30, 2020

Respectfully submitted,

4 XAVIER BECERRA
Attorney General of California
5 DAMON G. MCCLAIN
Supervising Deputy Attorney General
6

7 */s/ Annakarina De La Torre-Fennell*

8 ANNAKARINA DE LA TORRE-FENNELL
Deputy Attorney General
9 *Attorneys for Defendants*

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**VERIFICATION OF KIMBERLY SEIBEL
TO PLAINTIFFS' SPECIAL INTERROGATORIES (SET 1)**

John Armstrong, et al. v. Gavin Newsom, et al.

USDC, Northern District, Case No. C 94-2307 CW

I, Kimberly Seibel, declare under penalty of perjury that I have read and reviewed the above amended supplemental response to Plaintiffs' Special Interrogatories and that the response is true and correct based on my own knowledge, or based on information that is available to me.

Executed this 30 day of April, 2020, in Sacramento, California.



Kimberly Seibel

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **John Armstrong, et al. v. Newsom, et al.**

No.: **C 94-2307 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On **April 30, 2020**, I served the attached

**DEFENDANTS' AMENDED SUPPLEMENTAL RESPONSE TO
PLAINTIFFS' SPECIAL INTERROGATORY NO. 7**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Gay Crosthwait Grunfeld
Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105-1738

Prison Law Office
Attn: Armstrong Counsel
1917 Fifth Street
Berkeley, CA 94710-1916

Tamiya Davis
Office of Legal Affairs
California Department of Corrections and Rehabilitation
1515 "S" Street, Suite 314S
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 30, 2020**, at Sacramento, California.

F. Stevenson
Declarant

/s/ F. Stevenson
Signature

EXHIBIT J

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,)
)
 Plaintiffs,)
)
 vs.) No. C94 2307 CW
)
GAVIN NEWSOM, et al.,)
)
 Defendants.)
)

REMOTE PMK DEPOSITION OF DIRECTOR AMY E. MILLER

Volume I

Friday, May 15, 2020

10:10 a.m.

STENOGRAPHICALLY REPORTED BY:

SUSAN F. MAGEE, RPR, CCRR, CLR

CSR No. 11661

1 APPEARANCES:

2 For the Plaintiffs:

3 ROSEN BIEN GALVAN & GRUNFELD LLP

4 BY: MICHAEL FREEDMAN, ESQ.

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12 For the Defendant:

13 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

14 OFFICE OF THE ATTORNEY GENERAL

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22 //

23

24

25

1 APPEARANCES (Continued):

2 For the Defendant (continued):

3 DEPARTMENT OF CORRECTIONS AND REHABILITATION

4 OFFICE OF LEGAL AFFAIRS

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13 ATTORNEY GENERAL OF CALIFORNIA

14 BY: JEREMY DUGGAN, DEPUTY ATTORNEY GENERAL

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18 (916) 210-6008

19 jeremy.duggan@doj.ca.gov

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DIRECTOR AMY E. MILLER, Volume I

John Armstrong, et al. v. Gavin Newsom, et al.

Friday, May 15, 2020

Susan F. Magee, RPR, CCRR, CLR, CSR No. 11661

| MARKED | DESCRIPTION | PAGE |
|-----------|---|------|
| Exhibit 1 | Plaintiffs' Notice of Deposition Pursuant to F.R.C.P. 30(b)(6) of the California Department of Corrections and Rehabilitation's Person Most Knowledgeable; Request for Production of Documents, MILLER01_00001 - MILLER01_00015 | 9 |
| Exhibit 2 | Notice of Approval of Emergency Regulatory Action, MILLER04_000018 - MILLER04_000081 | 58 |
| Exhibit 3 | AIMS Role - Staff Complaint, MILLER02_00016 | 75 |
| Exhibit 4 | AIMS Role - Grievance Alleging Unnecessary or Excessive Use of Force (UOF), MILLER03_00017 | 128 |

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FRIDAY, MAY 15, 2020

10:10 a.m.

THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, I will administer the oath remotely pursuant to Rule 11 of the April 6th, 2020, Emergency Order issued by the California Judicial Council. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record.

MR. FREEDMAN: This is Michael Freedman, and I agree.

MR. MAIORINO: This is Trace Maiorino, and I agree.

MR. DUGGAN: This is Jeremy Duggan. I agree.

MS. DAVIS: This is Tamara Davis. I agree.

DIRECTOR AMY E. MILLER,
having been first duly sworn, was examined and testified
as follows:

EXAMINATION BY MR. FREEDMAN

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Q. Good morning, Director Miller.

A. Good morning.

Q. Could you please state your full name for the record.

A. Yes. My name is Amy Elizabeth Miller.

Q. My name is Michael Freedman. I'm an attorney for the plaintiffs in the Armstrong v. Newsom class action, and I'll be taking your deposition today. I'll be asking you a series of questions. My questions and your answers will be recorded by the court reporter who is working remotely because we're taking this deposition via video. This is just a reminder to speak loudly and in a manner that can be understood and easily recorded by the court reporter. And this is especially important because we are all conducting this by video.

In particular, the court reporter cannot record nods of your head or "mm-hmms" or things like that, so please make sure to use words to respond to any of the questions that I ask.

A. Okay.

Q. You've just -- great. You've just taken an oath that requires you to tell the truth, the whole truth and nothing but the truth.

1 Do you understand that?

2 A. Yes.

3 Q. When you're answering my questions today, I
4 don't want you to guess about things. But if you can
5 make an estimate about something based on your
6 knowledge, you should do that.

7 Do you understand?

8 A. Yes.

9 Q. Please let me know if you don't understand a
10 question that I ask you. I will do my best to rephrase
11 it so that you can understand it. Please also let me
12 know if you need a break.

13 Have you taken any medications or drugs that
14 might make it difficult for you to understand and answer
15 my questions today?

16 A. No.

17 Q. Is there any reason you would not be able to
18 answer my questions fully and truthfully today?

19 A. No.

20 MR. FREEDMAN: If you could please pull up
21 Document 1, so it will be Miller 01.

22 And Madam Reporter, if we can mark this as
23 Exhibit 1.

24 (Exhibit 1, Plaintiffs' Notice of Deposition
25 Pursuant to F.R.C.P. 30(b)(6) of the California

1 Department of Corrections and Rehabilitation's Person
2 Most Knowledgeable; Request for Production of Documents,
3 MILLER01_00001 - MILLER01_00015, marked for
4 identification.)

5 BY MR. FREEDMAN:

6 Q. Do you have that document in front of you?

7 A. I do.

8 Q. Excellent. Have you seen this document before?

9 A. I have.

10 Q. When did you first see it?

11 A. This document was presented to me by the --
12 by -- I'm actually not sure if it was the office of
13 legal affairs or the attorney general's office that
14 provided it to me in preparation for today.

15 Q. Could you please turn -- I believe it is to
16 page 4, but I'll double-check that, which is the -- part
17 of the list of the topics in the deposition notice.

18 A. Okay.

19 Q. Please take a look at Topic 27 which reads,
20 "Any changes that CDCR is planning to make or has made
21 to the process for investigating staff misconduct claims
22 at RJD."

23 Have you been designated by CDCR as a person
24 most knowledgeable to testify on this topic?

25 A. I have. And for the record, that's on

1 page 4 -- oh, okay. I'm sorry. I have that on page 5.

2 Q. It's MILLER01_00005; correct?

3 A. Yes, correct, correct.

4 Q. And I'll just repeat the question.

5 Have you been designated as a person most
6 knowledgeable on Topic 27?

7 A. I have, yes.

8 Q. And are you designated as CDCR's person most
9 knowledgeable for that entire topic?

10 A. No. I'm designated as the person most
11 knowledgeable with regard to the Allegation Inquiry
12 Management Section which is a new area for addressing
13 staff complaints.

14 Q. What is your understanding of what it means to
15 be designated as a person most knowledgeable on the
16 Allegation Inquiry Management System underneath
17 Topic 27?

18 A. My understanding is that I am the person
19 designated by the agency, so by the California
20 Department of Corrections and Rehabilitation, to speak
21 about the Allegation Inquiry Management Section on
22 behalf of the Department of Corrections.

23 Q. Do you understand that your answers will bind
24 CDCR?

25 A. I do.

1 Q. What, if anything, did you review to prepare to
2 testify on Topic 27 today?

3 A. So I -- I reviewed quite a few things. I, of
4 course -- and by the way, some of this is -- although I
5 reviewed it specifically for today, it -- it states that
6 I am currently working on in my position as a director
7 that has oversight of this particular area. And so
8 although I've reviewed them again in preparation for
9 today, it's also things that I have been working on and
10 so have been familiar with that through that process.

11 But I definitely reviewed the -- I reviewed the
12 flowcharts that we've created for the Allegation Inquiry
13 Management Section for when things would go to that
14 particular -- and by the way, we use the acronym
15 A-I-M-S. We say "AIMS." And if it's okay with
16 everybody, I would prefer to do that and use that
17 acronym.

18 So I reviewed those flowcharts. We created
19 some flowcharts so that the staff in the field would
20 better understand the process and what does go to the
21 AIMS unit; what doesn't go to the AIMS unit.

22 I reviewed the current department operations
23 manual sections, Chapter 3, Article 14; and Chapter 3,
24 Article 22. That's our employee investigation section
25 and then also our employee discipline just to refresh

1 myself in those areas.

2 I also reviewed our current department
3 operation manual sections with regard to the appeals
4 process. With that said, we are actively working to do
5 revisions based on changes that we are making to the
6 grievance and appeals process.

7 I reviewed the submission of the emergency
8 regulations for the grievance and appeals process.

9 I also reviewed a letter that -- a memorandum
10 actually that was written by the Office of Audits and
11 Court Compliance with regard to concerns that surfaced
12 during a tour in 2018 specifically at Richard J. Donovan
13 Correctional Facility. In addition, I read a letter
14 also drafted from the prison law office specific to
15 those -- that same tour and concerns that they had as
16 well.

17 I reviewed the memorandum that was drafted, I
18 think, in December of 2018 -- I'm trying to remember
19 dates -- that was part of a review that was a team that
20 was sent subsequent to that for -- in September of 2018.
21 Later in the year the Department of Corrections and
22 specifically the division of adult institutions sent a
23 team of staff to do some additional interviews with
24 inmates and -- to try to ascertain if there were
25 additional concerns regarding staff misconduct.

1 I -- in addition to those documents, I'm trying
2 to think if there's -- because I'm working in -- because
3 I'm the director now over AIMS, some things I'm actually
4 reviewing as part of that position, and then some things
5 have been missed, so I may actually mix some of that.

6 I reviewed the lessons -- the PowerPoint slides
7 for the training that was given to our new AIMS staff.
8 So that training we had two actual sessions that were
9 given by the Office of Internal Affairs. One happened
10 in January and one happened in March, and that's because
11 we actually activated in a phased approach the
12 Allegation Inquiry Management Section. And so part of
13 our activation happened at the end of January of this
14 year 2020, and then another part happened in April 1 of
15 2020; so I reviewed those documents as well.

16 And I'm -- I'm positive there are other things
17 that I have reviewed specifically for this preparation,
18 preparation for today. They're not coming to my head
19 right now. But as we go along, as I remember, I'll be
20 sure to let you know.

21 Q. Excellent. So the documents that you listed
22 for me, as far as you can remember right now, are the
23 documents that you reviewed to prepare for today?

24 A. Yes.

25 Q. Okay. Did you speak with anyone to prepare for

1 the deposition today?

2 A. I did. After reviewing some of those documents
3 regarding the tour in 2018, the Bishop memo, I did have
4 a conversation with Deputy Director Kim Seibel because
5 of what I had read. I was -- I wanted to know more
6 about some of the steps they had taken to address those
7 issues, and so I did have a conversation about that with
8 her.

9 I also spoke to the associate director now who
10 has taken the place in the Reception Center Mission --
11 his name is Ron Davis -- just to see if there was
12 anything ongoing with regard to that that may be
13 happening since he assumed that position in February of
14 this year.

15 Of course I've spoken to the attorneys in
16 preparation for today as well.

17 Q. And I don't want you to say anything about what
18 you discussed with your attorneys because that's
19 privileged conversation between you and your attorney.

20 About how long did you speak with Ms. Seibel?

21 A. We spoke -- I think that we probably spoke
22 about maybe 2-1/2 or 3 hours. It was a virtual
23 conversation just like this. We held it via Skype
24 Business, and so we weren't in the same room together.
25 But that conversation, I think it was about 2-1/2 to

1 3 hours.

2 Q. And what about your conversation with
3 Mr. Davis?

4 A. That was not very long. I think that we talked
5 maybe for 10 or 15 minutes, just really an update as to
6 if anything was still being worked on and what they had
7 there as far as staff, working on the staff complaint
8 process.

9 Q. And how much time did you spend with your
10 attorneys preparing for this deposition?

11 A. I would say maybe altogether, because we've had
12 several meetings like this, this virtual meeting setup,
13 I would say that I probably spent maybe eight to nine
14 hours total.

15 Q. Now, what we've now marked as Exhibit 1, the
16 deposition notice, do you have knowledge of any of the
17 subjects in the deposition notice other than Topic 27?

18 MR. MAIORINO: Objection. Goes beyond the
19 scope of this PMK's designation.

20 MR. FREEDMAN: You can answer the question.

21 THE WITNESS: As I mentioned, I had had -- I
22 had that conversation with Deputy Director Kim Seibel
23 about, you know, really a general conversation about
24 what they were putting in place locally to try to
25 address some of the issues, and I had read those

1 memoranda, the memorandum and letter with regard to --
2 to the concerns from 2018. And during that time I was
3 actually an associate director in a different mission,
4 so definitely my focus was on my other mission.

5 I think that I probably heard in passing some
6 discussion but nothing that I could recall specifically.

7 BY MR. FREEDMAN:

8 Q. Now, before we continue -- and this is
9 something we've done at the other PMK depositions
10 without -- with Ms. Seibel and with Patricia Ramos. I
11 just want to make clear that we reserve our right to
12 continue this deposition if defendants produce
13 additional documents that are responsive to our document
14 requests. And so we don't yet have them in hand. We
15 reserve the right to bring you back to ask additional
16 questions if, in fact, additional documents regarding
17 AIMS are produced at a later date. We don't anticipate
18 that will be necessary, but I just want to preserve our
19 rights there.

20 MR. MAIORINO: Okay. And we filed an objection
21 to you doing that. But again, I think that we're on the
22 same page. We don't perceive that happening.

23 MR. FREEDMAN: Okay.

24 BY MR. FREEDMAN:

25 Q. Did you bring any documents with you here today

1 to help you with your testimony?

2 A. The only documents that I have here today are
3 the -- the memorandum or an e-mail, I should say, with
4 regard to person most knowledgeable and the designation
5 of who would be speaking on that. It's from Joanna Hood
6 dated January 27th, 2020. And then I also had a copy
7 which, when I look at it now, is the same as the
8 document MILLER01.

9 Q. So besides those two documents you mentioned,
10 you didn't bring any documents here to help you with
11 your testimony, did you?

12 A. No.

13 Q. No notes?

14 A. Nothing.

15 Q. What is your current job title?

16 A. My current job title is director for the
17 division of correctional policy research and internal
18 oversight.

19 Q. That is quite a mouthful.

20 Is there an acronym that you use to refer to
21 that division?

22 A. There is. It is C-P-R-I-O, and some people
23 will pronounce it. They will try to make it a word and
24 are pronouncing it "CPRIO."

25 Q. CPRO; is that right?

1 A. CPRIO, yes.

2 Q. How long have you been the director of CPRIO
3 for?

4 A. I assumed this position February 4th of 2020,
5 so just a few months.

6 Q. What are your duties as director of CPRIO?

7 A. So in my proposition as director of CPRIO, my
8 responsibility is oversight of seven different areas; so
9 units, if you will. I have oversight of the Office of
10 Internal Affairs. I have oversight of the Office of
11 Appeals. I have also oversight of Office of Audits and
12 Court Compliance.

13 In addition, Office of Research, Office of
14 Correctional Policy Research. Sorry. That's a new one.
15 Peace Officer Selection and Employee Development, so our
16 hiring for peace officers and then training. And I
17 think I have missed one.

18 Q. I also think you have missed one. I had OIA,
19 Office of Appeals, OACC, Office of Research,
20 Correctional Policy Research, hiring and training, and
21 then what's the seventh one?

22 A. The last one is Office of Correctional Safety.

23 Q. Now, at the deposition today I think we're
24 going to focus mostly on the Office of Internal Affairs,
25 OIA, and in particular on AIMS. But in just a couple

1 sentences, could you tell me what each of those seven
2 units does?

3 A. Sure, okay. So we'll start with the peace
4 officer selection and employee development. That is our
5 unit that has our background investigation unit
6 involved, so they go through the backgrounds for persons
7 interested in being peace officers. They also have
8 oversight of the academy so that we have that piece as
9 well, academy training for peace officers.

10 They in addition to that are part of or have
11 responsibility over our lesson plans. They work very
12 closely with C-POST, California Peace Officer Standards
13 and Training, so they work with them so that our
14 training for our staff is also vetted through C-POST.

15 And they also provide training for leadership,
16 supervisors training. So they're the ones that
17 coordinate the sergeants academy, the lieutenant's
18 academy. They coordinate basic supervision and advanced
19 supervision and then also coordinate our leadership
20 training for -- in addition. So they're really hiring
21 academy and training. So that's POST.

22 The Office of Correctional Safety is a unit
23 that works specifically or most specifically, I should
24 say, with -- with gangs, security threat group-type
25 investigations. So they do a lot of investigations with

1 criminal activity happening inside the prisons involving
2 the inmate population. They are experts on our firearms
3 and things of that nature.

4 They also have been very active because they
5 have our incident command system. They have oversight
6 of that and, of course, have been running the department
7 operations center during the COVID-19, so they have that
8 piece in their area as well. So those are those two
9 units.

10 And then I have a new unit called the
11 Correctional Policy Research. That unit's focus is
12 really on looking at best practices, if you will. I've
13 dubbed them my best practice units.

14 When the department is looking to maybe change
15 policy, wants to see if another area maybe in the
16 nation, another large agency is doing something unique
17 to work with their inmate population, finding successes,
18 that unit is there to do the research piece of it and
19 put together that information that can then be reviewed
20 by stakeholders in the department to determine if we
21 want to pursue additional change.

22 So they're not there to write the changes but
23 rather to do the -- or not to create the changes, I
24 should say, probably is more appropriate, but to do the
25 research so that, as a department, we know if we want to

1 move forward with something like that.

2 So there's our Correctional Policy of Research.
3 It's a new division, by the way, unit of one right now
4 while they get to developing. It's a brand-new unit.
5 So it has an associate director and he is actively
6 working on bringing on staff.

7 Then we have the Office of Audits and Court
8 Compliance. So the Department of Corrections has a unit
9 dedicated to having independence in reviews of practices
10 within the institutions and within the Department of
11 Corrections. So the Office of Audits and Court
12 Compliance has teams of staff that perform things such
13 as security audits in the institutions, or they do
14 audits of our accounting functions, you know, to make
15 sure we are using our money correctly, make sure we
16 are -- accounts receivable people owe us money back,
17 things of that nature. So that entire unit is dedicated
18 to audits.

19 They also monitor external audits. So for
20 instance, if the office of the inspector general
21 performs an audit, they would then be the liaison, if
22 you will, between the office of the inspector general
23 and the rest of our departments and help track any
24 corrective action plans and things of that nature. So
25 that's our Office of Audits and Court Compliance.

1 We have the Office of Appeals. They're going
2 through a huge change right now, Office of Appeals.
3 We've restructured that particular unit, and of course
4 we have emergency regulations that I'm sure we will
5 speak to later. And so with that, we are going through
6 a restructuring process, but their focus is still the
7 same.

8 The Office of Appeals oversees the Office of
9 Grievances. So the local grievance offices, every
10 institution has a local office of grievances where all
11 appeals and soon to be renamed grievances go from the
12 offenders as well as parole regions. And so with that,
13 the Office of Appeals oversees those units as maybe a
14 dual responsibility type of thing to make sure that
15 their practices are sound. And in addition, they are
16 the area where the final review of an inmate's grievance
17 is completed before the inmate -- or parolee, by the
18 way, because it's for both -- before that offender
19 exhausts his or her administrative remedies and has the
20 ability to then take the concern to court if they so
21 desire. So that's the Office of Appeals.

22 The Office of Internal Affairs is exactly what
23 it sounds like. That is our investigative unit for
24 employee allegations of employee misconduct that would
25 rise to the level of adverse action. So they're our

1 investigative unit, if you will, and they are focused on
2 employee investigations. They -- although they have the
3 ability to open investigations on their own and that
4 does sometimes happen, typically they receive requests
5 to open investigations from the field, whether it's an
6 institution or a parole unit through their hiring
7 authority, and then they review those and make a
8 decision if it meets the threshold to be investigated.

9 The Office of Internal Affairs also now is the
10 location for our new Allegation Inquiry Management
11 Section unit different from investigations. It's -- the
12 Allegation Inquiry Management Section actually performs
13 inquiries and not investigations, so there's a
14 difference there, but they are in the Office of Internal
15 Affairs. They are part of that unit now in order to
16 give us some independence in the inquiry process.

17 I always missed one.

18 Q. I believe the Office of Research is what is
19 left.

20 A. Thank you. The Office of Research. So the
21 Office of Research is -- really has two main purposes.
22 They're very -- the first purpose is, of course, our
23 data collection site, if you will. So they really --
24 when people have -- when anybody has a question about
25 the numbers, Office of Research is our unit that is able

1 to bring those numbers up. Whether it's numbers of
2 incidents, whether it's numbers of appeals, they are the
3 unit that oversees a process we call COMPSTAT which is
4 many sections, operations in the institutions and some
5 of our units and data regarding that. It's a 13-month
6 review, if you will, of numbers, and every year there's
7 a COMPSTAT review in each of those areas to talk about
8 those numbers and look to see if there's any concerns,
9 trends, things that need to be worked on.

10 The other thing the Office of Research does is,
11 of course, coordinate research requests. So we
12 sometimes get research requests from outside the
13 Department of Corrections, and so they make sure that
14 any of those requests are following the rules for
15 research, and particularly the rules when we talk about
16 human subjects. Because obviously a lot of research
17 projects that come through the Department of Corrections
18 involve our population, and thus human subjects, and so
19 rules that we need to make sure that we follow for that
20 as well.

21 Q. Thank you very much for the summary of those
22 very wide-ranging job responsibilities.

23 Who do you report to?

24 A. I report to the -- undersecretary of
25 administration, and that would be Jeffrey Macomber.

1 Q. And who reports directly to you?

2 A. So my direct reports right now are -- for
3 Correctional Policy Research would be
4 Kristoffer Applegate; for the Office of Correctional
5 Safety, that would be Derrick Marion; for the Office of
6 Research I have an acting deputy director, that would be
7 Christopher Chambers; and the Office of Internal
8 Affairs, that would be deputy director Brenda Crowding.
9 For -- every time. Could you tell me which ones I
10 missed?

11 Q. I think you did Policy of Research, OIA. Let
12 me -- I'm not so interested in the people right now.

13 What level are the -- are the people who report
14 to you?

15 A. Okay. Thank you for that. Some of them are
16 classified as chiefs. So in Office of Correctional
17 Safety, his classification is a chief. Some of them are
18 deputy directors, and then some of them are associate
19 directors. So I have three different classifications of
20 staff, if you will, but all of them leave those seven --
21 you know, each of them are a leader in those seven
22 units, but all at that level.

23 Q. And you said the -- in OIA it is Deputy
24 Director Brenda Crowding; is that correct?

25 A. That is correct.

1 Q. Okay. And then I don't want to spend much time
2 on this at all, but what were the last two positions
3 before you became director of CPRIIO that you held?

4 A. So the last two positions I held were as the
5 associate director for Female Offender Programs and
6 Services in Special Housing, and I held that from June
7 of 2016 until February of 2020. And then before that, I
8 was the associate director for the Reception Center
9 Mission, and I held that position from November of 2014
10 until June of 2016.

11 Q. Do you know what the Armstrong Remedial is?

12 A. I do.

13 Q. And what is it?

14 A. So the Armstrong Remedial Plan is our -- is the
15 Department of Corrections' plan to ensure equal access
16 to programs, services and such for disabled inmates.
17 And specifically with Armstrong, speaking to inmates
18 with either physical disabilities, mobility, hearing,
19 speech, kidney and dialysis. So physical disabilities.

20 Q. Do you know what an 1824 form is?

21 A. I do.

22 Q. And what is it?

23 A. So the 1824 form is the form that an inmate can
24 use to request accommodations for their disability.

25 Q. When was the last time that you received

1 training on Armstrong?

2 A. I actually recently completed the training that
3 we have on the learning management system, and so we do
4 have modules in electronic format, and I completed those
5 in April of this year, 2020.

6 Q. Have you read any of the motion filed by
7 plaintiffs that was called the Plaintiff's Motion to
8 Stop Defendant From Assaulting, Abusing and Retaliating
9 Against People With Disabilities at R.J. Donovan
10 Correctional Facility?

11 MR. MAIORINO: Objection. Goes beyond the
12 scope of this PMK's designation.

13 THE WITNESS: I did read it. I believe I read
14 it when it first came out.

15 BY MR. FREEDMAN:

16 Q. Did you read any of the documents that were
17 filed along with the motion to support the motion?

18 MR. MAIORINO: Objection. Goes beyond the
19 scope of the PMK's designation.

20 BY MR. FREEDMAN:

21 Q. You can go ahead. Throughout this deposition
22 if your counsel objects, so long as they don't instruct
23 you not to answer the question, you can go ahead and
24 answer the question.

25 A. Okay. I don't believe that I have, no.

1 Q. So did you read any of the declarations from
2 incarcerated people describing that misconduct that they
3 either witnessed or were the victims of?

4 MR. MAIORINO: Objection. Goes beyond the
5 scope of this PMK's designation.

6 THE WITNESS: No, I did not.

7 BY MR. FREEDMAN:

8 Q. I believe you earlier said that you have read
9 the December 2018 report issued by an A.W. Bishop about
10 his interview team's findings at Richard J. Donovan
11 Correctional Facility.

12 And just for the rest of the deposition, we can
13 say "RJD" to refer to -- have you read A.W. Bishop's
14 2018 report?

15 A. Yes, I did read it.

16 Q. What was your reaction when you read that
17 report?

18 MR. MAIORINO: Objection. Goes beyond the
19 scope of this PMK's designation. She's not here to give
20 her personal opinion, just to provide testimony
21 regarding the designation.

22 BY MR. FREEDMAN:

23 Q. You can go ahead and answer.

24 A. So all -- in my -- as an opinion outside of
25 AIMS, if you will, but recognizing that reading that, of

1 course, I -- as a now director and especially overseeing
2 the investigations, the employee investigation piece of
3 the arm of our agency, it definitely did concern me that
4 those allegations came about during the interview
5 process in 2018.

6 Q. And what about those allegations was concerning
7 to you?

8 MR. MAIORINO: And same objection to that.
9 It's beyond the scope of this PMK's designation to give
10 her personal opinion.

11 THE WITNESS: So I think the thing that
12 concerns me the most or maybe a couple of things is that
13 the allegations that were made, at least the summary
14 because that's what I have, of course, is the summary as
15 written in that Bishop memo are very serious and, if
16 true, absolutely are against policy and need to be
17 addressed, and the staff need to be addressed
18 appropriately.

19 The other thing that I noted in that particular
20 memo was that -- and I believe it was in this memo that
21 I reviewed -- that there was a belief by the population
22 through those interviews that they did not have
23 confidence in the grievance process or in the staff
24 complaint process at the institution. And so that, of
25 course, is concerning as well.

1 BY MR. FREEDMAN:

2 Q. Why does CDCR investigate allegations of staff
3 misconduct?

4 MR. MAIORINO: Objection. Goes beyond the
5 scope of this PMK's designation, and vague and ambiguous
6 and overbroad.

7 THE WITNESS: Obviously the Department of
8 Corrections as a law enforcement agency is -- is held to
9 a very high standard. We are charged with the care and
10 rehabilitation of a population of persons that have been
11 incarcerated for crimes that they've been convicted of.
12 And so if there are allegations of staff misconduct, the
13 persons who are expected to care for and provide for the
14 rehabilitative efforts of this population, if there are
15 allegations of staff misconduct and if their -- if staff
16 are behaving in a way that prevents the population from
17 being able to receive those programs and services and
18 rehabilitation they need to be successful, as well as
19 committing acts that could even be criminal, it's our
20 obligation to look into those and to make sure that we
21 get -- we do a thorough investigation or inquiry and, if
22 evidence is there, that we address those accordingly
23 through the employee discipline process.

24 BY MR. FREEDMAN:

25 Q. Does CDCR have an obligation to investigate

1 allegations of staff misconduct?

2 MR. MAIORINO: Objection. Goes beyond the
3 scope of this PMK's designation. Outside the scope of
4 the designation for AIMS.

5 THE WITNESS: Yes.

6 BY MR. FREEDMAN:

7 Q. And what is the source of that obligation?

8 A. The source of that obligation, of course, first
9 and foremost is Penal Code, and we're required to
10 investigate any allegations of staff misconduct. Of
11 course, we also have our internal regulations and
12 department operational manual that all speak to an
13 obligation to report misconduct as well.

14 Q. What is the Appeal Inquiry Management System,
15 what we've been calling AIMS?

16 A. So it's -- it's actually the Allegation Inquiry
17 Management Section. That's okay. It's a new term, so
18 we're all getting used to it.

19 So the Allegation Inquiry Management Section
20 has -- is a new unit in the Department of Corrections,
21 and it was developed in an effort to have an outside --
22 let me rephrase that. It's -- it was developed so that,
23 when there were allegations of employee misconduct that
24 rise to a level that could, if true, result in adverse
25 disciplinary action, but where there's no reasonable

1 belief that's been met, so there's nothing to say that
2 it did happen although the allegation was there, this
3 section was stood up so that, from an outside
4 perspective, an inquiry could be completed to gather
5 evidence, to talk to witnesses, and to try to determine
6 if there is either a reasonable belief that this
7 conduct, that the employee misconduct happened, in which
8 case it could be referred to the Office of Internal
9 Affairs for a formal investigation, or if through that
10 inquiry process there -- they are unable to gather any
11 evidence to substantiate that allegation, in which case
12 it would then -- that report would be turned over to
13 hiring authority so they could address the -- the staff
14 complaint that came through on the grievance, on an
15 inmate grievance.

16 Q. So I think you stated that one of the purposes
17 of AIMS is to bring an outside perspective to these
18 inquiries.

19 What do you mean by "outside perspective"?

20 MR. MAIORINO: Objection. Misstates her prior
21 testimony.

22 THE WITNESS: So what I mean is that we have
23 always -- we have the Office of Internal Affairs, but
24 they -- their ability to do investigations really is
25 subject to having a -- having the standard of reasonable

1 belief met for an allegation. And so of course the
2 Office of Internal Affairs being a unit outside of the
3 division of adult institutions and outside of the
4 division of parole operations so they don't report to
5 that particular division. But beyond that, staff
6 complaints have, until they met that threshold, been
7 addressed via the allegation -- via the staff complaint
8 process within those units. So if there was a staff
9 complaint at an institution, staff at the institution
10 would do the allegation inquiries.

11 The Allegation Inquiry Management Section,
12 which is a part of the Office of Internal Affairs, gives
13 the department the ability to do the inquiry with staff
14 that do not work in the location where the misconduct is
15 alleged to have happened, so whether that's an
16 institution or whether that's in a patrol region, these
17 staff are independent. They are not part of the
18 division of adult institutions. They are not part of
19 the division of parole operations, if you will, the
20 adult parole operations. Instead they are separate and
21 apart in the division that I oversee which is
22 Correctional Policy Research and Internal Oversight or
23 CPRIO.

24 So they haven't -- they have the ability to be
25 independent of the location that the allegation

1 allegedly took place in.

2 BY MR. FREEDMAN:

3 Q. When was AIMS created?

4 A. So the concept of AIMS was something that was
5 requested through the budget change proposal in
6 2019-2020. And so that was a request to build this
7 unit, if you will, that was made through the budget
8 change proposal or BCP process. It went through that
9 process and was approved.

10 And so then they began the development of the
11 AIMS unit which included getting practices in place,
12 getting staffing in place, a hiring process. We
13 actually went live -- maybe is the term that we use --
14 but activation, and when we first started accepting
15 allegations of staff misconduct that would rise to the
16 level of adverse disciplinary action but that lacked
17 reasonable belief, we began accepting those allegations
18 late January of 2020. I believe the date was
19 January 27th of 2020. And that was for the northern
20 region, and we included RJD in that implementation in
21 January. Then we activated the rest of the state on
22 April 1st of 2020.

23 Q. Is AIMS now fully operational throughout the
24 state?

25 A. Yes.

1 Q. So before we go any further, I want to talk a
2 little bit about the difference between inquiries and
3 investigations because I think it's really central to
4 what we're discussing today.

5 Can you summarize the process for
6 investigating -- conducting an investigation into an
7 allegation of staff misconduct from the moment an
8 incarcerated person makes an allegation of staff
9 misconduct to the end of that process? And I'd like the
10 answer to be at a pretty high level if that's possible.

11 MR. MAIORINO: Objection. It goes beyond the
12 scope that this PMK was designated.

13 THE WITNESS: So if an offender submits a
14 grievance that alleges staff misconduct, so an
15 allegation that a staff member acted in a way that
16 violates law, violates policy, ethical standards, if you
17 will, if that is submitted, that -- submitted on a
18 grievance, a -- we call them CDCR 602s so that's the
19 title of the form that we typically will get that on,
20 the first part of that is it goes to the grievance
21 office.

22 The grievance coordinator reviews it, sees if
23 it's a staff complaint. And because of that, the
24 grievance office then forwards that up to the hiring
25 authority. That would be the warden. The warden can

1 actually delegate it to the chief deputy warden. And by
2 the way, that's if we're talking about an institution.
3 Also, of course, in a parole region, to have that
4 through the regional parole administrator or deputy
5 regional parole administrator.

6 BY MR. FREEDMAN:

7 Q. And Director Miller, for purposes of
8 the deposition today, let's just talk about the
9 institutions because I'm really not that interested in
10 parole. And I think it's great that it covers parole as
11 well, but I think it will just make things more
12 confusing, so let's just focus on the institution today.

13 A. Okay. So speaking of an institution, again, it
14 goes to the warden or the chief deputy warden. They
15 review that allegation, and they have to make a decision
16 on that allegation, and they have three choices for
17 that.

18 So if the allegation from the offender from the
19 inmate is an allegation that, if true, is more likely
20 than not going to lead to adverse disciplinary action,
21 so, you know, is going to result in a letter of
22 reprimand or higher, and if there's reasonable belief
23 that it occurred, then that hiring authority or
24 reviewing authority, if it's the chief deputy warden,
25 then would draft a 989, a request for interview, and

1 that would go to the Office of Internal Affairs for a
2 formal investigation.

3 Q. I think you said "request for interview." Did
4 you mean request for investigation?

5 A. I'm sorry. Thank you. Yes, I meant a request
6 for investigation. Thank you.

7 So that's the first -- that's the first option,
8 if you will.

9 The second option, if they review that staff
10 complaint and there's an allegation that, if true, is
11 more likely than not going to lead to adverse action but
12 there's no reasonable belief met at that point, they now
13 can send that to the Allegation Inquiry Management
14 Section, the unit in OIA that does allegation inquiries,
15 and they would complete an inquiry at that unit.

16 If they review that complaint, staff complaint,
17 and even if it's true, it would not result in
18 disciplinary action. Maybe just corrective action even
19 if it's true. Those would stay locally. Still go
20 through the staff complaint process locally but would
21 stay locally, and they would address it there.

22 If it goes to AIMS, which is what we're
23 speaking to specifically today, if it were to go to
24 AIMS, as it comes in, that allegation, then it first
25 goes to an analyst who reviews the allegation package

1 that was submitted and does some data entry, gives it a
2 log number through the AIMS tracking system and puts in
3 some very basic data information.

4 That analyst then sends that on to the captain
5 of the unit, and the captain of the unit does a review
6 and determines if it should stay in the Allegation
7 Inquiry Management Section, and that determination is
8 based on their evaluation that, if true, would it likely
9 lead to adverse disciplinary action. So they're looking
10 at that review.

11 If they decide that it's going to stay, then it
12 gets issued to a lieutenant. We've -- a correctional
13 lieutenant, but they're in the AIMS unit. We're calling
14 them inquiry lieutenants. And then that lieutenant is
15 the one that does the inquiry.

16 The only time that it wouldn't be a lieutenant
17 is if the allegation involved somebody of a higher rank
18 than captain, in which case it would stay with the
19 captain, and they would do those inquiries. So we have
20 a little bit of a division there. Most would be done,
21 though, by those lieutenants.

22 Once those lieutenants get done with that
23 inquiry, and that means either they've completed the
24 investigation -- or their inquiry, I'm sorry. I
25 actually don't want to mix the two. They completed the

1 inquiry or they get to a point where they now have
2 reasonable belief that the misconduct occurred, then
3 they stop their -- they stop their inquiry. If the
4 inquiry is complete, they finalize their report, it's
5 reviewed by the captain, it's reviewed by the chief
6 deputy administrator as well, and that's the
7 classification that oversees the entire AIMS unit, and
8 then it's returned to the hiring authority.

9 If the person doing the inquiry believes that
10 there's now reasonable belief, they stop it, they stop
11 their inquiry at that point and finalize that report,
12 they turn it over to their captain and, of course,
13 reviewed by the chief deputy administrator. And if that
14 reasonable belief standard has been met, then they
15 return it to the hiring authority, advising them that --
16 that they're returning it based on their belief that
17 reasonable belief has been met.

18 And so for AIMS, that's the basic process. The
19 only other piece is that, if something comes to AIMS, an
20 allegation, and it's referred to AIMS but the AIMS unit
21 in review determines it should not be there, if that's
22 the decision, the captain discusses it with the chief
23 deputy administrator to make sure that they agree that
24 it should not be there.

25 And if the decision is is that it should not be

1 there because, one, either reasonable belief has already
2 been met, they think it should actually go to a formal
3 investigation; or they don't believe it rises to adverse
4 action even if true, in result of those cases it's
5 returned to the hiring authority or reviewing authority
6 to take a different action.

7 Q. Why did CDCR -- well, could you describe --
8 scratch that last question.

9 So now these inquiries before the reasonable
10 belief standard has been met, some of them are conducted
11 by AIMS; correct?

12 A. That is correct.

13 Q. Before the creation of AIMS, where were those
14 inquiries conducted?

15 A. Before the creation of AIMS, those were
16 completed at the local level, so at the institutions.

17 Q. And so those inquiries were conducted by staff
18 who worked at and were under the chain of demand of the
19 prisons themselves; correct?

20 A. That is correct. It's -- and let me preface
21 that with in almost all cases that was exactly it. I
22 have seen a few cases where a warden made a decision to
23 ask another institution to do the inquiry, but that was
24 not very frequent.

25 Q. So in most cases before the creation of AIMS,

1 inquiries into allegations of staff misconduct were
2 conducted by staff at the local prison institution?

3 A. Yes. I would say that's an accurate statement.

4 Q. Now with AIMS, some of those inquiries into
5 whether -- into allegations of staff misconduct are
6 conducted by AIMS instead of the local institution;
7 correct?

8 A. Yes, some. Not all but some.

9 Q. And we'll get into those somes in a little bit.

10 Why did CDCR create AIMS?

11 MR. MAIORINO: Objection. Objection just to
12 the extent that it calls for information protected by
13 attorney-client privilege, work product or the
14 deliberative process.

15 THE WITNESS: So -- and I believe that actually
16 I've answered this already, that the department
17 obviously would like to be seen as a transparent
18 department and absolutely wants to make sure that, if
19 there is staff misconduct, that it is -- that it is --
20 the inquiry and/or investigation, but in this case the
21 inquiries, are done very well; that the evidence is
22 gathered; and that we are able to uncover if wrongdoing
23 actually did occur.

24 And so with that, there had been some concerns
25 about whether or not that could be done at the

1 institution level, and the department ultimately made
2 the decision to create the Allegation Inquiry Management
3 Section to those allegations that, although there's no
4 reasonable belief, still if they were -- if they were
5 true, would result -- would likely result in an adverse
6 disciplinary action. So taking those -- those serious
7 allegations of staff misconduct and putting them into an
8 independent unit to do those inquiries.

9 BY MR. FREEDMAN:

10 Q. AIMS was -- the decision to create AIMS was
11 based at least in part as a response to a 2019 Office of
12 the Inspector General Report regarding staff misconduct
13 inquiries at Salinas Valley State Prison; right?

14 A. Yes. That's absolutely true and was referenced
15 in the -- in the budget change proposal that was
16 submitted.

17 Q. Have you reviewed the OIG 2019 SVSP report?

18 A. When that report came out in 2019 I reviewed
19 it, so it's been a number of years, and also have had
20 the opportunity to review the response to the inspector
21 general written by the department. And so I have
22 actually reviewed that as -- in my role as director for
23 this division because, of course, we're in the
24 development still of bringing up the Allegation Inquiry
25 Management Section and finalizing department operations

1 manual information, so yes.

2 Q. And the OIG found in that report that staff
3 conducting misconduct inquiries at SVSP were often
4 biased in favor of their fellow staff members; right?

5 A. That was one of the findings that the inspector
6 general's office noted in their report, yes.

7 Q. And the inspector general also found that the
8 staff conducting misconduct inquiries at SVSP often
9 ignored inmate witness testimony; right?

10 A. In the report from the inspector general, that
11 was also something that they found, yes.

12 Q. And the OIG also found that staff conducting
13 staff misconduct inquiries at SVSP often compromised the
14 confidentiality of the investigation; right?

15 A. That also, yes, was listed as concern with the
16 Office of the Inspector General in a finding.

17 Q. And the OIG also found that staff conducting
18 misconduct inquiries at SVSP lacked training on how to
19 conduct inquiries; right?

20 A. Yes. That was also a finding.

21 Q. And the OIG also found that many of the
22 inquiries at SVSP were incomplete; right?

23 A. Yes. The OIG felt that the inquiries were not
24 complete, did not address all the concerns, yes.

25 Q. And the OIG also found that in many of the

1 inquiries, the staff conducting them failed to ask
2 relevant questions; right?

3 A. I don't remember that exact statement, so I
4 would -- I would be remiss to say that's exactly what I
5 remember it saying, but I do remember that they felt
6 that the inquiries were not done well and that they were
7 not complete.

8 Q. CDCR after receiving this report concluded that
9 the problems identified at SVSP with the staff
10 misconduct inquiry process likely also existed at other
11 institutions; isn't that right?

12 MR. MAIORINO: Objection. Goes beyond the
13 scope that this PMK has been designated.

14 THE WITNESS: I believe that that was actually
15 a statement written in the response to the inspector
16 general's letter, yes.

17 BY MR. FREEDMAN:

18 Q. And wasn't that statement also included in the
19 budget change proposal requesting funding to create
20 AIMS?

21 A. It may have been, so -- and I know I read that,
22 a statement similar to that. I'm not exactly sure
23 where, but yes.

24 Q. So we just went over some of the problems that
25 were identified in the SVSP report; right?

1 A. Correct.

2 Q. And CDCR acknowledged that those problems
3 likely existed at -- throughout the system; correct?

4 MR. MAIORINO: Objection. Goes beyond the
5 scope that this PMK's been designated.

6 THE WITNESS: I think that what the department
7 said more specifically was that, because it's the same
8 process that we have in place statewide, that there's
9 the potential for those same failures to exist in other
10 locations, yes.

11 BY MR. FREEDMAN:

12 Q. How does AIMS address the problems identified
13 in the OIG's report regarding inquiries at Salinas
14 Valley State Prison?

15 A. The way that AIMS addresses those concerns are
16 a -- there's a number of ways. To begin with, the staff
17 that are involved in those inquiries do not work at the
18 institution, so we have that as one of the pieces. So
19 where there was concern that staff working in the same
20 facility as the staff they are doing inquiries on were
21 struggling to do those well, the staff do not work
22 there.

23 The -- another piece of that is that the staff
24 have received some pretty robust training. So they
25 received approximately 3-1/2 days of training from the

1 Office of Internal Affairs staff specifically, talking
2 about how to do investigations, how to do interviews of
3 subjects and witnesses, some skills on how to -- what
4 type of evidence they should be looking for.

5 And so beyond -- beyond what would be training
6 at a local level, these staff in the AIMS unit received
7 training from the Office of Internal Affairs regarding
8 an inquiry process and really were given some additional
9 tools and training to help them to put together a more
10 complete report.

11 I think that in addition to that, there --
12 these reports are also then being reviewed -- before
13 they're returned to the institution, they're being
14 reviewed -- after the -- after the inquiry lieutenant,
15 if it's done by a lieutenant, then by a captain and even
16 by a chief deputy administrator, both of those who also
17 don't work for the institution. And so they are looking
18 at that report also to make sure the questions are
19 answered, that the report is thorough, that the facts
20 that can be gathered have been gathered and have been
21 put together into that report before it is sent back.

22 And so having those additional sets of eyes
23 also outside of the process or outside the institution,
24 if I will, gives us -- gives the department the ability
25 to have -- to -- I'm trying to think of the right way to

1 say it. To feel as -- to believe that those reports are
2 much more independent and are gathering as much evidence
3 as possible so that the hiring authority can make an
4 informed decision.

5 Q. CDCR hopes that AIMS inquiries won't suffer
6 from the same problems as the inquiries reviewed in the
7 SVSP report; right?

8 MR. MAIORINO: Objection. Vague and ambiguous.
9 Argumentative.

10 THE WITNESS: I think that the word "hope" is
11 maybe not correct. Absolutely we expect that the
12 Allegation Inquiry Management Section will not have the
13 same types of situations that the inspector general's
14 office was concerned with in the reports for -- in the
15 report from Salinas Valley.

16 BY MR. FREEDMAN:

17 Q. And CDCR expects that AIMS inquiries will be
18 better than the inquiries at SVSP; right?

19 MR. MAIORINO: Objection. Goes beyond the
20 scope that this PMK has been designated.

21 THE WITNESS: Yes, we -- department absolutely
22 expects that these allegation inquiry reports that are
23 going to be the product of this unit are going to be
24 very thorough, very complete, and that, if reviewed by
25 the inspector general's office or anybody else, they

1 would agree that those are good reports that absolutely
2 address the concerns and discuss or bring forward the
3 relevant evidence that might exist to answer the
4 allegation.

5 BY MR. FREEDMAN:

6 Q. Ms. Miller, do you need a break?

7 A. I'm okay. Thank you.

8 Q. Okay. No problem.

9 Could you please describe the structure of
10 AIMS?

11 A. Let me make sure that I know what you're asking
12 for.

13 So when you're asking about the structure of
14 AIMS, you're asking about the staff that are in the
15 unit?

16 Q. The organizational structure.

17 A. The organizational structure.

18 So for the Allegation Inquiry Management
19 Section specifically, the top of that organizational
20 structure is a chief deputy administrator, and so that
21 person who is hired has oversight of that entire unit.
22 Of course he then reports on to the deputy director for
23 the Office of Internal Affairs.

24 Below the chief deputy administrator we have
25 correctional captains. We have several in the northern

1 region; we have, I believe, two in the central region;
2 and then one in the southern region. And so those
3 captains, if you will, report directly to the chief
4 deputy administrator.

5 Below those captains we have inquiry
6 lieutenants, correctional lieutenants. And so, of
7 course, a fair number in the northern region, central
8 region and in the southern region; so inquiry
9 lieutenants. Those are typically the staff that are
10 doing those reports, inquiry reports and allegation
11 inquiry reviews. As I mentioned earlier, they -- they
12 do most of the inquiries, although there may be some
13 that fall to the captain based on the level of the staff
14 that the allegations are against.

15 Each of our -- this is a reason -- these are
16 broken up regionally. So I have mentioned that we have
17 a northern region, a central region and a southern
18 region. Each of the regions has an office technician,
19 so that person that's there to help them with some of
20 the clerical duties that are associated with office, so
21 they each have an office technician.

22 And then we also have an analyst, and the
23 acronym is AGPA, Associate Government Program Analyst,
24 and that person is responsible for the inquiries that
25 come in, so they're -- they're the first point of

1 contact for inquiries coming in, they're also the last
2 point of contact before they go back out into the field,
3 and so that particular person is responsible for
4 tracking, if you will. They have the -- they have
5 access to the Allegation Inquiries Management System,
6 the tracking system, essentially the tracking system.
7 They have access to that. Like I said, there's a point
8 in and a point out, which means that they are -- they
9 open an allegation in the system; they also close it in
10 the system.

11 Q. Is there only one chief deputy administrator in
12 AIMS?

13 A. There is only one.

14 Q. And who is that?

15 A. That's Paul Edwards.

16 Q. And the chief deputy administrator position,
17 what rank level is that?

18 A. So he's a chief deputy administrator. I'm not
19 sure what his working title is. I would be remiss to
20 say I do know exactly what his title is, but he would --
21 he would be the equivalent of a chief deputy warden at
22 the institution level.

23 Q. And how many correctional captains are there in
24 AIMS?

25 A. So I believe that we have -- I believe that we

1 have three in the north. We have three or four in the
2 northern region, so I'm exactly sure there. I'm sorry
3 because I can't remember. And then we have two in the
4 central region and then we have one in the southern
5 region. So I believe it's either six or seven, but I
6 don't remember the exact number.

7 Q. And how many lieutenants are there in AIMS?

8 A. So each captain has oversight of approximately
9 six to seven lieutenants. And so if all of the
10 lieutenants positions are full, you know, you've got
11 approximately 3- -- I think we have 37 or -8, but I
12 don't remember the exact number on lieutenants either.
13 I know that they're not all filled right now. We're
14 still actively recruiting for some that were -- we were
15 unable to fill on the first round.

16 Q. Do you know how many are not filled?

17 A. I don't right offhand. Of course it's
18 something we can get for you. And I know that we're
19 actively working to fill them.

20 Q. Do you have an expectation about when they will
21 all be filled?

22 A. Although I'm not intimately involved in the
23 hiring process -- that, of course, is something
24 happening through the Office of Internal Affairs and the
25 AIMS unit specifically -- but I believe that they --

1 that they are almost done filling the vacancies in the
2 northern region. And then they are working on the
3 hiring process. I think they're still in the -- setting
4 up for interviews in the central and southern process.

5 I would -- I would expect that we would, of
6 course, hopefully have those filled here probably within
7 30 to 60 days. However, as with every unit in the
8 Department of Corrections, you know, vacancies happen;
9 promotions happen; retirements happen. And so
10 absolutely our intent is to always have those positions
11 filled, but you also have a natural turnover in
12 positions.

13 Q. Where are the -- where do these people work?
14 Where is their office?

15 A. So in the northern region they are located in
16 Rancho Cordova. So up here they're co-located with
17 another part of CDCR, specifically contract bed units in
18 a building in Rancho Cordova, so they work there.

19 In the central region they're located in
20 Bakersfield, California.

21 And in the southern region they're located in
22 Rancho Cucamonga, California, so . . .

23 Q. And are those all existing OIA offices?

24 A. They are -- they are not necessary -- I
25 actually do not believe -- let me rephrase that. I

1 don't believe any of them are co-located with existing
2 Office of Internal Affairs offices because there wasn't
3 space to co-locate them. So instead they're located in
4 state buildings but not hand-in-hand with OIA.

5 Q. Do any of the personnel in AIMS have office
6 space inside any of the prisons in CDCR?

7 A. No.

8 Q. Now, I think you previously said that the
9 lieutenants conduct almost all of the inquiries; is that
10 right?

11 A. That is correct.

12 Q. In conducting those inquiries, are the
13 lieutenants assigned to specific institutions?

14 A. So the way that the structure is currently,
15 they have designated lieutenants for specific
16 institutions. It's not to say that they wouldn't from
17 time to time be assigned a different institution for a
18 different inquiry, but typically they're going --
19 they're going to -- or being assigned a couple of
20 institutions each.

21 Q. I think you just said they have a couple of
22 institutions each; is that right?

23 A. That's correct.

24 Q. Does that mean that's more than -- and there
25 are 35 California prisons; right?

1 A. That's correct, yes.

2 Q. And I think you testified that there are
3 approximately somewhere around 35 lieutenants in AIMS
4 also; is that correct?

5 A. That's correct.

6 Q. So each of them is assigned a couple of
7 institutions.

8 Does that mean that more than one lieutenant is
9 assigned to -- let me go backwards.

10 Does that mean that an institution may have
11 more than one lieutenant assigned to conduct AIMS
12 inquiries at that institution?

13 A. So the -- so let me first start by saying that
14 we can't forget, although we stopped talking about them,
15 that we also do allegation inquiries for paroles. And
16 so of all of those lieutenants, we have others that will
17 be dealing with parole regions. And so like I said, I
18 know we stopped talking about them, but that happens.
19 That's part of the process too.

20 And the lieutenants in their assignments is
21 definitely need-based more than anything. So although
22 the chief deputy administrator and then, you know, the
23 captain and then the lieutenants, it would be -- it
24 would be great to have it a very static number, but
25 that's not true. It's probably going to vary from time

1 to time based on the number of allegations that are
2 received and where the need is. So if you have a couple
3 of institutions with very few allegations, maybe they
4 can share one lieutenant. If you have one institution
5 with a lot of allegations, then they probably need more
6 than one.

7 And so the intent is to try to have staff
8 regularly assigned but recognizing that it's going to be
9 fluid. And then, again, we have to not forget paroles.

10 Q. I know AIMS is somewhat in its infancy and
11 hasn't perhaps even ramped up fully in terms of a full
12 caseload.

13 Given that caveat, are the lieutenants who
14 conduct the inquiries expected to spend most of the
15 their time out in the field conducting their inquiries
16 or most of the time in an office doing other types of
17 work?

18 A. I don't -- I don't know that that -- I don't
19 know that that question can actually be answered one way
20 or the other. Absolutely the intent of the inquiry
21 lieutenant is to be in the field doing these inquiries.
22 And then, of course, they will be generating these
23 allegation inquiry reports. So you're right when you
24 say we're in our infancy. We've been, you know, open
25 for business since the end of January, and we're still

1 figuring out what that looks like. Definitely part of
2 our tracking system that's being reviewed is to make
3 sure or to look at how long the processes are taking.
4 And because we are regionally based, we'll have
5 lieutenants that have to drive hours to get to a
6 location to do inquiries.

7 So we're still really at the beginning stages
8 of looking at what that looks like, so I don't know that
9 I can actually answer that question because
10 unfortunately I think there's a third and maybe even a
11 fourth caveat to that which is, some of them are going
12 to be on the road a lot to go to places and to come
13 back.

14 And so -- but the thought is it's definitely
15 that they're in the field, they're doing these
16 inquiries, they're gathering evidence, and then they're
17 coming back and getting those reports done. And what
18 that balance looks like, I don't think that we quite
19 know yet.

20 Q. You mentioned earlier that in January AIMS went
21 on line for the northern region plus RJD; right?

22 A. That's correct, yes.

23 Q. Why did CDCR activate AIMS for RJD at a time
24 different from when it activated AIMS for the other
25 prisons in the southern region?

1 MR. MAIORINO: Objection to the extent it calls
2 for confidential information protected by
3 attorney-client work product.

4 BY MR. FREEDMAN:

5 Q. So if the answer involves something -- legal
6 advice that you perceived from -- you or the department
7 has received from its attorneys, then you shouldn't
8 answer that because that's privileged information.

9 But if otherwise, you can answer the question.

10 A. Let me say this, that I was actually not in my
11 position at that point in January when we went live, and
12 obviously the decision was made before that, and so I
13 was not involved in those discussions as to why RJD was
14 added into the first implementation phase. But I do
15 know that the only discussion I've had about it has been
16 with my attorneys at this point, so . . .

17 Q. Okay. How many -- if you know, how many
18 inquiries has AIMS processed so far? And by
19 "processed," I mean -- by process I mean accepted -- by
20 "processed" I mean accepted to open an inquiry.

21 MR. MAIORINO: Objection to the extent it goes
22 beyond the designation of Director Miller for this PMK.
23 I don't believe you requested any numbers related to
24 inquiry.

25 ///

1 BY MR. FREEDMAN:

2 Q. If you know, you can answer.

3 A. Okay. I believe that there's been a little
4 over 200 submissions to the Allegation Inquiry
5 Management Section. How that breaks down as far as the
6 numbers that have been returned to the institution
7 because they don't meet the criteria to be in AIMS and
8 then how many have been tests in AIMS for the inquiries,
9 I'm not exactly positive of the breakdown, but I believe
10 that the -- the majority absolutely have stayed in AIMS
11 for allegation inquiries, but those exact numbers I
12 don't have right now.

13 Q. Does AIMS do anything else except conduct
14 inquiries into allegations of staff misconduct?

15 A. No. The AIMS unit is specifically with regard
16 to -- and is -- was stood up to respond to inmates'
17 allegations of staff misconduct that we received through
18 the grievance and appeals process.

19 Q. All right. Could you pull up what I believe is
20 marked as MILLER04, and we'll mark this document as
21 Exhibit 2.

22 (Exhibit 2, Notice of Approval of Emergency
23 Regulatory Action, MILLER04_000018 - MILLER04_000081,
24 marked for identification.)

25 THE WITNESS: Okay.

1 BY MR. FREEDMAN:

2 Q. What is this document?

3 A. So this document here is the submission of the
4 emergency regulation package for our revision to the
5 grievance and appeals process for offenders in
6 corrections.

7 Q. And when were those emergency regulations
8 submitted to the Office of Administrative Law?

9 A. These emergency regulations were submitted in
10 early March and accepted towards -- towards mid to late
11 March.

12 Q. And when will the emergency regulations become
13 effective?

14 A. The emergency regulations go into effect
15 June 1, 2020.

16 Q. Now, these emergency regulations address parts
17 of the AIMS process; correct?

18 A. Correct. It addresses, yes, at a very high
19 level what goes into the Allegation Inquiry Management
20 Section, yes.

21 Q. And though -- and the sections that do that in
22 the emergency regulations are section -- let's see.
23 Subchapter 5.1. Well, why don't you tell me.

24 What sections of these emergency regulations
25 address AIMS? And I might point you to page -- I

1 believe it's MILLER04_00055 to -- as perhaps the
2 starting point, but I'd like you to tell me all the
3 sections in here that relate to AIMS.

4 A. All right. So it's Section 3480 -- or it
5 starts, I should say as you mentioned, "Subchapter 5.1
6 Inmate and Parolee Programs," and then Article 1 for
7 administrative remedies for inmates and parolees.

8 3480 starts the revised emergency regulations,
9 if you will, and that very first section in 3480 is our
10 definition and our implementation date. So you'll see
11 there going -- going ahead and being implemented June 1
12 of 2020.

13 And then there are several definitions that
14 definitely would relate specifically to the Allegation
15 Inquiry Management Section; for instance, when you look
16 at (b)(2)j, "'Allegation Inquiry,'" and the definition
17 being refers to the process of gathering preliminary
18 information concerning a claim that involves an
19 allegation of staff misconduct. So obviously one of the
20 definitions very specific to AIMS.

21 Claims definitely is specific -- the definition
22 of claim anyway, because in our new process, offenders
23 will have the ability to submit more than one claim in
24 an appeal, and so one of those claims may be a claim of
25 staff misconduct. So just for knowledge, it means a

1 single complaint arising from a unique set of facts and
2 circumstances. And, of course, that could be a staff
3 complaint or an -- it could be a complaint that requires
4 an allegation inquiry.

5 Q. Let me interrupt you for one second.

6 A. Sure.

7 Q. I don't think we need to go through every
8 subsection.

9 A. Okay.

10 Q. And I think we'll have -- I think I'll have
11 some questions about perhaps some of them down the line.
12 I meant more sort of the numbered sections, you know,
13 3480, you know, which of these sections address AIMS.

14 A. Okay. Okay. So the exact section that really
15 is most specific to AIMS, although it's referenced in a
16 few of the other sections, but the section that's
17 specific to allegations of staff misconduct is
18 "Section 3484, Allegations of Staff Misconduct."

19 Q. Does Section 3481 have any regulations that
20 address AIMS?

21 A. I'm sorry. I'm looking through it very
22 quickly.

23 I don't believe so, no.

24 Q. And what about 3482?

25 A. Again, I don't believe so. Not in that

1 section.

2 Q. And what about 3483?

3 A. So if you look at -- if you look at 3483 there
4 was a few referenced specific to the allegation inquiry,
5 if you will, and therefore the Allegation Inquiry
6 Management Section. So at 3483(d) it talks about, "The
7 reviewing authority shall refer claims alleging staff
8 misconduct to the Office of Internal Affairs for
9 completion of an allegation inquiry or formal
10 investigation pursuant to Section 3484." So you -- we
11 have that section there, so . . .

12 In addition, still in 3483, let me make sure I
13 get the letters right. In (i)(8), one of the -- one of
14 the decisions that could potentially be given to an
15 inmate as a result of a submission of a grievance could
16 be that it's under inquiry or investigation, meaning the
17 claim is under an allegation inquiry or formal
18 investigation by departmental staff or other appropriate
19 law enforcement.

20 So if that matter, if the allegation inquiry is
21 not complete or if it's under investigation in some
22 other fashion, that speaks -- references it there. And
23 I think that that's all the references in that
24 particular section, 3483.

25 Okay. And of course 3484 --

1 Q. Go ahead, Director Miller.

2 A. I was going to say that 3484 is allegation of
3 staff misconduct. So that section really is primarily
4 with reference to our plan.

5 Q. Do you -- I don't know that we need to go
6 through each of the other sections.

7 Are you aware of any other sections other than
8 3480, 3483 and 3484 that have a bearing on AIMS?

9 A. I believe that there's also reference in the
10 appeal review. I would have to go through it obviously
11 to pull that, but I believe there's reference of a
12 review in there as well. I may be mixing it up because
13 we are actively working on department operations manual
14 sections as well, and so I'm trying to put that in my
15 head, trying to separate the two, so let me look.

16 So in -- I'm pretty sure it was in there in
17 3486 in the appeal review. If you look to 3486 and then
18 (d) it says, "If the Office of Appeals determines that a
19 claim involves staff misconduct and that claim was not
20 referred to the Office of Internal Affairs for an
21 allegation inquiry or formal investigation by the Office
22 of Grievances, then the Office of Appeals shall refer
23 that claim to the individuals below who shall consider
24 whether completion of an allegation inquiry or formal
25 investigation is required pursuant to Section 3484."

1 And then it speaks to the associate director
2 for division of adult institutions since we're speaking
3 of institutions specifically. So a backstop, if you
4 will. If it does not get addressed at the grievance
5 level and is captured at the appeals level, again, then
6 pushing it back down to make sure that that allegation
7 inquiry or investigation is completed appropriately.

8 Q. And when you say the "grievance level," do you
9 mean the first level review of a 602 that is submitted
10 by an incarcerated person?

11 A. That's correct. If you look at these new
12 emergency regulations, you will see that we -- we
13 currently have three levels. There were two levels at
14 the institution level, one at the headquarters level.
15 The new emergency regulations going into effect June 1
16 will only have two levels. You'll have a local level.
17 We call that the grievance level; right? This is a
18 submission of a grievance.

19 And then you'll have the second level which is
20 the appeal of the grievance. So if they disagree with
21 the decision that they received at the grievance level,
22 they can appeal that, the office of appeals; correct.

23 Q. We've just talked about some of the provisions
24 in these emergency regulations that address AIMS; right?

25 A. Correct.

1 Q. Are there any regulations other than these
2 emergency regulations that govern AIMS?

3 A. I don't believe so. I don't think there is any
4 other regulations. We are -- as I've mentioned, we are
5 working on revisions to the department operations manual
6 which, of course, is more of a supplement to regulations
7 and helps to better describe processes. But as far as
8 regulations go, I believe that -- that these are the
9 ones specific to allegation inquiries.

10 Q. And what's the timeline on completing those DOM
11 revisions?

12 A. I have a team that's actively working on those
13 DOM revisions, and we are hoping to have them out as
14 soon -- as soon as we can. We don't expect them to be
15 out before June 1 unfortunately but hopefully 30 to
16 60 days afterwards at the latest. We're working very
17 hard to get them done.

18 Q. Are there any other documents that set forth
19 policies specifically for AIMS? I'm not talking about
20 generally applicable policies for CDCR.

21 MR. MAIORINO: Objection. Overbroad. Vague
22 and ambiguous.

23 THE WITNESS: Yeah. I'm not -- I'm not sure I
24 understand what you're asking either.

25 BY MR. FREEDMAN:

1 Q. All right. So the -- we've just discussed how
2 the emergency regulations include some policies that
3 specifically govern AIMS; right?

4 A. Yes.

5 Q. And you just mentioned that your -- you and
6 your staff were working on new sections to the
7 department operations manual that will also be specific
8 to AIMS; correct?

9 A. That is correct.

10 Q. And so my question is beyond the regulation and
11 the draft DOM revisions that you're working on, are
12 there other documents that set forth the policies and
13 procedures for AIMS specifically?

14 A. So we have created a couple of flowcharts to
15 assist the field in the AIMS process recognizing it's
16 new and everybody's learning how to use the process. So
17 we did put together a couple of flowcharts that we put
18 out to the field so that they could, as they're -- as
19 they are looking at these allegations, they -- it can
20 help them to understand whether or not it should go to
21 AIMS. And if it shouldn't go to AIMS, where should it
22 be addressed.

23 Q. Besides the regulations, the DOM revisions
24 you're working on, those flowcharts, are there any other
25 documents that set forth policies and procedures

1 specifically for AIMS?

2 A. We have the activation memorandums as well. So
3 in January and again, April 1, we -- we had a memorandum
4 that announced the activation of those units, and there
5 was some -- some very brief information included in
6 those memorandums about the activation.

7 Q. So besides the regulations, the DOM revisions
8 you're working on, the flowcharts and these activation
9 memorandums, are there any other documents that set
10 forth policies or procedures specific to AIMS?

11 A. We also have the training documents. So as I
12 mentioned before, there was about 3-1/2 days of
13 training. Some of that training was not specific to
14 AIMS, if you will, but specific to our employee
15 discipline process or the investigation process. But
16 some of those training documents were more specific to
17 AIMS and/or had been created in order to provide the
18 training for AIMS and gives those staff procedures that
19 they can follow, a roadmap, if you will, of how to get
20 their job -- how to get their job done.

21 Q. So besides the documents that you've mentioned
22 so far, are there any other documents that set forth
23 AIMS policies or procedures?

24 A. None that I can think of right now. I guess
25 there might be, but I can't think of any right now.

1 Q. Are you aware that, before CDCR submitted the
2 emergency regulations to the office of administrative
3 law, that they were discussed at a March 2nd, 2020,
4 hearing of the assembly budget subcommittee on public
5 safety?

6 MR. MAIORINO: Objection. Goes beyond the
7 scope that this PMK was designated.

8 THE WITNESS: Yes, I am aware that they were
9 discussed.

10 BY MR. FREEDMAN:

11 Q. Did you attend that subcommittee hearing?

12 MR. MAIORINO: Objection. Goes beyond the
13 scope that this PMK was designated.

14 THE WITNESS: I did not.

15 BY MR. FREEDMAN:

16 Q. Did you in any other way, video or by reading a
17 transcript, review what was discussed at that
18 subcommittee hearing?

19 MR. MAIORINO: Objection. Goes beyond the
20 scope that this PMK was designated for. Vague and
21 ambiguous.

22 THE WITNESS: I did not -- I don't believe I
23 watched it. I do know I've had discussions since then
24 with our legislative affairs, our -- the legislative
25 affairs. We've had discussion because some additional

1 information was requested about the process through that
2 hearing. And so I know that I've had conversations with
3 representatives from legislative affairs about that
4 hearing.

5 BY MR. FREEDMAN:

6 Q. And what was discussed in those conversations?

7 MR. MAIORINO: Objection. It goes beyond the
8 scope of what this PMK was designated for, and we object
9 to the extent that it calls for confidential information
10 related to attorney-client work product.

11 THE WITNESS: I -- I'm actually -- because I'm
12 so involved in the activation of the Allegation Inquiry
13 Management Section, I don't know that I remember
14 specifically what those conversations included, but I
15 know that there have been and I have been involved in,
16 since taking over this director position, several
17 conversations about what allegations would be handled
18 through the AIMS unit and then what allegations would
19 not be part of the AIMS unit. And so I think that that
20 is probably what was discussed, but I -- I don't
21 remember for sure.

22 BY MR. FREEDMAN:

23 Q. Did CDCR make any changes to the proposed
24 emergency regulations after that hearing and before it
25 submitted the emergency regulations to the office of

1 administrative law?

2 MR. MAIORINO: Objection. It goes beyond the
3 scope that this PMK was designated for, and I'm going to
4 object to the extent it calls for confidential
5 information protected by the attorney work product or
6 deliberative process privilege.

7 THE WITNESS: I don't remember if there were
8 any changes from the time of that hearing until the
9 actual submission to office of administrative law.
10 Actually -- I don't remember if there were. Since I've
11 come in -- since I came into the division in February,
12 there had been some changes, some things that had been
13 modified or changed, but I don't know if there were
14 specifically any changes from the time of the hearing
15 until the time of submission. I don't remember.

16 BY MR. FREEDMAN:

17 Q. What were the changes that were made from the
18 time when you became the director until they were
19 submitted to the office of administrative law?

20 MR. MAIORINO: Objection. Goes beyond the
21 scope that this PMK was designated for. We object to
22 the extent that it calls for confidential information
23 protected by attorney-client work product.

24 THE WITNESS: When I first came in as the
25 director, there was still conversation that was taking

1 place specifically with regard to use of force
2 allegations, and so that was one area where there had
3 not been a final decision. And so when I think change,
4 I think that "change" probably wasn't the right word,
5 but instead there was still discussion and there had not
6 been a decision to include any use of force, any
7 allegations made of unnecessary or excessive use of
8 force over to the Allegation Inquiry Management Section.

9 And the reason behind that was because, when
10 the AIMS unit, as it's been described to me, that the
11 AIMS unit was developed when it was developed because
12 the use of force allegations already had a very robust
13 process for doing inquiries that that -- and that that
14 process is really based in court decision, but that
15 process would remain in place and would continue going
16 forward, so those allegations would not necessarily be
17 part of the AIMS process.

18 We continued -- we continued with discussions
19 with some external stakeholders internally as well to
20 discuss what -- you know, what, if anything, should be
21 included. And ultimately the decision was reached that
22 we would include allegations of unnecessary or excessive
23 use of force that were made by our inmates via the
24 grievance process when that use of force resulted in
25 serious bodily injury.

1 And so that was a decision that was made.
2 And like I said, I don't remember if it was made before
3 that hearing or after that hearing, but it was from the
4 time I joined on until the final regulations were put
5 out, a decision that was made that AIMS would go ahead
6 and take those that resulted -- where the use of force
7 resulted in serious bodily injury. But anything that
8 did not result in serious bodily injury, any allegation
9 would stay at the local level and go through the
10 process, the inquiry process for those allegations that
11 currently exist.

12 The other piece to that is that we've been
13 asked a couple of times about great bodily injury as a
14 result of use of force, but it's important to know that
15 those allegation -- or those incidences where use of
16 force results in great bodily injury or death always go
17 to the Office of Internal Affairs for deadly force
18 investigation team and a deadly force review board. And
19 so because of that, by their nature, they automatically
20 go. So they weren't included in AIMS because they
21 already go to a higher level.

22 BY MR. FREEDMAN:

23 Q. And when you talk about the preexisting local
24 process for investigating staff misconduct allegations,
25 are you referring to the institutional executive review

1 committee process?

2 A. Correct. In use of force -- in the
3 use-of-force process that we have and the review process
4 for use of force, you have the incident commander who
5 does an evaluation of the use of force, you have the
6 first-level manager's review which is typically a
7 captain, you have the second-level manager's review or
8 an A.W., and then after that -- Associate Warden, I'm
9 sorry. We get used to saying "A.W.," but Associate
10 Warden.

11 And then it goes on to the Institution
12 Executive Review Committee. We use the acronym IERC
13 which is the warden's level of review for all uses of
14 force. The IERC not only reviews all uses of force, but
15 they also review all allegations of unnecessary or
16 excessive use of force made by offenders.

17 Q. Give me one second here.

18 So just to be clear, you're not certain whether
19 the decision or decisions regarding what, if any,
20 use-of-force allegations to include within AIMS were
21 made before or after that March 2nd hearing?

22 A. I'm not. I'm not. A lot of discussions
23 happened, and I'm not sure exactly the timeline of when
24 those changes came in.

25 MR. FREEDMAN: So I think now would be a good

1 time for to us take a lunch break if that's all right
2 with you.

3 THE WITNESS: Sure.

4 MR. FREEDMAN: Okay. Why don't we -- why don't
5 we go off the record.

6 MR. MAIORINO: Okay. Let's go. We're off the
7 record now.

8 (Luncheon recess taken from 11:56 a.m. to
9 12:31 p.m.)

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1 A F T E R N O O N P R O C E E D I N G S :

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3 MR. FREEDMAN: Okay. Why don't we go back on
4 the record.

5 All right. We are just now coming back
6 from lunch break. Director Miller, can you please pick
7 up MILLER02, a document with the heading "AIMS Role -
8 Staff Complaint" at the top.

9 And I'd like to -- I think we're up to
10 Exhibit 3.

11 (Exhibit 3, AIMS Role - Staff Complaint,
12 MILLER02_00016, marked for identification.)

13 THE WITNESS: I have it. Thank you.

14 BY MR. FREEDMAN:

15 Q. What is this document?

16 A. This document was created and we put it out to
17 the field on April 1st of 2020. And we did this
18 flowchart, if you will, to help the field to understand
19 when a staff complaint does come to the inquiry
20 management section and when it would not.

21 Q. Who prepared the document?

22 A. It was definitely a collaborative effort. So I
23 can tell you that it was -- I oversaw the development of
24 the document. We had the Office of Internal Affairs,
25 the deputy director; and the Allegation Inquiry

1 Management Section chief deputy administrator,
2 Mr. Edwards. So Ms. Crowding and Mr. Edwards were both
3 involved in the creation of this document as was office
4 of appeals, my office of appeals associate director,
5 Howard Moseley.

6 And then we have a captain who we've brought on
7 board to help us with the activation and the development
8 of the department operations manual. His name is
9 Chance Andes. He was involved in creation as was a --
10 we have a staff services manager. I think he was a
11 Staff Services Manager 1. He's a retired annuitant, and
12 he also assisted. His name is Tom Surges. He also
13 assisted in the creation of it. As a matter of fact,
14 the program that was used to create it, he's the -- it
15 was Tom Surges who actually has the skills to do that.
16 The rest of us were not familiar with that program.

17 Q. Who approved the final version of the document
18 that was issued to the field on April 1st?

19 A. I definitely put this form in front of my
20 supervisor, the undersecretary Jeff Macomber, and he
21 agreed that it accurately depicted what we were -- what
22 our role is. And so to the extent I -- I think that
23 Mr. Macomber, Undersecretary Macomber is the highest
24 level that looked at it and agreed with it and approved
25 it. And so besides me, it would have been Mr. Macomber.

1 Q. And when you say it was issued to the field,
2 what does that mean?

3 A. This document went out as an attachment, along
4 with the activation of the central and southern region
5 for the Allegation Inquiry Management Section. And we
6 did a conference call on the 1st of April. We had our
7 central and southern institutions and parole regions as
8 well as the northern regions just to make sure that they
9 were on board with some of these documents. They did
10 not exist when they activated. And so that activation
11 memo and then this flow chart, one of the other
12 flowcharts, all went out to the field. We're talking
13 about the institutions, the parole regions. Also, of
14 course, accessible to our Allegation Inquiry Management
15 Section staff and our division of adult institution,
16 associate directors, it went out to all of those folks
17 as referenced.

18 Q. And does this document accurately describe the
19 process for determining whether a staff complaint will
20 result in an AIMS inquiry?

21 A. Yes.

22 Q. Is this document consistent with the emergency
23 regulations that CDCR has issued regarding the appeals
24 process in AIMS?

25 A. Yes, it is.

1 Q. So if I'm looking at this document correctly,
2 it looks like there's four questions that need to be
3 answered by the hiring authority at an institution
4 before determining whether to make a referral to AIMS to
5 conduct an inquiry; is that correct?

6 A. I would have to do the math to figure out if
7 four is the right answer but -- one, two, three -- but I
8 think four is the right answer, yes.

9 Q. Okay. So let's go through each -- and I
10 believe you testified earlier that this is an accurate
11 reflection of the policy governing whether staff
12 misconduct allegations will result in an inquiry at
13 AIMS; is that right?

14 A. That's correct.

15 Q. Okay. So let's go through those four questions
16 one by one.

17 Okay. So the first question -- and this is in
18 a box at the top of the page -- says, "Is there a
19 grievance with a staff complaint?"

20 Do you see that?

21 A. I do.

22 Q. What is a "staff complaint"?

23 A. So a staff complaint is an allegation made by a
24 person that staff acted outside of -- outside of their
25 training and policy and procedure, including any

1 unethical type of behavior. So a complaint about an
2 employee and their conduct being outside of approved
3 policy procedure or ethical standards.

4 Q. Could a staff complaint also include a
5 complaint that a staff member violated the law?

6 A. Oh. Absolutely, yes.

7 Q. Is the term "staff complaint" defined anywhere?

8 A. I -- I am trying to remember. I think -- I
9 think it might be defined, in department operations
10 manual, but I don't remember for sure.

11 Q. So the flowchart says -- so the question we're
12 looking at now is, "Is there a grievance with a staff
13 complaint"; right?

14 A. Correct.

15 Q. And it looks like on the chart, if the answer
16 is "no," then there will not be an AIMS inquiry; is that
17 correct?

18 A. That's correct. If a grievance comes in and --
19 if there's a staff complaint but it's not on a
20 grievance, not submitted as a grievance, then it would
21 not go to AIMS.

22 Q. And if there's a grievance but it doesn't have
23 a staff complaint on it, it also wouldn't go to AIMS;
24 correct?

25 A. That is correct, yes.

1 Q. Okay. But if there is a grievance with a staff
2 complaint on it, you would proceed to the next question;
3 correct?

4 A. Yes.

5 Q. Okay. Now, before we get on there, so what --
6 for purposes of this flowchart, what is a grievance?

7 A. So when we talk about a grievance, we're
8 talking about an allegation -- in this case a staff
9 complaint -- that's submitted on a form through the
10 grievance process. So we're talking about the offender
11 and, as we mentioned before, we're talking specifically
12 about inmates who in writing submit a grievance
13 typically on a CDCR 602 form into the locked boxes in
14 the housing units that are then collected by the
15 grievance coordinators and put into the grievance
16 process.

17 Q. So you mentioned that a staff complaint on a
18 602 would be a grievance; correct?

19 A. That's correct, yes.

20 Q. Could an incarcerated person use any other
21 forms to submit a staff complaint?

22 A. The department, our position is that any --
23 anything in writing submitted by the offender into those
24 grievance collection boxes will be accepted and
25 addressed through the grievance process. So if they

1 don't access to a 602 form, maybe they put something on
2 just a regular lined piece of paper or some other
3 document and submit it through the -- to the grievance
4 coordinators and into the grievance process. We would
5 accept that as a grievance and treat it as such.

6 Q. So if it was just submitted on a blank piece of
7 paper, not a form at all, that would be treated as a
8 grievance?

9 A. That is correct.

10 Q. What if it was submitted on an 1824 form?

11 A. If the same thing is true, if it was submitted
12 on an 1824 form but it includes an allegation, a staff
13 complaint allegation, then again, it would go through
14 the staff complaint process as a grievance; so we
15 would -- we would accept it into this process as well.

16 Q. If an institution had separate submission boxes
17 for 1824s and 602s which I believe some institutions do
18 and someone submitted an 1824 with a staff complaint on
19 it into the 1824 box, not the 602 box, would that be
20 considered a staff complaint --

21 A. Yes.

22 Q. -- on a grievance?

23 A. Yes. That would still be accepted as a staff
24 complaint on a grievance. Absolutely.

25 Q. So if I'm hearing you correctly, the type of

1 piece of paper that it's on does not matter; is that
2 correct?

3 A. That's correct. We would prefer that it be on
4 a 602 form just for the standardization's sake. But
5 absolutely. Regardless of the piece of paper that it's
6 submitted on, we'll accept it as a -- as a grievance.

7 Q. Now, in terms of the submission, does it have
8 to be submitted through one of the means for submitting
9 a 602?

10 A. So I just want to make sure that I understand
11 the question. You're saying does it have to come to us
12 through the locked boxes in the housing units? Is
13 that -- or in the areas that are designated for the
14 collection of grievances? Is that what you're asking?

15 Q. Yes.

16 A. So -- so the answer is not a simple yes. So I
17 think that the vast majority of them will come through
18 that process, and we would expect them to be submitted
19 into those boxes. We know that there are some instances
20 where the offenders may not have access to that box.
21 For instance, when you look at some of our
22 administrative subrogation units, they may not actually
23 have access to putting a grievance into that box, and so
24 we do have a process where staff accepts those and
25 submit them into the box, the grievance box for them.

1 But the vast majority, we expect, will come through that
2 grievance box process.

3 Q. And now these -- what would happen if someone
4 sent a letter to the warden about staff misconduct?
5 Would that be processed through this -- would that be a
6 "yes" or a "no" to this first question here that it was
7 a grievance with a staff complaint?

8 MR. MAIORINO: Objection. It's an incomplete
9 hypothetical.

10 THE WITNESS: So letters to the warden
11 previously -- just for context, letters to the warden
12 would previously not have gone through the grievance
13 process, if you will. They would still -- if it's a
14 staff complaint, would still be doing the allegation
15 inquiries at the local level in that staff complaint
16 process but probably would not have gone through the
17 grievance process.

18 We are -- as we're working on our department
19 operations manual section, this is one of the areas
20 where there has been discussion as to how we transition
21 those letters to the warden into the grievance process.
22 And so the intent is if the inmate puts it in writing,
23 even if they don't submit it into the box, let's say
24 they send it to the warden, a letter to the warden and
25 said that when the warden reviews that and it has an

1 allegation of staff misconduct, they would then forward
2 that into the grievance process so that it could be
3 addressed through the staff complaint process.

4 BY MR. FREEDMAN:

5 Q. What about if an incarcerated person passes a
6 note to an officer saying that -- complaining about
7 staff misconduct? Would that be a grievance with a
8 staff complaint on it?

9 MR. MAIORINO: Objection. Incomplete
10 hypothetical.

11 THE WITNESS: So the answer to a note being
12 passed from an inmate to an officer making an allegation
13 of staff misconduct, because it's outside of the staff
14 complaint process -- or sorry. Outside of the grievance
15 process, if you will, right now the process for that is
16 that any employee who is made aware of an allegation of
17 staff misconduct is required to report it. We would
18 expect that that is exactly what happens.

19 And so then as part of that process where the
20 employee is reporting that to their immediate
21 supervisor, obviously if it's an emergent issue, it's
22 going to be addressed very quickly. But if it's -- if
23 it's something that doesn't meet that emergency
24 threshold and it's submitted to the supervisor and it's
25 a piece of paper -- we sometimes refer to them as kites,

1 if you will, just a piece of paper, just in writing.
2 The expectation would be that we are doing a -- we're
3 looking into those allegations, and so the direction
4 that -- with the new grievance process, the direction
5 that we will be providing to our staff is we expect that
6 a supervisor will interview that inmate, that, you know,
7 they'll have the staff member's memo, if you will,
8 saying that he received this piece of paper from an
9 inmate, they'll submit it to the supervisor and that the
10 supervisor will interview the inmate. And if the inmate
11 confirms that that is a complaint that they'd like to
12 file about staff misconduct, that the supervisor would
13 then provide the inmate with a 602 form and give the
14 inmate the opportunity to complete that form so that it
15 can be submitted into the grievance process.

16 At the same time if the offender were to need
17 any assistance with filling out that form, that the
18 supervisor then would also be expected to do that for
19 the offender.

20 BY MR. FREEDMAN:

21 Q. If I'm hearing you correctly, though, the note
22 passed to an officer would not result in a "yes" answer
23 to, "Is there a grievance with a staff complaint";
24 correct?

25 A. I think the actual answer is is that it would

1 not automatically result in that grievance process, but
2 instead we would go another step or two to give that
3 offender the opportunity to then submit that grievance.

4 Q. The incarcerated person would have to file a
5 602, though, to officially trigger this process that
6 might result in an AIMS inquiry; is that correct?

7 MR. MAIORINO: Objection. Misstates prior
8 testimony. Incomplete hypothetical.

9 THE WITNESS: So the intent for the -- the
10 intent of the Allegation Inquiry Management Section and
11 the review of allegations of staff misconduct through
12 that section is absolutely that those allegations are
13 coming through or by way of the grievance process, yes.

14 BY MR. FREEDMAN:

15 Q. Let's say someone sends a letter to the officer
16 of the inspector general complaining about staff
17 misconduct. Would that letter result in a "yes" or a
18 "no" answer to "Is there a grievance with a staff
19 complaint?"

20 MR. MAIORINO: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: The -- the process that we expect
23 going forward is that, when that letter goes to the
24 office of the inspector general or to any other entity,
25 let's say the associate director or others, that that

1 letter would then be routed back to the institution;
2 that the institution would interview the inmate and give
3 the inmate or the incarcerated person the opportunity to
4 complete that 602; and that way, along with whatever
5 document was submitted to whomever outside of the
6 grievance process and then the 602, that it would be
7 entered into the grievance process at that point.

8 BY MR. FREEDMAN:

9 Q. Now, what about written complaints about staff
10 misconduct submitted by third parties; that is, not the
11 person who was the victim of the staff misconduct?
12 Would such third-party written complaints of staff
13 misconduct result in a "yes" or a "no" to the question
14 "Is there a grievance with a staff complaint?"

15 MR. MAIORINO: Objection. Incomplete
16 hypothetical.

17 THE WITNESS: So just like submitting -- just
18 like if a letter was received by the inspector general's
19 office, if we receive -- the intent of the process going
20 forward is if a letter is received by -- from a third
21 party documenting an allegation of staff misconduct --
22 and by the way, when we talk about a third party, we're
23 not talking about the staff misconduct actually
24 happening to the third party because that's a little bit
25 of a different process; right? We're actually talking

1 about --

2 Q. Correct.

3 A. Okay. We're talking about instead that the
4 third party is reporting an allegation of staff
5 misconduct that occurred to an incarcerated person, so
6 they're in the middle of the process.

7 Again, the -- the direction going out to the
8 field as we -- as we go forward is that we expect that,
9 when we receive that information, again, we will have
10 that inmate interviewed, that incarcerated person
11 interviewed at the institution; give that person the
12 opportunity, then, to submit a 602; we'll include a copy
13 of that document as well as the 602, and submit it
14 through the grievance process.

15 Q. Would a memorandum written by a staff member
16 reporting misconduct by other staff members against
17 incarcerated people result in a "yes" or a "no" answer
18 to the question, "Is there a grievance with a staff
19 complaint?"

20 MR. MAIORINO: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: That particular question actually
23 would hinge on a couple of things. If the staff member
24 is reporting for an incarcerated person, so let's say
25 the incarcerated person had a verbal conversation with a

1 staff member and said, you know, "This other employee is
2 engaged in staff misconduct," right, that -- that staff
3 member that's being reported to really becomes that
4 third party again, if you will. They're reporting
5 information that they were told by an inmate, but
6 they're not reporting anything that they actually saw,
7 witnessed, responded to or whatever.

8 So in that regard we would follow that process
9 as we described before, that we'll interview -- have
10 that inmate interviewed, give that inmate the
11 opportunity to fill out a grievance and submit that
12 through the process.

13 If it's something that this other employee
14 witnessed, so now they've witnessed an employee engaged
15 in staff misconduct against an incarcerated person,
16 that's a little bit different. Those are submitted
17 typically directly to the hiring authority in that
18 regard. They go to the hiring authority, and that would
19 look -- that would look more like, and in most cases I
20 believe would fit more properly into a -- a formal
21 investigation because of the -- because of the way that
22 the allegation came through.

23 So I would think that would more likely lead to
24 a formal investigation as opposed to the Allegation
25 Inquiry Management Section because the information did

1 not come from an inmate at that point.

2 Does that make sense?

3 Q. I think I understand what you're saying.

4 Is there any way under the second circumstance
5 that you were talking about there where an officer is
6 reporting misconduct that he or she actually observed
7 that AIMS would conduct an inquiry?

8 MR. MAIORINO: Objection. Incomplete
9 hypothetical. Vague and ambiguous.

10 THE WITNESS: I think that because we're in the
11 infancy stage of the Allegation Inquiry Management
12 Section, I think there is potentially -- there's a
13 chance that that may happen. Based on whether or not it
14 fits the actual criteria for submission to AIMS, I think
15 that it would definitely be a case-by-case decision,
16 because what we're looking for, the difference -- the
17 difference between going to the Office of Internal
18 Affairs for a formal investigation as opposed to staff
19 witnessing what they believe to be misconduct against an
20 inmate, we would still need -- we would still expect, in
21 order to go through the AIMS process, to have the -- the
22 incarcerated person's grievance submitted.

23 So it's -- potentially that person would be
24 interviewed and submit the 602. I think it would be a
25 case by case. And I'm not -- I don't know that there's

1 a definitive "yes" or "no" in that situation, but I
2 think it is possible, although I don't know under what
3 circumstances that might happen.

4 BY MR. FREEDMAN:

5 Q. So if I'm hearing you correctly, in most if not
6 all cases, in order to cross this first threshold
7 question into whether AIMS will conduct an inquiry,
8 there would have to be some written complaint by an
9 incarcerated person about staff misconduct; is that
10 correct?

11 A. The intent of a staff complaint being addressed
12 through the Allegation Inquiry Management Section is
13 absolutely that it's a -- that it's a written complaint
14 from the -- from the incarcerated person. And by
15 "written," it's if the incarcerated person cannot write
16 it themselves, that, you know, they get assistance from
17 staff as is called for in our different plans for
18 assistance.

19 Q. And it sounds like you've mentioned on a number
20 of occasions that, where there's an allegation that
21 comes not from a written complaint by -- sorry. Hold on
22 one second. My two-year-old is screaming in the
23 hallway.

24 (Pause in proceedings.)

25 MR. FREEDMAN: Okay. We're good. We're in a

1 new era here.

2 BY MR. FREEDMAN:

3 Q. You've mentioned on a couple of occasions that
4 where a staff complaint comes to the department's
5 attention not through a written complaint written by an
6 incarcerated person, that there will be a process to
7 interview the potential victim of staff misconduct,
8 provide them with -- and provide them with a 602 to
9 submit a written complaint; right?

10 A. That's correct. It's -- that is consistent
11 with what we already expect when we receive an
12 allegation that does not come from the offender directly
13 as we are -- the expectation is already that we are
14 interviewing that person to get -- to get their -- their
15 information firsthand.

16 Q. Is that policy written down anywhere?

17 A. So that is -- that is not a policy that's
18 written down currently. It is the expectation and it's
19 policy that we expect to have in department operations
20 manual as it relates to the Allegation Inquiry
21 Management Section. So it's one of the pieces that
22 we're putting together for this process.

23 Q. If, as it happened in the Armstrong case, an
24 incarcerated person submits a declaration in court about
25 staff misconduct that they -- in which they were a

1 victim, would CDCR go through the same process that you
2 previously discussed where they would go and interview
3 the person and encourage them to submit a 602 about it?

4 MR. MAIORINO: Objection. Incomplete
5 hypothetical. Goes beyond the scope that this PMK was
6 designated for for today's deposition.

7 THE WITNESS: If documents are submitted
8 through court, for instance, a declaration from an
9 incarcerated person, it goes directly to the court, I
10 would expect that we would become aware of it through
11 our legal team, and that would absolutely be something
12 that would be addressed with the office of legal affairs
13 and with our legal counsel to determine what process
14 exactly is used to answer that.

15 BY MR. FREEDMAN:

16 Q. Can an oral complaint by a victim of staff
17 misconduct standing alone trigger an AIMS inquiry?

18 MR. MAIORINO: Objection. Incomplete
19 hypothetical.

20 THE WITNESS: As we discussed previously, if
21 there's an oral complaint and that's all that we have is
22 just an oral complaint that is documented, we would give
23 the incarcerated person the opportunity to document that
24 via the grievance process.

25 If the incarcerated person chooses not to, does

1 not want to go through the grievance process, we still
2 have an obligation to look into that complaint. So no
3 matter what, it doesn't just disappear or vanish. It
4 has to be addressed but would not go through the AIMS
5 process.

6 BY MR. FREEDMAN:

7 Q. Sorry. I just want to make sure I have this
8 absolutely clear. For -- as a predicate to the
9 initiation of an AIMS inquiry, there has to be a written
10 grievance of a staff complaint by the incarcerated
11 person who was the victim of the staff misconduct; is
12 that correct?

13 A. I'm going to restate it just to make sure that
14 what I'm -- what I'm agreeing to is absolutely correct,
15 that the expectation is is that, in order for it to go
16 to the AIMS for an inquiry, for an allegation inquiry,
17 that we get that documented in writing from the -- from
18 the incarcerated person firsthand. So we're looking for
19 it to be submitted directly from the person who the
20 misconduct happened to, yes.

21 Q. And what is -- what is the purpose behind that
22 rule that you -- before you would conduct an AIMS
23 allegation inquiry there needs to be a written complaint
24 from the person who was a victim of the staff
25 misconduct?

1 MR. MAIORINO: Objection. Vague and ambiguous.

2 THE WITNESS: Part of the reason for the
3 Allegation Inquiry Management Section and this external
4 review, if you will, is to make sure that the integrity
5 of the process is maintained. It's not unheard of that
6 a note will be found in a grievance box or a letter will
7 come to a secretary or some other person that makes an
8 allegation of staff misconduct and may even include the
9 name of the person that potentially is making that
10 claim. And then when you interview that person, when
11 you have that interview, that person denies completely
12 that they submitted that, wrote that, put that in the
13 box, whatever the case may be.

14 And so what we want to make sure we're doing is
15 we want to make sure that those allegations that come
16 through through the grievance process, that we have
17 firsthand from the offender what the alleged misconduct
18 is and that they have their information specifically.
19 Because unfortunately it's very difficult for us to take
20 third-party information without specifics. Often it
21 doesn't have specifics; it doesn't have enough
22 information for us to even begin to look into the
23 allegation of thoughtfully. So getting that information
24 directly from the incarcerated person is really
25 important for us in order to ensure that we're using our

1 resources and getting into the allegations
2 appropriately.

3 BY MR. FREEDMAN:

4 Q. Many incarcerated people have trouble reading
5 and writing, don't they?

6 MR. MAIORINO: Objection. Overbroad. Vague
7 and ambiguous.

8 THE WITNESS: I -- I do not know what the --
9 what the numbers look like in the Department of
10 Corrections for literacy amongst our population, but I
11 can tell you that it's been my experience that many of
12 our incarcerated people do not -- you know, don't --
13 either have poor reading and writing skills or, you
14 know, lower than a high school level.

15 But with that said, I've also ran into very few
16 that could not complete a 602 or complete any other
17 document with enough information to move forward.

18 BY MR. FREEDMAN:

19 Q. And some incarcerated people with disabilities
20 have trouble completing grievance forms because of their
21 disabilities; right?

22 MR. MAIORINO: Incomplete hypothetical.
23 Overbroad and vague and ambiguous.

24 THE WITNESS: There are definitely inmates with
25 disabilities that would make it difficult to fill out a

1 602 form, which is why we definitely have in place staff
2 assistance. Our staff are aware of their responsibility
3 to assist incarcerated people when they need it to
4 complete those types of documents. No different than if
5 they were trying to submit a form to go to a medical
6 appointment or be seen by medical.

7 BY MR. FREEDMAN:

8 Q. And what sort of assistance can people with
9 disabilities get to complete grievance forms?

10 A. So for starters, we have a staff assistance
11 process. So when we have our incarcerated persons that
12 are identified as having disabilities, our -- our staff
13 have the ability to look that up in our electronic
14 databases, see what those disabilities are.

15 If we have an offender who is -- has difficulty
16 or has problems with their sight, because it's a paper
17 form and being able to fill out that paper form will be
18 difficult, it would be reasonable to expect that staff
19 would help them by writing that information that the
20 offender is relaying to them. So what we would expect
21 is that staff would -- and they may not be able to do it
22 right away, so it may be something that they ask the
23 incarcerated person, you know, "Can we get back to you?"
24 Maybe, you know, we work through a counselor or somebody
25 else, but giving them the opportunity to dictate what

1 they want in that grievance on that form and then staff
2 writing it for them.

3 In other cases, you know, due to disability
4 they may not -- I think writing is definitely the
5 biggest one, and so sight is a big deal. They may not
6 actually have the capability to write, period, based on
7 disabilities. Again, of course, helping to write
8 that -- that grievance for them.

9 Q. Which staff would provide that type of
10 assistance generally?

11 MR. MAIORINO: Objection. Overbroad and is an
12 incomplete hypothetical.

13 THE WITNESS: I don't think that there's any
14 one designated staff that would do that particular
15 process for the incarcerated person, but through our
16 training, staff are aware that, when that request is
17 made, that we are accommodating that person. And so
18 whether the -- it's a housing unit officer, and like I
19 said, if they're busy they may say, you know, "We're
20 going to have to get back to you," you know. "Just hold
21 on, and we'll get it." Maybe if it's in -- if they're
22 in the library and they're -- they need assistance, it
23 may be a library technician that's in the library.

24 One thing that we do find is a lot of our
25 incarcerated persons, especially when it comes to

1 filling out a grievance form, often turn to other
2 incarcerated persons that they know and that they trust
3 to complete that form as well for them.

4 BY MR. FREEDMAN:

5 Q. Is the grievance process supposed to be
6 confidential?

7 MR. MAIORINO: Objection. Vague and ambiguous.

8 THE WITNESS: The grievance process is not
9 confidential.

10 BY MR. FREEDMAN:

11 Q. Do all staff have access to the grievance
12 documents?

13 A. No. So the question you're asking is, do staff
14 have the ability to remove the grievances from the
15 locked boxes where they're submitted. The answer to
16 that question is no, they do not.

17 We have, as a department, put out a rule that
18 grievances are collected by staff outside of that
19 immediate work area. Typically it's staff from the
20 office of grievances but could also be other staff
21 designated by the warden as long as they don't work in
22 that immediate area.

23 Q. And why does CDCR have that policy?

24 A. That policy -- and by the way, because I was
25 not involved in the creation of that policy necessarily,

1 but when that policy came to be, it was to ensure that
2 inmates had access to the grievance process and that
3 there was no concern that staff were removing those
4 grievances, that they weren't making it to the grievance
5 offices. So it was really to make sure that no matter
6 what, if a grievance was submitted, it made it to the
7 grievance office to be logged and reviewed and then
8 dealt with accordingly.

9 Q. So CDCR has made a policy decision that it is
10 not appropriate for housing unit staff to look at
11 appeals submitted in the housing unit appeals box;
12 correct?

13 MR. MAIORINO: Objection. Overbroad. Vague
14 and ambiguous. Misstates prior testimony.

15 THE WITNESS: I don't think that that would
16 accurately -- I don't think that was an accurate
17 statement that you made. What I would say is that -- is
18 that we've made a decision that the collection of
19 grievances happened outside of the housing unit. So
20 there's no expectation that staff will never see any
21 grievance written. As a matter of fact, when grievances
22 are written and then go to the office of grievances,
23 they're then issued out to be answered at that first
24 level through institution, and the grievance is right
25 there, and staff often see that. So there's no

1 expectation that the grievances are kept confidential.

2 The reason for the boxes was to ensure that if
3 an inmate submitted in the locked boxes and the fact
4 that nobody else has access to them except for the
5 designated staff, is to make sure that anything that is
6 submitted gets to the office of grievances, is logged in
7 and recorded as being received.

8 BY MR. FREEDMAN:

9 Q. Is it possible that a person unable to write a
10 grievance themselves would not feel comfortable asking
11 housing unit staff to write the grievance for them?

12 MR. MAIORINO: Objection. Vague and ambiguous.
13 Overbroad. Calls for speculation and goes beyond the
14 scope that this PMK was designated.

15 THE WITNESS: It's definitely outside the
16 purview of AIMS, but it's been my experience that there
17 are times -- I don't think it's the norm, but I can
18 imagine there are times when an incarcerated person
19 would not want to go to housing unit staff and ask them
20 to write the grievance, especially if their intent is to
21 submit a staff complaint against that person.

22 So absolutely, I think there are times when
23 that -- when that would not happen, but they are not the
24 only people that can fill those out. All staff are
25 expected to help the population.

1 BY MR. FREEDMAN:

2 Q. So but if someone is forced to be reliant on
3 staff to write a grievance, it -- strike that.

4 By excluding nonwritten complaints of staff
5 misconduct from being capable of triggering an AIMS
6 inquiry, do you believe that that makes it more
7 difficult for some people with disabilities to have
8 their allegations investigated by AIMS?

9 MR. MAIORINO: Objection. Incomplete
10 hypothetical and mischaracterizes prior testimony.

11 THE WITNESS: I don't -- I don't think it makes
12 it more difficult. I think that instead what I would
13 say is that those -- those incarcerated persons who have
14 difficulty writing would -- we would then need to make
15 sure that our other processes that exist to give those
16 persons assistance are in place and are functioning so
17 that, you know, our -- especially our disabled
18 incarcerated persons have that ability to dictate the
19 grievance that they have and have it written so that it
20 can be submitted in that manner.

21 So I think that in all cases, that's why we
22 have and require our staff to provide the assistance
23 that we require for disabled inmates is to ensure that
24 they have equal access to our programs and services, and
25 this is just another one of those cases.

1 BY MR. FREEDMAN:

2 Q. So a person who could write a grievance by
3 themselves would be able to just write the grievance and
4 submit it on their own; right?

5 MR. MAIORINO: Objection. Overbroad.
6 Incomplete hypothetical and goes beyond the scope that
7 this person was designated as a PMK.

8 THE WITNESS: I would say yes, if a person has
9 writing skills and the ability to write, that they would
10 be able to complete a grievance and submit it without
11 any assistance, yes.

12 BY MR. FREEDMAN:

13 Q. Now, a person who can't write the grievance for
14 themselves for whatever reason, including disability,
15 would have to do something in addition to be able to
16 submit a grievance; right?

17 MR. MAIORINO: Objection. Incomplete
18 hypothetical. Vague and ambiguous. Overbroad. Calls
19 for speculation. Beyond the scope that she was
20 designated as a PMK.

21 THE WITNESS: As I've mentioned previously, if
22 a person has a disability or for any other reason could
23 not complete it on their own, then absolutely,
24 assistance should be there to help them to do that.

25 But correct, if they can't write it themselves,

1 then that next -- the next step would be to make sure
2 that there's somebody that can, through our assistance
3 that we have to give the offenders, that that's
4 available.

5 BY MR. FREEDMAN:

6 Q. They'd have to find someone to help them;
7 right?

8 MR. MAIORINO: Objection. Incomplete
9 hypothetical. Calls for speculation.

10 THE WITNESS: I don't know that "find" is the
11 right word because our incarcerated population
12 encounters staff pretty frequently throughout the day.
13 So I would think through their regular course of a day
14 in the institution that they're encountering multiple
15 staff members, and that encounter of multiple staff
16 members, you know, that they, instead of having to find
17 somebody, would be able to approach somebody and make
18 that request.

19 BY MR. FREEDMAN:

20 Q. That'd have to get a staff member to agree to
21 help them; right?

22 MR. MAIORINO: Objection. Incomplete
23 hypothetical.

24 THE WITNESS: They have to make the request.
25 So the staff member can't do something that they don't

1 know that needs to be done. So -- so absolutely. They
2 have to make the request in order for that to be
3 completed.

4 BY MR. FREEDMAN:

5 Q. And the staff member would have to agree to
6 grant that request; right?

7 MR. MAIORINO: Incomplete hypothetical.

8 THE WITNESS: The staff member would have to
9 either provide that assistance or arrange for that
10 assistance to be provided, correct, and that's the
11 expectation of our staff is that, for offenders that
12 need assistance with writing, that they either provide
13 that assistance or make arrangements so that it can be
14 provided in a timely -- in a timely manner.

15 BY MR. FREEDMAN:

16 Q. And once they are able to have a staff member
17 there to provide that assistance to them, they then have
18 to tell the staff member about the staff complaint that
19 they have; right?

20 MR. MAIORINO: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: That's correct. We wouldn't be
23 able to look into something if we didn't know what the
24 complaint was; that's correct.

25 ///

1 BY MR. FREEDMAN:

2 Q. So who makes the decision regarding whether a
3 grievance is a staff complaint?

4 MR. MAIORINO: Objection. Vague and ambiguous,
5 overbroad and incomplete hypothetical.

6 THE WITNESS: The initial review of a grievance
7 when it comes in goes to the grievance coordinator, so
8 of course that grievance coordinator is the first one
9 that takes a -- takes a look and does an initial review
10 and determines if any of the claims involved in the
11 grievance would include a staff complaint. Grievance
12 coordinators receive this training to be alerted for in
13 what to look for in terms of an allegation of staff
14 misconduct. So it's the grievance coordinator that
15 first looks at it and determines whether it should be
16 referred to the reviewing authority for designation as a
17 complaint against staff.

18 BY MR. FREEDMAN:

19 Q. What information can the grievance coordinator
20 look at to make that decision?

21 A. The grievance coordinators, in making that
22 decision, are typically looking only at what comes in on
23 that grievance. So grievance coordinators are often
24 looking at the grievance itself or whatever it was
25 written on and anything attached to it that the -- that

1 the offender included or the incarcerated person
2 included. That could be statements from other inmates
3 if they included that. It could be -- it could be a
4 copy of a document. But anything else that is submitted
5 with that grievance coordinator has the ability to
6 review.

7 Q. Can they speak with the complainant? I'm
8 sorry. Just to be clear, can they speak with the
9 complainant before deciding whether it is a staff
10 complaint?

11 A. Nothing in the policy prevents them from
12 speaking to the complainant before they make a decision,
13 so if a complainant -- nothing prevents them from doing
14 that. I don't -- I don't know that it happened very
15 often, but nothing prevents them from doing that.

16 Q. Is there anything in the policy that requires
17 them to speak with the complainant if the grievance is
18 unclear regarding whether it's a staff complaint?

19 A. Not -- not at that initial review. There's
20 nothing in the policy that requires that, no.

21 Q. How much time does the grievance coordinator
22 have to make a decision about whether a grievance has a
23 staff complaint?

24 MR. MAIORINO: Objection. Overbroad. Calls
25 for speculation. Goes beyond the scope of the PMK

1 designation.

2 THE WITNESS: The -- the expectation is that
3 all of our grievances that are submitted through the
4 process are reviewed timely. In new -- the emergency
5 regulation, so they will go into effect June 1,
6 indicates that within one business day, every single
7 grievance that's collected is reviewed to ensure that
8 any emergency issues are addressed immediately. Beyond
9 that, then, it goes to the grievance coordinators --
10 coordinator who does that review.

11 If anything in that -- in that grievance rises
12 to the level of a staff complaint, then they need to
13 submit it over to the reviewing authority. The
14 expectation is that the reviewing authority will review
15 any claims of any staff complaints and make a decision
16 whether to forward it to AIMS or not within five
17 business days.

18 And so the number of days that the grievance
19 coordinator has to get it to the reviewing authority and
20 the reviewing authority to review it and make the
21 decisions to forward it one way or the other, our
22 expectation is that that's completed within five days.

23 Those aren't hard lines. There will
24 potentially be times where there may be days on one way
25 or the other impact, and that will not impact whether

1 AIMS accepts the allegation. If it meets the criteria
2 to go to AIMS, it's still going to go to AIMS even if it
3 falls outside of that number of days, but the
4 expectation is that it's being routed -- reviewed and
5 routed expeditiously and the expectation being five
6 days.

7 BY MR. FREEDMAN:

8 Q. On Exhibit 3, this document MILLER02, there's a
9 big box in the middle.

10 Do you see that?

11 A. Yes.

12 Q. And then it says at the top of that box in
13 bold, "Within five calendar days of discovery of the
14 allegation the hiring authority shall," and then it
15 lists a bunch of things.

16 Do you see that?

17 A. I do.

18 Q. Now, I think when you were just talking, you
19 said that the -- you said that the expectation is that
20 the reviewing authority would make a decision on a
21 referral to AIMS within five business days.

22 Is it five business days or five calendar days?

23 A. I'm sorry. I don't know that I said "business
24 days," but if I did, I did not mean to. It's calendar
25 days.

1 Q. Okay.

2 A. I'm sorry.

3 Q. Okay. So let's move on to the second question
4 on the flowchart. "Is it a claim or allegation
5 regarding UOF, PREA, offender discipline, or a
6 reasonable accommodation?"

7 Do you see that?

8 A. I do.

9 Q. And it looks like to me, if the answer is "no,"
10 you move on to the next step in the process; right?

11 A. That's correct.

12 Q. And if the answer is "yes," you may move on in
13 the process, or you might not move on in the process.

14 Is that right also?

15 A. That's correct.

16 Q. Okay. So -- and then on the left side of the
17 chart there are four boxes. The top one says "UOF."

18 What does "UOF" stand for?

19 A. UOF is the acronym we all can use for Use of
20 Force.

21 Q. And then the second box says "PREA."

22 What does PREA stand for?

23 A. PREA is the acronym for Prison Rape Elimination
24 Act.

25 Q. And then the third box says "Offender

1 Discipline," and the fourth box says "Reasonable
2 Accommodation"; right?

3 A. That's correct.

4 Q. And by "Reasonable Accommodation," is that a
5 reasonable disability accommodation?

6 A. That's correct.

7 Q. All right. So let's go through these one by
8 one. Let's start with the Prison Rape Elimination Act
9 or PREA.

10 The flowchart, if I'm reading it correctly
11 indicates that complaints of staff misconduct that fall
12 under PREA will not trigger an AIMS inquiry; is that
13 correct?

14 A. That is correct.

15 Q. What types of staff complaints would be covered
16 by PREA, would be a PREA complaint?

17 A. So if it was a violation of the standards under
18 the Prison Rape Elimination Act, that would be -- for
19 staff misconduct, that would include staff sexual
20 misconduct, and that would also include staff sexual
21 harassment. So if the staff member was involved in
22 sexual misconduct with an inmate or was sexually
23 harassing an inmate, those would both fall into this
24 category.

25 Q. Would the hiring authority be the person who

1 determines ultimately whether a staff complaint is a
2 PREA complaint?

3 A. Yes, yes, yes.

4 Q. And I actually have a background question. I
5 noticed in the regulations that we were looking at
6 earlier there are repeated references to the reviewing
7 authority.

8 What is the reviewing authority?

9 A. So the reviewing authority, when we're talking
10 about allegations of staff misconduct, involve the chief
11 deputy warden or warden. And so when we talk about
12 reviewing authority, we're very clear that the person
13 reviewing an allegation of staff misconduct cannot go
14 below the level of a chief deputy warden in the
15 institution setting.

16 Q. And how is the reviewing authority different
17 from the hiring authority?

18 A. In the -- in the emergency regulations we speak
19 to the reviewing authority, and they're taking --
20 they're looking at these allegations of staff
21 misconduct, and they have the authority to make a
22 decision whether it's going to go to AIMS or whether
23 it's going to stay locally.

24 The hiring authority, a little bit different.
25 Always the warden, right, in the institution setting or

1 the chief executive officer on the health care side.

2 But in this case we'll talk about the warden.

3 So the hiring authority is the person that has
4 the ability to take disciplinary action against staff.
5 They're also the person that has to approve an
6 investigation against staff. And so hiring authorities
7 are the wardens, and it's their responsibility to make
8 those decisions.

9 In the grievance process we allow a reviewing
10 authority to make a decision whether it would go to AIMS
11 or whether it would go -- or stay locally. If that
12 reviewing authority believes that the allegation meets
13 the reasonable belief standard and should be going to
14 the Office of Internal Affairs for a formal
15 investigation, then that reviewing authority, the --
16 refers it to the hiring authority, a request for
17 investigation is completed and it's submitted -- it
18 requires the hiring authority's approval.

19 Q. So in the institutional context, the reviewing
20 authority is either the hiring authority or the chief
21 deputy warden; correct?

22 A. That is correct, yes.

23 Q. And then the hiring authority is just the
24 warden; correct? Or the chief executive officer on the
25 medical side?

1 A. That's correct, yes.

2 Q. Okay. When an institution is making a decision
3 about whether a staff complaint is a PREA complaint,
4 would they only be looking at the information on the
5 written 602 grievance?

6 MR. MAIORINO: Objection. Overbroad. Goes
7 beyond the scope of her designation as a PMK.

8 THE WITNESS: I'm not sure I understand the
9 question.

10 BY MR. FREEDMAN:

11 Q. Let me rephrase it. What -- when the reviewing
12 authority is determining whether a staff complaint is a
13 PREA complaint, what information does the reviewing
14 authority have in front of him or her to make that
15 decision?

16 MR. MAIORINO: Objection. Goes beyond the
17 scope for which she was designated as a PMK. May call
18 for speculation.

19 THE WITNESS: So although outside of the AIMS
20 process, the reviewing authority, for matters that may
21 be a violation of the Prison Rape Elimination Act,
22 typically they are looking at what was submitted with
23 the grievance, and so the statements from the
24 incarcerated person and then any evidence that they --
25 that they submitted along with that.

1 BY MR. FREEDMAN:

2 Q. Would they typically speak with the complainant
3 before determining whether it was a PREA grievance?

4 MR. MAIORINO: Objection. Goes beyond the
5 scope that she was designated as a PMK. May call for
6 speculation.

7 THE WITNESS: So they would not necessarily
8 speak to the incarcerated person before making that
9 determination that -- and by the way, in these cases
10 remember that the reviewing authority -- the reviewing
11 authority is not necessarily -- let me make sure that we
12 are very clear about this.

13 If the grievance coordinator receives a
14 grievance with a claim that would violate the Prison
15 Rape Elimination Act and involve staff sexual misconduct
16 or staff sexual harassment, because that is something
17 that does not go to the reviewing authority to be
18 considered for AIMS, then that would, because it is a
19 violation of the Prison Rape Elimination Act, that is
20 automatically noticed -- that allegation is
21 automatically noticed to the hiring authority.

22 And immediately, the process for the inquiry
23 into that allegation is started with the use of a what
24 we call a locally designated investigator, those persons
25 that are trained by the Office of Internal Affairs to

1 conduct allegation inquiries into claims that would
2 violate the Prison Rape Elimination Act. Those staff,
3 those locally designated investigators -- we refer to
4 them as LDIs -- they are trained specifically to look
5 into that type of allegation whether it is
6 staff-on-offender or offender-on-offender.

7 BY MR. FREEDMAN:

8 Q. A 602 claiming that an officer groped an
9 incarcerated person's genitals during a search would not
10 result in an AIMS inquiry; correct?

11 MR. MAIORINO: Objection. Incomplete
12 hypothetical.

13 THE WITNESS: That's correct that it would not
14 be -- when that claim is received, it would not be
15 referred to the reviewing authority for consideration to
16 be sent to the AIMS unit. Instead it is immediately
17 addressed via the local process for addressing Prison
18 Rape Elimination Act violations, and that's through the
19 use of a locally designated investigator. So correct,
20 it doesn't go to the reviewing authority to be referred
21 to AIMS.

22 BY MR. FREEDMAN:

23 Q. Now, if you go down to the fourth box,
24 "Reasonable Accommodation," the flowchart indicates that
25 complaints about staff not providing reasonable

1 accommodations to people with disabilities will also not
2 trigger an AIMS inquiry; is that correct?

3 A. I don't think that was stated exactly accurate,
4 so let me say that, if an incarcerated person submits a
5 grievance and they're requesting an --

6 (Interruption.)

7 THE REPORTER: Off the record.

8 (Record read.)

9 THE WITNESS: So in response, if an
10 incarcerated person submits a grievance and that person
11 is requesting a new accommodation, a reasonable
12 accommodation based on a disability and it's an
13 accommodation they have not been previously given, then
14 that would not be something that goes into the
15 allegation inquiry management section for review.
16 That's something that would go into our RAP process to
17 be addressed.

18 And likewise if the -- the second part of that
19 box, if an incarcerated person is disputing the decision
20 made by the RAP, then again not something that goes into
21 the Allegation Inquiry Management Section but instead is
22 addressed at the institution through the supervisory
23 review.

24 BY MR. FREEDMAN:

25 Q. What if someone is doing neither of those

1 things and is saying that staff violated policy by not
2 providing the reasonable accommodation in the past?

3 MR. MAIORINO: Objection. Incomplete
4 hypothetical. Goes beyond the designation as a PMK.

5 THE WITNESS: See, I don't know that without
6 very specific scenarios that is something that can be
7 easily answered because it really requires more of a
8 case-by-case review for -- if the incarcerated person is
9 alleging that the employee intentionally refused to
10 provide an accomodation, then that falls into the world
11 of being a staff complaint and is different than if the
12 employee failed to provide the accommodation but there's
13 no information to suggest that that failure to provide
14 the accommodation was intentional, done with malice. So
15 I think that it really would require information from
16 the grievant about -- about the background of how that
17 accommodation was not met.

18 BY MR. FREEDMAN:

19 Q. And why would it matter whether the failure to
20 comply with policy regarding the provision of a
21 reasonable accommodation was intentional or
22 unintentional?

23 A. The premise of something being a staff
24 complaint really in many ways hinges on the intentional
25 misconduct of staff. There are plenty of times when

1 staff don't follow policy to the letter, and when you --
2 when you get to the heart of the matter, it wasn't
3 intentional. In some cases there's an explanation for
4 it; in other cases they just didn't know what the policy
5 was. And so it's the difference between refusing --
6 refusing something as opposed to not knowing that you
7 needed to provide it to begin with. So that aspect of
8 the allegation being intentional really does make a
9 difference.

10 Q. Can staff only be disciplined for intentional
11 failures to comply with policy?

12 MR. MAIORINO: Objection. Overbroad. Vague
13 and ambiguous. Goes beyond the scope.

14 THE WITNESS: No. Although the disciplinary
15 process is separate from AIMS, of course we're looking
16 at whether or not an allegation is likely to result in
17 adverse disciplinary action when we review for an AIMS
18 allegation. And so can -- can an unintentional act lead
19 to adverse action? Absolutely it can, which is why I
20 say that it really is a case-by-case review. You have
21 to look at that, and the decision has to be made is this
22 misconduct likely to result in adverse disciplinary
23 action? And if so, then of course, we're looking at it
24 going to the Allegation Inquiry Management Section.

25 But if the misconduct is not likely to result

1 in adverse disciplinary action and may only go to rise
2 to the level of -- and even if true, only be -- only
3 rise to the level of corrective action, then it wouldn't
4 be something that goes to the Allegation Inquiry
5 Management Section.

6 So and that's why it's important to also know
7 some of the background and have information about the
8 actual allegations, intentional or not, and the harm
9 that it caused.

10 BY MR. FREEDMAN:

11 Q. Now, we're talking about the second question on
12 the flowchart; right? "Is it a claim or allegation
13 regarding Use of Force, PREA, offender discipline or a
14 reasonable accommodation"; correct?

15 A. That's correct.

16 Q. And what I hear you saying is that, if someone
17 on a grievance form complains that staff previously
18 failed to provide them with a requested reasonable
19 accommodation, it would be a case-by-case basis to see
20 whether it would move past the second question?

21 MR. MAIORINO: Objection. Incomplete
22 hypothetical. Misstates prior testimony.

23 THE WITNESS: So the -- let me make sure I
24 understand the question. That the incarcerated person
25 puts in a grievance, This is the second time that this

1 employee has denied me my reasonable accommodations.

2 So that's in the grievance --

3 BY MR. FREEDMAN:

4 Q. Let's make it -- let's make it a little bit
5 more concrete. "On June 1st, 2020, I asked
6 Officer Smith to call for a wheelchair pusher for me.
7 No wheelchair pusher ever came for me." The end.

8 MR. MAIORINO: Objection. Incomplete
9 hypothetical and beyond the scope for which she was
10 designated.

11 THE WITNESS: So the end. I would say that if
12 that's the totality of the grievance, that
13 the incarcerated person is saying, "I asked for a
14 wheelchair pusher, and a wheelchair pusher never came,"
15 but the incarcerated person didn't say that the staff
16 member refused to get them a wheelchair pusher, denied
17 them a wheelchair pusher, so again, it absolutely is
18 something that has to be evaluated.

19 Is that a staff complaint? Is that a policy
20 violation that needs to be remedied? And if, indeed,
21 whether the employee forgot to call or a wheelchair
22 pusher just never came, is that on its own by itself
23 reason to believe that the employee, if true, that the
24 employee would receive adverse disciplinary action.
25 Again, case-by-case call, and a decision has to be made

1 one way or the other.

2 I, of course, am not the reviewing authority
3 currently but -- and absolutely overseeing this process.
4 And I would say that in that case, very short scenario,
5 that I don't believe that it would be likely to lead to
6 adverse discipline action.

7 BY MR. FREEDMAN:

8 Q. But that's the next question on the flowchart;
9 right?

10 A. That is the next question. But we had
11 already -- when you were talking about reasonable
12 accommodation and you said it was neither of those two,
13 I -- you know, then on the bottom of the box, so right.
14 You're right. That's absolutely the next question.

15 Q. And I understand that the claim violation of
16 policy is not sufficient to result in adverse action.
17 It wouldn't go to AIMS; correct?

18 A. That's correct.

19 Q. The -- Let's look at the box called "Offender
20 Discipline."

21 A. Okay.

22 Q. Can you explain the different bullets in that
23 box and what they mean?

24 A. Sure. So when we talk about offender
25 discipline, we are talking about the -- primarily the

1 rules violation report process. So we're talking about
2 employees who document an offender's -- an incarcerated
3 person's misconduct and the process we go through for
4 hearing that.

5 So the very first bullet on there is the "Claim
6 of due proves violation." So in our rules violation
7 report process they are due processes that are
8 guaranteed to the incarcerated person. For instance,
9 they have the right to call witnesses. They have the
10 right to have their reports and all nonconfidential
11 attachments 24 hours in advance. So things of that
12 nature; due process rights.

13 If the allegation is an allegation that staff
14 violated their due process rights during the discipline
15 process, that by itself is not enough to say it's going
16 to go to the Allegation Inquiry Management Section.
17 Instead that will stay at the local level and be
18 addressed as a disciplinary appeal.

19 "Disagreement with decision," it's rare
20 although it sometimes happens that the incarcerated
21 person agrees when they are found guilty of a violation.
22 And so in those cases where they disagree with the
23 decision and they feel that -- let's say that their
24 belief is that the hearing officer did review all the
25 evidence and they want to discuss that, that they

1 believe it was not heard appropriately and they disagree
2 with the decision, again, not a complaint of staff
3 misconduct, a disciplinary appeal, something that would
4 be handled at the disciplinary level or at the appeals
5 process locally.

6 And then finally a claim that the "disciplinary
7 report as written is untrue." In that third bullet,
8 that again -- we talked about a case-by-case review. If
9 the offender -- if the incarcerated person disagrees
10 with the rule violation report, the narrative of the
11 rule violation report, and they believe that that's not
12 true, whether that's not how it happened, they didn't --
13 you know, they didn't find something or they said they
14 did, whatever the case may be, if -- if that's the
15 allegation that they believe that the rule violation
16 report as written is untrue, it really becomes a matter
17 of reviewing that allegation to determine if -- if it --
18 if the incarcerated person is, you know -- if they say
19 they're lying, they planted evidence, that's a -- that's
20 different; right? Is it case by case? Now we're
21 looking at something that, if true, could lead to
22 adverse disciplinary action.

23 If the claim is not that they're lying but just
24 that, you know, I -- let's say the reporting staff
25 member says, "I was fighting with this other inmate" --

1 "I wasn't fighting with the other inmate. The other
2 inmate was fighting with me," right, or some variation.
3 Now it's really a perspective issue. More than
4 anything, we're looking at, you know, two people may not
5 see everything exactly the same. So it's a
6 case-by-case. The decision has to be made case by case.
7 And that, again, is a situation that has to be evaluated
8 and the decision made whether that it meets the
9 threshold that it's likely to result in adverse
10 disciplinary action if true.

11 Q. So under that third bullet there it says,
12 "Based on the facts alleged and not the opinion of the
13 complainant."

14 What does that mean?

15 A. That -- I think I previously tried to explain,
16 but let me try again that that -- perspectives are not
17 always exactly the same. So for instance, when staff
18 respond to an incident, they may see both inmates
19 fighting. But the grievant may say, "I was not
20 fighting. I was defending myself." So we're talking
21 about a difference on perspective.

22 But if there's no evidence to suggest that the
23 reporting employee didn't see what they reported and to
24 them it appears two inmates fighting where the
25 incarcerated person that files the grievance says no, I

1 was defending myself, so it's that type of -- does that
2 make sense? That it's that type of difference as
3 opposed to making an allegation that they planted
4 evidence or that they widened the report or . . .

5 Q. Now, let's go back up to the top box. Use of
6 Force, "UOF."

7 The flowchart indicates that only certain types
8 of staff misconduct allegations related to the use of
9 force would trigger an AIMS inquiry; correct?

10 A. That's correct.

11 Q. And those allegations -- those are allegations
12 related to unreported uses of force; right?

13 A. That's correct. If there's no incident
14 happened -- related to an allegation of use of force
15 that would be unreported, and that would -- that would
16 trigger AIMS.

17 Q. And allegations -- and those include
18 allegations related to reported uses of force in which
19 the complainant suffered bodily injury or great bodily
20 injury; correct?

21 A. That's correct. And as we discussed earlier,
22 great bodily injury already on a natural goes to OIA as
23 part of the deadly force review process, and so -- but
24 the serious bodily injury claims do not and so, right,
25 those would be an AIMS -- most often an AIMS referral

1 unless the reasonable belief standard has already been
2 met, in which case it could go to OIA directly also.

3 Q. And all other allegations of staff misconduct
4 related to use of force will not go through AIMS;
5 correct?

6 A. That's correct. That if it's an allegation of
7 unnecessary or excessive use of force and if use of
8 force is reported and the use of force did not result in
9 SBI or GBI, then we would continue -- and you'll see the
10 two sets of numbers, the 3013 and 3014, those are the
11 form numbers that we use in the inquiry process for
12 allegations of unnecessary or excessive use of force.
13 They would stay at the institution level for that
14 process unless at some point the reasonable belief
15 standard is met, in which case again it would go back to
16 the hiring authority and could be then referred to the
17 Office of Internal Affairs. So minus the reasonable
18 belief standard, it would stay in the local process.

19 Q. And AIMS would not be involved; right?

20 A. That's correct. There's -- with that, AIMS
21 would not be involved.

22 MR. FREEDMAN: I'd like you to take a look at
23 the document MILLER03 which we'll mark as, I believe,
24 Exhibit 4 entitled "AIMS Role - Grievance Alleging
25 Unnecessary or Excessive Use of Force (UOF)."

1 (Exhibit 4, AIMS Role - Grievance Alleging
2 Unnecessary or Excessive Use of Force (UOF),
3 MILLER03_00017, marked for identification.)

4 BY MR. FREEDMAN:

5 Q. Do you see that?

6 A. I do.

7 Q. Okay. What is this document?

8 A. This document goes a little bit further into
9 the grievance -- the local process and then the AIMS
10 process for allegation or excessive use of force.

11 Q. And is this flowchart to be used to help the
12 institutions determine whether the hiring authority
13 should make a referral to AIMS for an inquiry in an
14 incident related to use of force?

15 A. So correct. This is -- this gives -- not
16 the -- you said the hiring authority but we're going to
17 roll it back a little bit to the reviewing authority on
18 this one and say that, right, this is where a decision
19 is made based on an allegation of unnecessary or
20 excessive use of force whether or not it -- the
21 allegation, whether it will go to AIMS.

22 And then a little more detail, by the way, on
23 what needs to be done and included in that submission so
24 that the allegation inquiry could be completed.

25 Q. And this flowchart has two questions on it that

1 need to be answered; is that correct?

2 A. That's correct.

3 Q. And the first one is, "Has the UOF incident
4 been via a CDCR 837 (Institutions) or a CDCR 1662
5 (Parole)?"

6 And if the answer is "no," it looks as if you
7 go to -- you jump to some other steps, some other
8 actions you need to take. And if the answer is "yes,"
9 you go to the second question.

10 Is that correct?

11 A. That is correct, yes.

12 Q. Okay. What does it mean for a Use of Force
13 incident to be reported by a CDCR 837?

14 A. So in the California Department of Corrections
15 and Rehabilitation, all uses of force are recorded in an
16 incident report, and that -- CDCR 837, that is our crime
17 and incident reporting documentation. And so for it to
18 be reported means that staff that used force reported
19 the use of force in an incident -- we like to refer to
20 them as incident packages where you have the staff who
21 used force, the staff that witnessed force being used,
22 another staff involved in the incident, staff involved
23 in the incident, who all submit reports to document the
24 incident as it took place so that it can be reviewed.

25 Q. Will the grievance coordinator be the person

1 answering the question in the first box in the first
2 instance?

3 A. In some cases it will be the --

4 Q. Let me back up. Let me back up. Well, I think
5 you were going to answer. Go ahead.

6 A. In some cases it will be the grievance
7 coordinator if they receive a complaint, an allegation
8 of unnecessary or excessive use of force that was not
9 reported at the time of the incident.

10 Q. And what would the grievance coordinator look
11 at to determine whether the use of force was recorded by
12 a CDCR 837?

13 A. So all of the incidents that are documented in
14 the institution are entered into -- now into the
15 incident report tracking system, a part of our
16 electronic record system for the Department of
17 Corrections. And so they would be looking -- based on
18 the information provided by the inmate, they would be
19 looking to see if an incident report had been generated
20 on -- you know, for the date involving this inmate and
21 involving this allegation or involving this reported use
22 of force.

23 Q. And am I correct that the grievance
24 coordinators receiving the 602 would be the person
25 checking in the incident report tracking system to

1 determine if there was an 837 about the incident raised
2 on the grievance?

3 A. The grievance coordinator may check on that
4 themselves. They may reach out to either the
5 use-of-force coordinator. They might reach out to the
6 particular facility where the incident allegedly did
7 take place to see if they have it logged as well.
8 Because the incident report tracking system is fairly
9 new and because I've been at headquarters the whole
10 time -- it just rolled out recently -- I'm not sure what
11 the level of access is for that for the grievance
12 coordinators.

13 And so I think they have the ability to look
14 that up themselves, but I would not -- I'm not certain.
15 But no matter what, they would verify if an incident
16 report had been, again, created.

17 Q. Okay. So let's move on to the second box.
18 Let's say the answer is yes, there was a reported use of
19 force related to the grievance filed by the incarcerated
20 person. The next box says, "Does Use of Force Incident
21 Package include SBI/GBI?"

22 Do you see that?

23 A. I do.

24 Q. And SBI stands for Serious Bodily Injury;
25 correct?

1 A. It does.

2 Q. And GBI stands for Great Bodily Injury";
3 correct?

4 A. Yes.

5 Q. Serious bodily injury is described in the
6 emergency -- is defined in the emergency regulations;
7 correct?

8 A. I believe that we defined it in the emergency
9 regulations, yes.

10 Q. Why don't you pull up the emergency
11 regulations. I think it was Exhibit 2. It's Exhibit --
12 MILLER04, I believe, and take a look at
13 Section 3480(b)(13).

14 A. Okay.

15 Q. Is that the definition of serious bodily injury
16 that's being used by CDCR to determine whether something
17 should be referred to AIMS?

18 A. That is the definition being used. And that
19 definition there is consistent with the definition at
20 the beginning of our California Code of Regulations
21 where all of the definitions are reiterated here.

22 Q. And in Section 3480 (b)(13), it is defined as,
23 "'Serious bodily injury' means a serious impairment of
24 physical condition, including but not limited to the
25 following: Loss of consciousness, concussion, bone

1 fracture, protracted loss or impairment of any bodily
2 member or organ, a wound requiring extensive suturing
3 and serious disfigurement."

4 Correct?

5 A. That's correct.

6 Q. Now, in this process of determining whether
7 something should be referred to AIMS, who answers the
8 question does use-of-force incident report package
9 include SBI/GBI?

10 A. So first -- and I just want to make sure that
11 we're very clear that there -- there may be an incident
12 package that -- where an inmate sustains serious bodily
13 injury or even great bodily injury but not as a result
14 of use of force. So in this regard we're talking about
15 serious bodily injury or great bodily injury and, more
16 specifically, serious bodily injury that likely resulted
17 or did result, was a result of staff use of force, so --

18 Q. I understand that.

19 A. Okay. Very good.

20 And that decision is made often at the time of
21 incident. So when an incident takes place, if the
22 inmate -- if it was determined that the inmate had a
23 loss of consciousness, if there was a bone fracture,
24 wound requiring extensive suturing, so that often is a
25 decision that can be made right away at the time of

1 incident.

2 It may also be something that cannot be
3 determined until the incarcerated person, let's say that
4 they -- right after the incident they're taken to a
5 local hospital for treatment, it may not be something
6 that we can definitively say serious bodily injury
7 exists until they return from the hospital and we know
8 the extent of the injuries. So this is something that's
9 determined, like I said, often at the time of incident
10 but may not happen until we either have the incarcerated
11 person returning from a hospital or having treatment for
12 an injury.

13 And so sometimes it doesn't happen immediately.
14 May happen a day or two later. It's -- there's not any
15 one specific time that it is determined in an incident.

16 Q. Again, who was making that decision, though,
17 about whether the incident -- for purposes of the AIMS
18 referral, who would make the decision whether the
19 reported use of force being complained about involved
20 serious bodily injury to the incarcerated person?

21 A. That is the -- the grievance coordinator is
22 looking at that incident package. And in the incident
23 package in that entire report -- and so there's written
24 reports from staff involved -- there's also a copy of a
25 medical evaluation for the inmate. We call it a 7- --

1 CDC 72- -- CDCR 7219, as well as any medical
2 documentation that may have been submitted after
3 treatment of the inmate.

4 They're looking for information in that
5 incident report that substantiates that there was
6 serious bodily injury as a result of the use of force,
7 so that would be -- our grievance coordinator is looking
8 at the incident package for that.

9 Q. So the incident package is the world of
10 information that the grievance coordinator is looking at
11 to determine if there's serious bodily injury; is that
12 correct?

13 A. That is correct, yes.

14 Q. What happens if the incarcerated person says
15 the serious bodily injury was not reported in an
16 incident package? So the force was reported but the
17 serious bodily injury was not?

18 MR. MAIORINO: Objection. Incomplete
19 hypothetical.

20 THE WITNESS: So if the incarcerated person is
21 alleging injuries that are more serious than what is
22 documented in the incident package, then that -- that
23 really becomes -- my belief, that would become more of a
24 case-by-case situation where the grievance coordinator
25 has the information in front of them; if the

1 information -- if there's a review of their information,
2 they don't -- they do not believe that there was serious
3 bodily injury, they can, of course, continue to allow it
4 to go through the standard 3013/3014 process.

5 I think if the grievance coordinator has any
6 questions, they can always conference that with the
7 reviewing authority and give the reviewing authority the
8 opportunity to look at it and make a decision one way or
9 the other.

10 So I -- I could see that they're -- although
11 hopefully not very often, there may be occasions where
12 an inmate believes that they have sustained serious
13 bodily injury and yet it's not reported as such in an
14 incident package.

15 BY MR. FREEDMAN:

16 Q. So if the answer to the first question is "no,"
17 you shoot down to the top box in the middle. If the
18 answer to the first question is "yes" but to the second
19 question is also "yes," then you also shoot down to that
20 second -- that first box in the middle.

21 Can you describe a little bit what happens if
22 you end up at that top box in the middle?

23 A. Sure. That top box in the middle, so now we're
24 talking about a use-of-force incident that was not
25 reported through our incident reporting process or an

1 incident that was reported and the use of force likely
2 resulted in the SBI to inmate.

3 Now we're getting into that first box, and it
4 says, "Within 48 hours of discovery of the allegation
5 the hiring authority shall," so this is consistent with
6 our existing process for the moving into allegations of
7 unnecessary or excessive use of force. That hiring
8 authority shall have the incarcerated person offender
9 here in this document examined by medical staff and
10 document their findings to include any statements made
11 by the offender. As mentioned we have that form being
12 used. It's called a CDCR 7219, and it's a medical
13 report of injury of incident I think is exactly how it's
14 titled, but I could be wrong.

15 The next thing they would do is they would
16 ensure that a video-recorded interview was conducted
17 with the incarcerated person.

18 They would complete -- we have two different
19 worksheets. We have a worksheet called a 3013-1. That
20 3013-1 is completed anytime an inmate receives an injury
21 as a result of use of force that is consistent with
22 serious bodily injury or great bodily injury. So they
23 would have to ask the questions that are included in the
24 worksheet for that 3013-1. And then because there is an
25 allegation also, they would also have to ask the

1 questions that are in the 3013-2 which is the allegation
2 of unnecessary or excessive use of force worksheet.

3 So they're going to immediately within that 48
4 hours have the offender interviewed, have a medical
5 exam, they're going to have that video-recorded
6 interview completed, making sure the questions are
7 asked. And at that point they'll stop the process,
8 gather that information that they've collected so far,
9 and they'll then go into the next box, as you see on
10 there, that within five days of discovery of that
11 allegation, make sure that the relevant information is
12 forwarded to the Allegation Inquiry Management Section
13 so that inquiry report can be completed.

14 Q. So in that top middle box, who would conduct
15 the video-recorded interview with the offender?

16 A. So consistent with our current policy, that
17 video-recorded interview is completed by a noninvolved
18 supervisor at the institution.

19 Q. That interview would not be conducted by an
20 AIMS lieutenant or any -- by any AIMS staff member?

21 A. That is correct. We will not -- because we do
22 not have AIMS staff located at the institutions, we will
23 not be doing that interview within 48 hours.

24 Q. Now, at the bottom of that box it says, "Note:
25 Institution/regional staff will not complete the CDCR

1 3014 at this time. The CDCR 3014 will be completed by
2 institution/regional staff once AIMS has completed the
3 allegation inquiry and returned it to the hiring
4 authority."

5 Can you explain what that sentence means, those
6 two sentences mean?

7 A. Sure. If you -- as noted before, we often use
8 the -- the two numbers 3013 and 3014 to talk about the
9 process for looking into allegations of unnecessary
10 excessive use of force or use of force that results in
11 SBI also. And so the 3013, the one and the two, those
12 are the worksheets, the required questions to ask of the
13 incarcerated person. It documents any witnesses that
14 they have, things of that nature.

15 The 3014 is the findings piece of that process.
16 And because we are taking the remainder of the inquiry
17 process out of the hands of the institution and moving
18 it over to the Allegation Inquiry Management Section to
19 do an inquiry, that 3014 is normally completed when the
20 inquiry is done. And because they will not be doing the
21 inquiry yet -- it's going to go to AIMS -- they're not
22 going to do that 3014 at that point. Instead they'll
23 wait until the inquiry report comes back, and then they
24 have the ability to then finish the document.

25 Q. All right. Now, if you wouldn't mind having

1 both flowcharts in front of you at the same time, I
2 don't know if you already do, but --

3 A. I did, but let me get them back.

4 Okay.

5 Q. So I believe that's Exhibits 3 and 4. I'm not
6 100 percent sure. At a minimum they are MILLER02 and
7 MILLER03.

8 So we've reviewed which types of allegations
9 might go through AIMS; right?

10 A. Well, we reviewed the -- on -- and I don't know
11 if it's 3 or 4, but on the "AIMS Role - Staff Complaint"
12 flowchart we reviewed when there are reasons that they
13 would not go or when there's maybe special circumstances
14 that change the exception to the process. And then we
15 talked about, of course, that we're looking for a
16 grievance with a staff complaint and that doesn't meet
17 one of the exceptions criteria. I think that's --

18 Q. Correct.

19 A. -- around where we were.

20 Q. And those are the first two questions on the
21 "AIMS Role - Staff Complaint" flowchart; correct?

22 A. That's correct.

23 Q. So the first question is, "Is there a grievance
24 with a staff complaint?" If the answer is "yes," you
25 move down to the second box. And then you're really

1 looking at what type of complaint it is; correct? And
2 certain complaints will go forward potentially through
3 AIMS and other ones definitely will not; correct?

4 A. Correct, right. There are rules for certain
5 types of claims; correct.

6 Q. Okay. So if the claim is not one of the types
7 of claims that are an exception to AIMS, then you move
8 to the third question; correct?

9 A. That's correct.

10 Q. And actually, I'm sorry. Before we move on to
11 that, I want to ask you a few more questions about the
12 use-of-force stuff. My apologies.

13 Is it correct that all reported uses of force
14 with no serious bodily injury or great bodily injury
15 will be excluded from AIMS?

16 A. Yes. That's the belief, that if it's -- so
17 that's our intent is that if it is an allegation of
18 unnecessary or excessive use of force, it's been
19 reported, that we have an inquiry process that already
20 exists at the institutions. Again, those numerical
21 values, the 3013/3014 process, is often how it's
22 referred to. And then the -- going up to the
23 Institution Executive Review Committee, we have that
24 process. It exists. It's very robust.

25 And so without serious bodily injury or great

1 bodily injury, the intent is to allow that process that
2 exists to continue to address those allegations.

3 Q. And those allegations of reported unnecessary
4 or excessive force that do not result in serious bodily
5 injury or great bodily injury would be excluded from
6 AIMS no matter how egregious the allegation of
7 misconduct is; correct?

8 MR. MAIORINO: Objection. Incomplete
9 hypothetical. Vague and ambiguous. Argumentative.

10 THE WITNESS: So the -- the decisions whether
11 or not it's going to go to the Allegation Inquiry
12 Management Section in uses of -- for allegations of
13 unnecessary excessive use of force does not hinge on
14 egregiousness. It hinges on, reported, whether the use
15 of force resulted in an SBI or GBI; and if not, that
16 inquiry process continues at the institution which is
17 the process that we have set up and exists currently.

18 If during that inquiry process at the
19 institution reasonable belief is established, it
20 wouldn't go to AIMS because that would not be the
21 appropriate place. But it could at that point, then,
22 and would at that point with reasonable belief that
23 misconduct occurred would then go in to be referred up
24 to OIA via the 989 or the request for investigation
25 process if that misconduct was likely to lead to adverse

1 disciplinary action, so . . .

2 BY MR. FREEDMAN:

3 Q. So as a hypothetical, if an incarcerated person
4 submits a 602 alleging that an officer for no reason
5 whatsoever punched him in the face but did not cause him
6 serious bodily injury or great bodily injury and there
7 was a reported use of force related to that incarcerated
8 person at that same time, that would not go through
9 AIMS; correct?

10 MR. MAIORINO: Objection. Incomplete
11 hypothetical. Goes beyond the scope.

12 THE WITNESS: And just to be very clear in
13 that -- in that scenario, and the staff member -- and
14 the use-of-force report and the injuries documented in
15 the medical evaluation for that offender are consistent,
16 and the injuries -- I think I said that. The injuries
17 documented are consistent with the reported use of force
18 and the inmate is claiming "The staff punched me for no
19 reason in the face," and the staff is claiming and the
20 staff had reported that this was a use of force, as a
21 result of that use of force this is what happened, and
22 it documents an injury to the face, is that the
23 allegation?

24 BY MR. FREEDMAN:

25 Q. Yes.

1 A. Have I got that right?

2 Q. Yes.

3 A. Okay, okay. Thank you. So if there's no
4 serious bodily injury as a result of that use of force,
5 then correct, that would not go to AIMS. It would stay
6 local. And then ultimately if -- or so it would stay
7 locally unless at the very beginning there was a
8 reasonable belief in which case, of course, the hiring
9 authority can send it to OIA. Or if through that local
10 process that already exists that reasonable belief is
11 established that misconduct occurred, in which case
12 again, reasonable belief standard is met, and if it's
13 likely to result in adverse disciplinary action, the
14 hiring authority can refer to OIA.

15 Q. Does CDCR have a sense yet of whether --
16 scratch that. Sorry.

17 All right. Let's go back to the MILLER02, and
18 to the third question which says, "If proven true, would
19 the misconduct more likely than not result in adverse
20 disciplinary action," do you see that?

21 A. I do.

22 Q. Who is responsible for answering this question
23 when determining whether an allegation of staff
24 misconduct should be referred to AIMS?

25 A. So this question is answered -- this question

1 is answered at the -- at the reviewing authority level,
2 so chief deputy warden to warden but at the reviewing
3 authority level.

4 Q. So the grievance coordinator would not be
5 eliminating grievances from AIMS' consideration based on
6 this question. It would be the reviewing authority?

7 A. Correct. If it is a staff complaint
8 allegation, then it is not -- the grievance coordinator
9 does not have the authority to make the decision. That
10 goes to the reviewing authority. And the reviewing
11 authority makes the decision whether reasonable belief
12 is met and it goes to OIA; not met but likely to result
13 in adverse actions or goes to AIMS; or not likely for
14 adverse action, stay with the institution. But that is
15 the reviewing authority; not the grievance coordinator.

16 Q. What information is the reviewing authority
17 supposed to consider when making that determination?

18 A. The reviewing authority, of course, has the
19 grievance that's been submitted to them, forwarded to
20 them, rather, from the grievance coordinator. But at
21 that point that reviewing authority also has the ability
22 to request or look at any other documentation that might
23 support moving something -- or might support the
24 allegations.

25 So for instance, the -- the inmate submits an

1 allegation of staff misconduct and says, you know, this
2 happened in visiting and, you know, there's a camera;
3 right? A camera. I want you to -- you know, that will
4 have that recorded.

5 The reviewing authority has the ability at that
6 point to make sure to gather that piece of evidence as
7 well so that they can evaluate and have as much in front
8 of them as possible to make that decision.

9 So although the reviewing authority is not
10 expected to go do an inquiry on their own, if there's
11 evidence readily available, they have the ability to
12 gather that to help make a decision.

13 Q. Have the reviewing authorities been provided
14 with any guidance about what they're supposed to do in
15 terms of gathering additional information in order to
16 answer this question?

17 MR. MAIORINO: Objection. Vague and ambiguous.

18 THE WITNESS: There was training conducted with
19 the reviewing authorities, and so we're talking about
20 chief deputy wardens and wardens as well as the
21 grievance coordinators specific to their obligations for
22 this. Definitely as we continue to go forward and we're
23 working on our department operations manual, these are
24 the types of things that we will also make sure are
25 included there so that they have very clear guidelines

1 that they can reference. But yes, during that -- during
2 those trainings they were -- they were advised that,
3 when they make that decision, they need to make sure
4 that they're evaluating the information that's in front
5 of them to include any evidence that might be
6 immediately available.

7 BY MR. FREEDMAN:

8 Q. Are they obligated to conduct -- are they
9 obligated to gather additional information before they
10 answer the question of whether the -- the misconduct, if
11 proven true, would more likely than not result in
12 adverse disciplinary action?

13 MR. MAIORINO: Objection. Vague and ambiguous.

14 THE WITNESS: I don't think that the word
15 "obligated" is the right word to use. Instead I would
16 say that the expectation is that they're making a sound
17 decision when they make that referral. And so if they
18 know that there's information that can be readily
19 obtained in order to help to make that decision, they
20 have the ability to do that, and we would expect them to
21 be making very good, sound decisions.

22 BY MR. FREEDMAN:

23 Q. In your role supervising OIA which in turn
24 supervises AIMS, have you seen the hiring authorities
25 are, in fact, gathering additional evidence other than a

1 602 to make this determination about whether the
2 misconduct would more likely than not result in adverse
3 disciplinary action?

4 MR. MAIORINO: Objection. Goes beyond the
5 scope.

6 THE WITNESS: Because the process is fairly
7 new, we're still, of course, just beginning this
8 process, I have not personally reviewed decisions at
9 this point made by hiring authorities. We are expecting
10 to stand up a review process here in the next few weeks,
11 but I -- so I have not personally reviewed those
12 decisions at this point.

13 BY MR. FREEDMAN:

14 Q. What is the institution supposed to do if the
15 grievance is unclear on whether the misconduct would
16 more likely than not result in adverse disciplinary
17 action?

18 MR. MAIORINO: Objection. Vague and ambiguous.

19 THE WITNESS: If the grievance comes through
20 and there's no information in the grievance that would
21 suggest that, even if guilty, that it would result in
22 adverse disciplinary action, the likely result is it
23 would stay at the local level. With that, as the local
24 level is completing their process, their supervisorial
25 review, if they uncover or come across information that

1 then would suggest that, if, you know -- if true, is
2 likely to result in adverse disciplinary action, they,
3 of course, are directed to stop their process of doing
4 their inquiry and take it to the hiring authority so
5 that a decision can be made.

6 And that decision may be based on what they've
7 already uncovered, if you will, that maybe there's
8 enough to send it to OIA. Or maybe it just changed the
9 allegation enough to where now, if true, it would result
10 in adverse disciplinary action but there's still not
11 reasonable belief, in which case then it would be
12 redirected to the Allegation Inquiry Management Section.

13 So if it stayed at that local level and then
14 additional information is received, that changes the
15 dynamics. It would then be referred back over to the
16 hiring authority to be -- and reviewing authority to
17 make a decision if it needs to be redirected.

18 BY MR. FREEDMAN:

19 Q. What if the 602 says only Officer Smith
20 committed staff misconduct against me.

21 What should happen with an appeal like that, a
22 grievance like that?

23 MR. MAIORINO: Objection. Incomplete
24 hypothetical. Goes beyond the scope.

25 THE WITNESS: If the only thing on the paper

1 submitted is Officer Smith used or was involved in staff
2 misconduct with me and there's no specific -- there's
3 nothing to suggest that the misconduct would rise to the
4 level of serious disciplinary action, then that would
5 stay in the local review process. The grievance or
6 claimant, if you will, incarcerated person would be
7 interviewed. If as a result of that interview they
8 disclose information that then would result in changing
9 where that should be reviewed, again, it gets referred
10 back through the process to determine if it needs -- if
11 it would be better responded to either at the AIMS level
12 or OIA level.

13 BY MR. FREEDMAN:

14 Q. So the institution does have the ability to
15 refer a case to AIMS outside of this five-calendar-day
16 deadline for discovering allegations?

17 A. That's correct. I think we mentioned it
18 earlier today, but that five days is, of course, the
19 expectation and the goal. Because completing inquiry
20 reports takes some time, and we want to make sure that
21 we are getting those inquiry reports completed, they're
22 thorough, and then they're returned to the institution
23 in enough time to respond to the grievance.

24 However, if it goes one direction and then
25 additional information is uncovered and it now needs to

1 go to AIMS for the inquiry process, it may be submitted
2 after the five days. That five days will not -- will
3 not be the trigger that says, Past five days it cannot
4 go to AIMS. It's definitely a goal, and that's our
5 expectation. But regardless, if it meets the criteria
6 for AIMS, it can be redirected then.

7 Q. So if a grievance is not referred to AIMS when
8 it is originally processed and a local inquiry is
9 conducted, and that local inquiry identifies information
10 to suggest that satisfies the AIMS criteria, the
11 institution could then refer the allegation to AIMS; is
12 that correct?

13 A. That's correct. That inquiry can come back
14 because at the point where now they have an allegation
15 that, if true, would likely result in adverse
16 disciplinary action, it can no longer continue in the
17 process locally. It has to either go to AIMS or has to
18 go to OIA.

19 MR. FREEDMAN: Okay. We've been going for a
20 couple of hours. Why don't we take a break for about
21 ten minutes.

22 (Recess taken from 2:33 p.m. to 2:44 p.m.)

23 BY MR. FREEDMAN:

24 Q. I want to go back to the use-of-force flowchart
25 that we were talking about before.

1 A. Okay.

2 Q. What is supposed to happen if someone files a
3 grievance about unnecessary or excessive force after an
4 IERC review of the use of force has already been
5 completed?

6 MR. MAIORINO: Objection. Incomplete
7 hypothetical and beyond the scope for which she was
8 designated.

9 THE WITNESS: The use-of-force review process,
10 the expectation is that we get through that process
11 in -- and by "we," I'm sorry. I mean that institution
12 gets through that process in 30 days, and so it's meant
13 to be a -- you know, a very expedient, thorough review.
14 And so there is the possibility that an allegation of
15 unnecessary or excessive use of force will be submitted
16 since an incarcerated person has 30 days. There's
17 the -- there's the chance that it will not get submitted
18 until after that process is complete. And if that
19 happens, we still follow the same process, if you will.

20 So let's say the institution executive review
21 committee is done. Let's say that they got done in ten
22 days, and now we're receiving this grievance after that.
23 Because the institution process through IERC is done,
24 the grievance will still go forward just as it would
25 have before. If it's an allegation and there was

1 serious bodily injury as a result of use of force, it
2 would still go to AIMS for an inquiry review.

3 Of course at that point the AIMS staff would
4 also have some additional documentation that they could
5 review because it's been through this process at the
6 institution, but it will still go through that process.
7 And then that inquiry report would still go back to the
8 hiring authority because the hiring authority is still
9 required to do a review of the allegation of unnecessary
10 or excessive use of force which is also part of the IERC
11 process. So if they finish the use-of-force review and
12 then this comes after it, they still have to take it
13 back to the IERC and address the allegation as well.

14 So it would still goes to AIMS if it was
15 going to go to AIMS. If it met the criteria, they would
16 still do the review, and then it would still go back to
17 the hiring authority who would then finish the review
18 process for use of force, and also of course then they
19 would be able to answer that grievance submitted by the
20 incarcerated person.

21 So if they do finish it first, that's the
22 process. If it comes in the middle -- sometimes that
23 happens. They're starting the process, they haven't
24 made it to the institution executive review committee
25 yet, but now somewhere in the middle the allegation

1 comes in. Then the review process at the institution is
2 stopped, is suspended while the inquiry is completed.
3 And then once the inquiry is completed and the hiring
4 authority gets the report, then they go back and then
5 finish their review process locally.

6 BY MR. FREEDMAN:

7 Q. So if there is a grievance submitted about a
8 use of force before the IER-- about a reported use of
9 force involving serious bodily injury before the IERC
10 has completed its review and that grievance gets
11 referred to AIMS, that results in a pause of the IERC
12 proceedings regarding that use of force?

13 A. That's correct.

14 Q. What happens if in the immediate aftermath of a
15 use of force causing serious bodily injury the
16 incarcerated person orally says to, you know, someone
17 conducting the follow-up from the use of force, "That
18 was excessive force" or "that was unnecessary force"?

19 MR. MAIORINO: Objection. Incomplete
20 hypothetical. Goes beyond the scope of the designation
21 of the PMK.

22 THE WITNESS: When an inmate makes an
23 allegation of unnecessary or excessive use of force
24 immediately following the use of force, and so we see
25 that sometimes, if that were to happen, then that

1 automatically starts the 3013/3014 process and that
2 recorded interview and getting the inmate statements and
3 all of that. In addition to that, part of that process
4 requests that the incarcerated persons submit in writing
5 their allegations. And so with that our -- our
6 direction going forward -- and we intend to include this
7 in department operations manual in our section -- is
8 going to be that the noninvolved supervisor that's doing
9 that recorded interview is also providing the offender
10 with a 602 form so that they can complete that so it can
11 get submitted simultaneously and we can have that
12 process going forward.

13 Of course, as you mentioned previously, if
14 there's not a 602 but it's in writing, we'll -- we'll
15 accept that through the grievance process as well.

16 BY MR. FREEDMAN:

17 Q. But just to be clear, even if someone reports
18 in the immediate aftermath of the use of force that
19 resulted in serious bodily injury that the force was
20 unnecessary or excessive, they would still need to file
21 a 602 in order for that allegation to be looked into
22 through AIMS; is that correct?

23 MR. MAIORINO: Objection. Incomplete
24 hypothetical. Vague and ambiguous.

25 THE WITNESS: The -- that is correct in that

1 the process will start that already exists to look into
2 the allegations. But in order for it to go to the
3 Allegation Inquiry Management Section, we need to
4 capture that information in writing from the offender
5 and whether that -- if they don't have the ability to
6 write and we assist them with that or whether right then
7 and there they complete that, in order -- the AIMS unit
8 deals with the grievance process specifically and those
9 allegations, and so you want those in writing.

10 BY MR. FREEDMAN:

11 Q. I'd like to go to the fourth box on the
12 flowchart MILLER02, and that box there's a question, "Is
13 there a reasonable belief the misconduct occurred";
14 correct?

15 A. That's correct.

16 Q. And if the answer is "yes," what happens?

17 A. So if the answer is yes, then they -- then we
18 have the threshold met that would justify forwarding
19 that allegation to the Office of Internal Affairs for a
20 formal investigation, so through what we would call that
21 9889 process, and that requests for investigation.

22 So if we've met the threshold of reasonable
23 belief, then it would not go to AIMS. It would go
24 for -- go to the Office of Internal Affairs for a formal
25 investigation request.

1 Q. And if the answer is "no," what happens?

2 A. So if the answer is no, then that's when we
3 move into the Allegation Inquiry Management Section and
4 that allegation inquiry referral over to the AIMS unit.

5 Q. Is there a reasonable belief standard -- the
6 test to be applied for the reasonable belief standard
7 set forth anywhere in policy?

8 A. And I've had read it, and I'm not exactly sure
9 which section I've read it in, but I believe that -- or
10 what document, but I believe that the reasonable belief
11 standard is one that is documented in the Madrid
12 settlement that helps to shape our employee
13 investigation and discipline process. I think that
14 that's where I've read it. It may be actually in the
15 training documents that were provided for the Allegation
16 Inquiry Management Section for the training given by
17 OIA. Can't remember exactly, but I know that I've read
18 the definition and the threshold that has to be met.

19 Q. So in this flowchart, MILLER02, who was
20 responsible for answering the question, "Is there a
21 reasonable belief the misconduct occurred?"

22 A. Again, that's the reviewing authority, so we're
23 looking at the chief deputy warden or the warden in that
24 case.

25 Q. And the deadline by which institutions are

1 supposed to complete their consideration of the four
2 questions in the flowchart is five calendar days; is
3 that correct?

4 A. That's correct. We set the expectation that
5 that process be completed in five days so that we have
6 adequate time once it gets to the Allegation Inquiry
7 Management Section to do a -- to do that allegation
8 inquiry and get it back to the hiring authority in time
9 to answer the grievance timely.

10 Q. The big box in the middle of MILLER02, does
11 that describe what the hiring authority is supposed to
12 do to prepare a referral for AIMS?

13 A. That's correct. That big box in the middle
14 talks about "The Hiring Authority shall," and it gives
15 direction as to what information and evidence that
16 exists is to be submitted over to the Allegation Inquiry
17 Management Section so that they can begin the process of
18 doing the allegation inquiry.

19 Q. Now, the third bullet there says, "Attach a
20 copy of any additional supporting documents that will
21 assist AIMS."

22 What might those documents be?

23 A. As we discussed earlier and as I mentioned as
24 part of the training for the reviewing authorities, we
25 -- they were trained to identify any other supporting

1 documents that would assist AIMS. So when we talk about
2 that, we could be talking about anything from, let's
3 say, sign-in sheets that staff were or were not at the
4 institution on the date of the allegation. We can be
5 talking about memorandums or counseling "chronos" or
6 maybe a log. If it's an issue with, let's say canteen,
7 and there's a log where the incarcerated person signed
8 accepting their canteen or a package. So it's those
9 types of documents, anything else that can be put
10 together and sent to AIMS to help them with their
11 inquiry work.

12 Q. On the second flowchart, the MILLER03, it does
13 not include the third and fourth questions from the
14 first flowchart MILLER02.

15 Is there a reason that those boxes are not on
16 the second flowchart?

17 A. I'm going to make sure that I've got your
18 question correct. What you're asking is, is there a
19 reason that the box that says that, "If proven true,
20 would the misconduct more likely than not result in
21 adverse disciplinary action?" and "Is there a reasonable
22 belief the misconduct occurred?" why those are not
23 included on the Unnecessary or Excessive Use of Force
24 Chart.

25 Q. You have it -- you have it exactly right, yes.

1 A. Okay. Now that I've got the question right,
2 let me make sure that I respond to it also correctly
3 because I'm still -- still a little confusing in my
4 head. The "If proven true, would the misconduct more
5 likely than not result in adverse disciplinary action,"
6 that's not included on this section on the second chart
7 on MILLER03 because, when we have a use-of-force
8 incident that was not reported, that by itself, if
9 proven true, is more likely than not to result in
10 adverse disciplinary action. So if you do not report
11 your use of force, there -- it is more likely than not
12 going to result in adverse disciplinary action.

13 If it did get reported and it did result in an
14 SBI, there isn't -- so this is an interesting one
15 because, "If proven true, would the conduct more likely
16 than not result in adverse disciplinary action," again,
17 if it's proven that the staff's use of force was
18 unnecessary or excessive, then again there's the
19 likelihood, if that is true, is likely that that's going
20 to result in adverse disciplinary action.

21 So again -- so that box, that third box isn't
22 included on the MILLER03 chart because in both of those
23 cases, the end result is likely to result in adverse
24 disciplinary action. So that's the assumption and so
25 it's not there.

1 "Is there a reasonable belief the misconduct
2 occurred?" That's not here as a box on the second
3 chart. However, if you look at the very bottom of that
4 chart, MILLER03, you'll see a box that says note, "If at
5 any time reasonable belief is established that staff
6 misconduct occurred, the allegation inquiry shall be
7 stopped, the AIMS report will be completed, and the
8 matter will be forwarded to the Hiring Authority for
9 consideration of referral to the Office of Internal
10 Affairs for a formal investigation."

11 So that box is not incorporated into the main
12 chart. You know, I helped develop these charts, and I
13 don't know that there's a reason why it was or was not
14 except that that statement at the bottom of -- and it's
15 at the bottom of both of the charts, by the way -- is
16 consistent no matter what.

17 In any event, this information is uncovered
18 that there's a reasonable belief now. Everything really
19 comes to a stop, and it goes up through the formal
20 investigation process.

21 Q. Okay. So the reviewing authority using this
22 flowchart decides that a referral to AIMS is
23 appropriate, they prepare an AIMS referral packet.

24 What happens next?

25 A. So they get everything together and then

1 they're going to e-mail the package to AIMS within those
2 five days hopefully. And anything that cannot be sent
3 in the e-mail to the designated address has to be sent
4 via overnight courier.

5 So we currently have the ability to attach some
6 files. If the files are too large, we cannot attach it
7 to that -- those e-mails. And so sometimes -- there are
8 going to be files, video recordings and things of that
9 nature will have to be billed GSO'd -- sent via Golden
10 State Overnight. I'm sorry that we use acronyms -- or
11 some other overnight courier service. So they put it
12 together, and then they get it up to the AIMS unit.

13 AIMS then does that evaluation as we mentioned
14 before, and so -- well, the analyst does the initial
15 intake, puts the necessary documentation in. So
16 anything that comes to AIMS gets a number. It always
17 gets a log number. So they put that initial information
18 into the tracking system, and then it -- the captain --
19 it's handed out to the captain. Based on the region and
20 based on the areas they oversee, the captains review
21 that case and they make a decision. They look at it,
22 and they determine if it's appropriate to keep it at the
23 AIMS level.

24 So recognizing that these allegations come up
25 not unlike the central intake unit at OIA, we have this

1 review process to make sure that everything that came to
2 AIMS is appropriate at AIMS.

3 That review is completed. And if the decision
4 is made that it's appropriate, they issue that out to
5 the -- to the inquiry lieutenants in those cases, and
6 the allegation inquiry report is -- will be -- well, the
7 inquiry is completed, the report's completed, and the
8 goal is to have it back to the hiring authority within
9 30 days.

10 If -- oh, sorry.

11 Q. No, no. Go ahead.

12 A. If the captain reviews the submission and
13 determines that it should not be at AIMS, it doesn't
14 meet the criteria, they then need to conference that
15 with the chief deputy administrator, so that highest
16 level in the AIMS unit, to determine if it should be
17 returned or whether it does meet the criteria.

18 So we built in a few levels of review before an
19 allegation inquiry submission is returned to make sure
20 that we're being thoughtful and keeping those that
21 should be in the section but returning those that don't
22 meet the criteria.

23 Q. In determining whether a referral is
24 appropriate for AIMS, are the captains using the same
25 four questions that appear on the MILLER02 flowchart

1 that we've been looking at?

2 A. That's correct. It's the exact same process
3 for them as well.

4 Q. If the captain decides that the referral is
5 inappropriate for some reason and then conferences with
6 the chief deputy administrator who agrees, what happens
7 then?

8 A. At that point the chief deputy administrator
9 then puts together a response to the institution. And
10 so in returning that inquiry request, they are advising
11 the institution why it doesn't meet the criteria for
12 AIMS based on their review.

13 And so based on their review, it could be that
14 they don't believe that, if true, it would rise to the
15 level of adverse disciplinary action. Or they could
16 believe that reasonable belief has already been
17 established and that they believe it's -- it should be
18 referred actually through the 989 process.

19 Q. So any AIMS referral that is rejected includes
20 an explanation for the rejection; is that right?

21 A. That's the process that we've built into it is
22 that, if they return it to the institution, that they
23 also provide the institution what the reason was.

24 Q. Is there any ability for the institution to
25 appeal a decision made by AIMS to reject a referral?

1 A. That process wasn't initially built in;
2 however, we have since developed that and have made that
3 the expectation and provided that information to the
4 reviewing authorities and the hiring authorities that,
5 if they receive a -- if they have a submission returned
6 to them and they disagree, that the hiring authority has
7 the ability, then, to appeal that decision to the deputy
8 director of OIA. So they can bring it all the way to
9 the deputy director level and have a reconsideration of
10 that particular submission.

11 Q. Is that current policy?

12 A. It's not written in policy, documented yet.
13 It's part of our revision to the Department Operations
14 Manual, so it will be included in that, and the
15 expectation has already been provided to the hiring
16 authority and reviewing authorities, and it will -- and
17 it will be included in our department operations manual
18 section.

19 Q. How long does AIMS have to decide whether to
20 accept or reject a referral?

21 A. AIMS is held to a five-day criteria as well.
22 If you look at the first chart, MILLER02, you'll see
23 "Return to Reviewing," and it's the very last box on the
24 far right bottom box. It says, "Return to Reviewing
25 Authority within five business days."

1 So the expectation is, from the time it comes
2 from the institution, that review process should take no
3 more than five days as well.

4 Q. And that's five business days; correct?

5 A. That's noted as five business days; that's
6 correct.

7 Q. And is that five-business-day deadline policy
8 or practice?

9 A. That five-business-day will be practice.
10 Again, it's something that it will be an expectation
11 that will be documented in our operational procedure,
12 but it isn't a hard rule. And regardless, if it exceeds
13 that -- those days, if it's not an appropriate name,
14 we'll continue to make sure that the inquiry is
15 completed in the right location.

16 Q. If AIMS decides to accept a referral, does
17 anyone above the captain level need to approve the
18 acceptance?

19 A. No.

20 Q. If AIMS decides to reject the referral, though,
21 the chief deputy administrator needs to approve that; is
22 that correct?

23 A. That's correct. That's the process we've built
24 in.

25 Q. In making a decision whether to accept or

1 reject an AIMS referral, can AIMS personnel request
2 additional documents from the institution?

3 A. I -- I'm going to say that there's nothing that
4 says that they cannot, so there's nothing that we built
5 into the process that says they cannot request
6 additional information. So if the AIMS unit -- and that
7 may be something that the AIMS captain and the chief
8 deputy administrator determines, that rather than return
9 it it would be more appropriate to try to receive
10 additional -- maybe they're missing one piece of
11 information or something that they believe is
12 important -- important to the process. So nothing says
13 they cannot. It's not something they're required to do.

14 Q. Has AIMS developed a specific form for
15 communicating acceptance or rejection of AIMS referral?

16 A. I don't believe that a specific form has been
17 created as of yet. I would assume at some point that
18 probably will be the case, but I do not believe that is
19 the case yet.

20 Q. So there's nothing akin -- there's nothing for
21 AIMS akin to the central intake panel division letters
22 that OIA uses to accept or reject OIA referral; is that
23 right?

24 A. I don't believe so at this point. I think that
25 thus far those returns have not included any templated

1 or structured response.

2 Q. So the institution's made a referral, AIMS
3 accepted the referral.

4 What happens then?

5 A. So AIMS has accepted the referral. It's given
6 to, in almost all cases, an inquiry lieutenant who will
7 then start the process to review the claims, start to
8 develop their -- or their inquiry, their investigation,
9 their inquiry plans, develop questions, they'll look to
10 identify witnesses, they'll start to schedule interviews
11 with the -- with the incarcerated person, with other
12 witnesses that are already identified, and then working
13 with the institution, get out there to complete that
14 inquiry work, including writing a list, putting together
15 and developing a list of any documents that they want to
16 collect while they're there and any other evidence that
17 might be valuable so that they can complete a thorough
18 report with as much information as possible so that the
19 hiring authority can make an informed decision.

20 Q. Do the inquiries conducted by AIMS, are they
21 limited at all by -- in scope?

22 A. Could you maybe clarify what you mean by
23 limited in scope?

24 Q. How is the scope of an inquiry defined for an
25 AIMS inquiry?

1 MR. MAIORINO: Vague and ambiguous.

2 THE WITNESS: So I'm not sure that I understand
3 the question, but I think --

4 BY MR. FREEDMAN:

5 Q. Let me try to rephrase. Let me try to rephrase
6 it.

7 So you get referral from the institution. It
8 has some allegation of staff misconduct. Given the
9 information that now is in the AIMS investigator's
10 hands, do they have to define the scope of what they are
11 conducting their inquiry into?

12 A. The -- the scope of -- so the scope of their
13 inquiry is specific to the claim, the allegations in
14 front of them. So to that extent that is the scope.

15 When they noticed the subject for an interview,
16 that's the scope of the interview. When they're
17 interviewing the incarcerated person, that's the scope.
18 And what they're -- and that's the allegation that
19 they're looking into.

20 If during the inquiry process additional
21 allegations, other allegations come forward not related
22 to that specific allegation that was -- that they're
23 working on, they're required to -- they're required to
24 document that. And then that, of course, would go back
25 through the higher authority to be reviewed for

1 follow-up.

2 So I think -- I think in answering your
3 question, their scope is really the allegation in front
4 of them and, of course, as they're going through that,
5 if anything additional were to come up, they're not
6 going to stop that information from coming necessarily,
7 but they'll document it, and it will not be addressed
8 necessarily in that document but would be handled
9 separate and apart.

10 Q. Can the AIMS lieutenant interview the
11 complainant as part of their inquiry?

12 A. Yes.

13 Q. Can they interview witnesses as part of their
14 inquiry?

15 A. Yes.

16 Q. Can they interview the subject of the inquiry?
17 And by "the subject," I mean the person who the
18 incarcerated person accused of engaging in misconduct?

19 A. Yes.

20 Q. Can they obtain documents from the institution
21 related to their inquiry?

22 A. Yes, they can.

23 Q. Can they obtain video surveillance from the
24 institution?

25 A. If it exists, yes, they can.

1 Q. Can they obtain audio surveillance if it exists
2 at the institution?

3 A. Yes. Again, if it exists they can.

4 Q. Can they obtain e-mails?

5 A. The inquiry staff do have the ability to make a
6 request for evidence from e-mail accounts, yes.

7 Q. Can they obtain other types of electronically
8 stored information like Word documents or PDFs or things
9 like that?

10 A. Yes. Again, they make that request and have
11 the ability -- of course, they request that information
12 and get that as part of their inquiry.

13 Q. If they think it's relevant to their inquiry,
14 can they obtain forensic evidence such as cell phones
15 and computer hard drives?

16 A. When you ask about forensic evidence such as
17 computer hard drives or cell phones, are you talking
18 about state-issued equipment or personal devices?

19 Q. How about -- so let's answer it first for
20 stated-issued.

21 Can they obtain state- -- information from
22 state-issued equipment such as cell phones, computer
23 hard drives, et cetera?

24 A. Yes. They have the ability to -- to gather
25 that information.

1 Q. What about from personal electronic devices of
2 witnesses or subjects to the inquiry?

3 A. For personal devices, so for instance a
4 personal cell phone, a personal computer, of course the
5 inquiring lieutenant can request, they can ask the
6 person if they can have that information, and the person
7 may give it to them. Outside of that it would require a
8 search warrant to gather that information. And not
9 saying that it cannot happen, but in those situations I
10 think it would be more likely than not that that then
11 would cross a threshold where it most likely would be
12 taken out of the Allegation Inquiry Management Section
13 and most likely be being addressed via the Office of
14 Internal Affairs through the formal investigation
15 process.

16 Q. Can the AIMS lieutenant request assistance from
17 the forensic analysis and support team?

18 A. Yes, they can.

19 Q. Is there any difference in terms of what an
20 AIMS lieutenant can obtain for his or her inquiry from
21 what an OIA special agent could obtain in an
22 administrative investigation being conducted by OIA?

23 A. The -- although there's not -- I don't believe
24 that there's any specific difference, if you will. So
25 the AIMS lieutenants have the ability to pull

1 information and evidence, you mentioned digital forensic
2 evidence, logbook pages and what -- anything, interview
3 subjects, interview inmates, interview witnesses.

4 The big difference between the two is that, if
5 an AIMS lieutenant is conducting their inquiry and they
6 reach a point where reasonable belief has been
7 established, then they are required to stop their
8 inquiry, finish their -- finalize their report, turn it
9 back over. It goes back through to the hiring
10 authority, and the hiring authority then has to make
11 that request over to the Office of Internal Affairs for
12 an investigation.

13 So although they have the same ability to pull
14 information, the AIMS lieutenant and captains also are
15 limited in that, once that threshold has been met of
16 reasonable belief, they can't continue. They have to go
17 out and then go through the formal investigation
18 process.

19 Q. What question or questions are an AIMS
20 lieutenant seeking to answer in their inquiries?

21 MR. MAIORINO: Objection. Vague and ambiguous.

22 THE WITNESS: I -- I'm not sure -- I'm not sure
23 I understand the question.

24 BY MR. FREEDMAN:

25 Q. Is the -- are they -- is the purpose of the

1 AIMS inquiry to answer the question, "Is there a
2 reasonable belief that the misconduct occurred?"

3 A. No. That's not the purpose of the Allegation
4 Inquiry Management Section, no. I would not say that
5 that is -- that is not the question that they're trying
6 to answer. They're trying to gather information
7 specific to the allegation that has been made by the
8 incarcerated person.

9 So -- but with that, if -- if they get to a
10 point where the information they have collected now hits
11 that threshold of reasonable belief, they're required to
12 stop, and then that gets referred over to the Office of
13 Internal Affairs, be at a higher authority.

14 So they're not answering the question of
15 reasonable belief necessarily, but when that threshold
16 is met, they can't continue.

17 Q. So if they reach the reasonable belief
18 threshold they have to stop. If they're conducting an
19 inquiry -- I'm sorry. They have to stop if they reach
20 the reasonable inquiry threshold; correct?

21 A. If they reach the reasonable belief threshold,
22 that is correct that they have to stop.

23 Q. If they're conducting an inquiry and they do
24 not reach the reasonable belief threshold, how do they
25 know when to stop their inquiry?

1 A. When the inquiry lieutenant or, if it happens
2 to be the in-captain doing the inquiry, they are -- they
3 are expected to continue with their inquiry until they
4 have documented all possible evidence that they can as
5 well as interviewing pertinent witnesses and, if
6 necessary, of course the incarcerated person that made
7 the allegation, and also if necessary the subject of the
8 allegation as well. So they're expected to continue
9 until -- until they have gathered the facts and
10 information surrounding the allegation.

11 And so when are they considered done? They're
12 considered done when -- when they don't have any
13 additional information that they can reasonably obtain
14 and put into that allegation inquiry.

15 Q. The people who have been hired to work for AIMS
16 or transferred into AIMS from other positions, do they
17 have any type of special experience conducting
18 investigations prior to working for AIMS?

19 A. Some of them did. There are some of the staff
20 that were hired into the AIMS unit that have either
21 prior experience in investigative services unit or have
22 experience doing allegation inquiries. Maybe they were
23 trained to be a locally designated investigator for the
24 Prison Rape Elimination Act. So there's -- some of the
25 staff definitely have some experience.

1 However not everybody did. And so -- so
2 although some did have experience; others, the
3 experience is -- you know, the experience they either
4 had at the institution or whatever their work history
5 was, and then that combined with their interview and all
6 the other factors that are considered in a hiring
7 situation were reviewed to determine who the best
8 persons were for the job.

9 Q. So previous experience conducting
10 investigations was not required to be selected for one
11 of the AIMS positions; is that correct?

12 MR. MAIORINO: Objection. Goes beyond the
13 scope of what she was designated in the PMK.

14 THE WITNESS: So the -- when we're talking
15 about investigations, we're typically talking about
16 special agents and people that are working for the
17 Office of Internal Affairs. And it doesn't happen very
18 often that staff go from a special agent position back
19 into a lieutenant position or a captain position. It
20 could happen, but we don't see it very often. So it was
21 not a requirement that staff had investigation
22 experience to be a part of the AIMS unit, no.

23 BY MR. FREEDMAN:

24 Q. I think I was using the word "investigation" in
25 more of a colloquial common meaning.

1 Was it -- was it a requirement to be selected
2 for one of the AIMS positions to have had experience
3 conducting investigations in the general sense of that
4 word, not in the specific OIA for the word?

5 MR. MAIORINO: Objection. Vague and ambiguous.
6 Goes beyond the scope of the deposition.

7 THE WITNESS: If -- so let me say that it was
8 not a prerequisite that they had investigation
9 experience. It was not a requirement that they had
10 inquiry experience or that they had experience at the
11 institution conducting inquiries.

12 However, the totality of the persons who
13 interviewed experienced and the review of the experience
14 they had was all considered when they -- when the
15 decision was made to hire into the units. Most of the
16 staff that came in were already correctional -- were
17 already supervisors. Maybe they were sergeants. Maybe
18 they were lieutenants. Maybe they were already captains
19 which would have made them actually a manager.

20 In all of these cases we expect and had
21 expected for a long time that our sergeants and our
22 lieutenants would be doing local reviews of appeals and
23 also doing reviews of staff complaints that would not
24 result in adverse disciplinary action.

25 So many of them have this experience already,

1 but it was not a prerequisite, no.

2 BY MR. FREEDMAN:

3 Q. What training did the AIMS staff receive
4 regarding how to conduct inquiries?

5 A. The AIMS staff came up to the Office of
6 Internal Affairs for training on their new roles, and so
7 they received approximately 3-1/2 days of training, and
8 that training encompassed a broad range of topics to
9 include interview -- interviewing tactics, to include
10 report writing. There was background information
11 specific to the discipline process and some historical
12 information that was provided to them, background
13 information about Penal Code, about public safety
14 officers' Bill of Rights and things of that nature.

15 The office of the inspector general gave a
16 presentation on their role in this whole process to the
17 units.

18 The staff received some training on how to --
19 how to use a safe vehicle appropriately and fill up the
20 car and things of that nature. They learned how to use
21 the mobile phone device that we provided them so that
22 they knew how to record interviews and do things of that
23 nature.

24 They learned how to get reimbursed for their
25 travel. They also learned about the incidents or the --

1 I'm sorry. The AIMS tracking system and how to work
2 within the tracking system to document their -- their
3 inquiry, their time, documenting where they are in the
4 process of the inquiry and all of that.

5 So it was a pretty broad brush. I'm not sure I
6 touched on every single topic. I think I touched on
7 most of them. But again, 3-1/2 days.

8 They also received an introduction from the
9 chief deputy administrator as well as the deputy
10 director of OIA. And then although I was not hired on
11 as the director in January, I was hired on by March and
12 I also attended parts of the training and made sure at
13 the beginning to give a brief introduction of myself and
14 also to set some very clear expectations for the unit
15 and what my expectations were for their work going
16 forward.

17 So like I said, I may have missed a few of the
18 topics, but that -- that encompasses most of it, I
19 think.

20 Q. What -- will the AIMS personnel receive any
21 ongoing training about how to conduct inquiries?

22 A. There is mandatory training that our staff get
23 every single year, and those -- that training is -- some
24 of that training involves requirements. Because of the
25 their status as a peace officer, some of that will be

1 required based on their assignment in OIA, and so there
2 is a schedule of training that will be ongoing. Some of
3 those will differ from year to year. For instance, of
4 course they're required to complete their firearms
5 training. That's something that's required. EEO and
6 sexual harassment is something that's required.

7 So some things will happen on the natural
8 because it's a requirement. Other things will happen --
9 will be added in or maybe taken out so that they get
10 different classes over the different years, and it will
11 be in collaboration with OIA and what they feel their
12 needs are in addition to what office of training and
13 personnel development mandate for training on those
14 annual training courses.

15 Q. How will new hires into AIMS be trained?

16 A. All new hires into AIMS will receive that 3-1/2
17 days of training that the brand-new unit received. So
18 as new staff are hired on, if they have not been to that
19 training, the expectation is we'll allow them to shadow
20 the existing staff. They'll be able to watch the
21 process. But they won't be able to actually engage in
22 the process until we've gotten them into that
23 orientation training, if you will, that 3-1/2 days.

24 And then after that, again, they'll probably
25 not be on their own immediately. They're -- in both of

1 our rollouts of AIMS we had them paired up quite a bit
2 in the beginning until they get familiar and accustomed
3 to the process and then get them out on their own after
4 that, so . . .

5 Q. What is -- what are the AIMS lieutenants
6 supposed to produce once their inquiry is done?

7 A. The AIMS lieutenant, once they've completed an
8 inquiry, they're expected to put together a report.
9 That is a report of -- it will summarize their
10 interviews, it's going to provide the evidence that
11 they've gathered, it's going to have any other fact or
12 information included, and that information in that
13 report will be finalized and submitted back to the
14 hiring authority.

15 So they will provide a document that entails
16 the information that they were able to gather for review
17 by the hiring authority.

18 Q. Will -- do those reports include a
19 recommendation from the person who conducted the inquiry
20 regarding whether the hiring authority should request an
21 investigation from OIA?

22 A. The report does not include that. The -- just
23 like the Office of Internal Affairs, they gather
24 information and facts, but they do not make a
25 recommendation or state an opinion as to guilt or

1 innocence in those reports. Instead they gather the
2 facts, they put that information in there.

3 The decision whether or not there has been
4 misconduct and then ultimately whether it will go to the
5 Office of Internal Affairs or whether any action will be
6 taken outside, that is the decision of the hiring
7 authority back at the institution.

8 Q. Now, you said earlier, I believe, that if the
9 AIMS lieutenant reaches a point in the inquiry where he
10 or she believes there is a reasonable belief that the
11 misconduct occurred, they have to stop the inquiry and
12 communicate that information to the hiring authority; is
13 that correct?

14 A. That is correct.

15 Q. In circumstances where that happens, do they
16 still write a report for the hiring authority including
17 all the information they've gathered up to that point?

18 A. Yes, they do.

19 Q. And by communicating to the hiring authority
20 that they believe -- that they have reached the point
21 where they have a reasonable belief that the misconduct
22 occurred, does that not function as a de facto
23 recommendation for the hiring authority to refer the
24 case to OIA for an investigation?

25 MR. MAIORINO: Objection. Incomplete

1 hypothetical.

2 THE WITNESS: I would say that, because the
3 threshold of reasonable belief is one that's universal
4 when we talk about allegation inquiries, that that would
5 be no different than if it had happened at the local
6 level as well, that at that point there is the
7 reasonable belief that the misconduct occurred, and that
8 takes the allegation inquiry section out of being able
9 to go any further or conduct any further inquiry into
10 it.

11 Whether or not that elevates or creates a de
12 facto recommendation, I suppose it could be seen that
13 way; however, the inquiry -- the AIMS section is not
14 making a recommendation for that. They're simply saying
15 they can no longer continue with the investigation due
16 to the fact that they have reached a threshold where
17 they believe reasonable belief is established. So it
18 still is the hiring authority who has to make that
19 decision.

20 BY MR. FREEDMAN:

21 Q. I believe you touched on this earlier, but if
22 an AIMS investigator uncovered additional misconduct in
23 the course of conducting interviews or reviewing
24 documents or what have you, I believe you said they're
25 supposed to continue their line of investigation on that

1 misconduct but then not investigate further and refer
2 the information back to the hiring authority; is that
3 correct?

4 A. Kind of. Let's talk about that a little bit
5 more and make sure that we're clear on that that if, in
6 the course of doing the allegation inquiry for one
7 allegation, additional allegations unrelated, separate
8 allegations are brought forward, the inquiry lieutenant
9 have an obligation to document those other allegations
10 of staff misconduct because we all have an obligation to
11 document allegations of staff misconduct. And so that
12 inquiry lieutenant is going to take that information.
13 And it will not be part of their inquiry for the claim
14 that they're currently reviewing, but they will still
15 have to document that allegation and submit it to the
16 hiring authority so that the hiring authority can then
17 make a decision on how to move forward with that
18 particular allegation of staff misconduct.

19 Q. So AIMS conducts an inquiry, they draft a
20 report, it gets reviewed and approved by the captain and
21 the chief deputy administrator, it then gets sent back
22 to the hiring authority.

23 What happens then?

24 A. Well, that's outside of the AIMS process. So
25 once -- once that report goes back, the AIMS unit is

1 out. They don't have any further contact with that.

2 That -- at that point and so outside of the
3 AIMS process, that now is -- the report sits with the
4 hiring authority and the hiring authority has to make a
5 decision based on the facts and evidence that are
6 presented before them whether or not they're going to
7 refer that to the Office of Internal Affairs. Maybe
8 they believe that enough has been gathered that direct
9 adverse action should be requested. Maybe there's
10 reasonable belief that they feel more investigation is
11 required, so that can be sent up to OIA. Maybe what
12 they have in front of them is enough to substantiate
13 that misconduct occurred but they no longer believe that
14 it rises to the level of adverse disciplinary action and
15 instead they want to take corrective action, they can
16 then move forward with that. Or maybe they, as a result
17 of that inquiry, have determined that there was no
18 substantiation of misconduct, in which case they
19 finalize the grievance response to the -- to the
20 incarcerated person, letting them know that.

21 So that really -- again, it's outside of the
22 AIMS world. It's not something that we would deal with
23 but falls back into the hiring authority's hands.

24 Q. Is AIMS provided with any notification
25 regarding what the hiring authority decides to do with

1 the inquiry reports?

2 A. There is nothing in the AIMS process to
3 document the decision by the hiring authority once the
4 report goes back. So unlike -- unlike our -- some of
5 our office processes, the AIMS tracking system ends at
6 the point that the report returns to the -- to the
7 hiring authority.

8 Q. So AIMS doesn't even know what the hiring
9 authority does when they're reporting them; right?

10 A. That's correct.

11 Q. Can AIMS directly refer any allegations to OIA
12 for an investigation?

13 A. The emergency regulations do leave the ability,
14 if they believe it to be appropriate, for that to
15 happen. Those are not expected to be the norm, but
16 there is the ability, if deemed appropriate, to go that
17 route. Again, it's not expected to be the norm, but it
18 is something that could happen.

19 Q. And I believe you just said it's in the
20 regulations; is that right?

21 A. I think it -- and I'm -- I'm now trying to
22 remember, but I believe that it is part of the emergency
23 regulations. And if not, maybe it's parts of another
24 process that we've worked on. And it may -- it actually
25 may be part of the employee inquiry and investigation

1 process in general. So I would have look that up and
2 verify. But it's my understanding that it could happen,
3 but it's not the expectation.

4 Q. Do you know if that has happened yet with any
5 of the inquiries that AIMS has conducted?

6 A. I don't know.

7 Q. AIMS was funded through a budget change
8 proposal; correct?

9 A. That's correct. The creation of the AIMS unit
10 was approved through a budget change proposal.

11 Q. And does that budget change proposal provide
12 funding for ongoing operation of AIMS?

13 A. It does.

14 Q. So far does AIMS have adequate funding to
15 perform, you know, its function?

16 A. I'm going to preface this answer with we're
17 definitely in the infancy stage, and so so far we have
18 not had a budget shortfall based on our funding.
19 However, we are very closely tracking that because we --
20 we know that the development of the AIMS unit was based
21 on quite a few assumptions. And what we think it was
22 going to take to complete those inquiries, we're going
23 to be closely monitoring times. And if we determine
24 that additional resources are needed, we will be
25 addressing that as quickly as possible. But so far

1 we're doing okay.

2 Q. Did you see that the Governor announced, I
3 believe it was yesterday, that there's a \$54 billion
4 shortfall for fiscal year 2020-2021 in the California
5 state budget?

6 MR. MAIORINO: Objection. Objection. Goes
7 beyond the scope for which this PMK has been designated.

8 THE WITNESS: Yes. I am very aware of the
9 projected deficit that we're facing.

10 BY MR. FREEDMAN:

11 Q. Is it possible that the projected deficit may
12 impact funding for AIMS?

13 MR. MAIORINO: Objection. Goes beyond the
14 scope for what she was designated as a PMK.

15 THE WITNESS: I can't answer whether or not it
16 will impact. I can tell you that, as of right now and,
17 you know, of course I've -- I was in conversation and
18 have maintained a conversation with my immediate
19 supervisor through a lot of this, and we've known that
20 we are facing an imminent budget crisis, there is
21 absolutely no -- no reason to believe at this point that
22 there would be any impact to the funding that we've
23 received so far. We expect that that will continue and
24 that it will not be impacted by this ongoing crisis.

25 ///

1 BY MR. FREEDMAN:

2 Q. Is there any oversight over AIMS?

3 A. The AIMS process has built in already oversight
4 from the office of the inspector general. So we do have
5 the inspector general who has the ability to monitor our
6 Allegation Inquiry Management Section process, and so
7 that is ongoing.

8 In addition to that, we have -- we are planning
9 to create two -- well, create two different review
10 processes, if you will, and so they're still in the
11 development phase. One of those processes will include
12 a review by the Office of Audits and Court Compliance to
13 ensure that inquiries are being responded to timely and
14 are moving through the process as designed. The second
15 process will be more of an internal process that we will
16 work with the Office of Internal Affairs to build so
17 that they can have a tool to evaluate the efficiencies
18 and the -- and the status of their operations in each of
19 their units: southern, central and northern.

20 So an internal process as far as the Office of
21 Internal Affairs and the AIMS, the chief deputy
22 administrator AIMS doing regular reviews as well as
23 having a unit in the office of audits and court
24 compliance that will have an audit tool of sorts. And
25 then of course we have our inspector general's office

1 that already has oversight of the process.

2 Q. Is the OIG currently monitoring the AIMS
3 process?

4 A. We discussed with the OIG -- we actually meet
5 with the OIG on a pretty regular basis at this point
6 about every other week to discuss the -- among other
7 things the Allegation Inquiry Management Section and the
8 progress. The last conversation that we had with the
9 inspector general's office they said that, although they
10 are not monitoring specifically allegations at this
11 point, they're still really reviewing the process of
12 reviewing the tracking system and getting -- they don't
13 have an audit school or a reviewing structure yet for
14 the sections but plan to develop it here in the -- you
15 know, ongoing.

16 And again, in my last conversation with the
17 officer of the inspector general, they thought that they
18 would be ready to actually start doing auditing and
19 having an audit tool closer to the end of the year.
20 Calendar year, by the way.

21 Q. And will the OIG be monitoring the quality of
22 the work by AIMS?

23 MR. MAIORINO: Objection. Vague and ambiguous.

24 THE WITNESS: The OIG has noted that they will
25 be auditing and reviewing everything from the initial

1 review by the reviewing authorities all the way through
2 the inquiry reports, the quality of those reports, and
3 ultimately the return back to the institution as well as
4 any decisions being made at that level. So the
5 inspector general's office has told us they'll be
6 reviewing the process in its entirety.

7 BY MR. FREEDMAN:

8 Q. But the OIG has also told you they will not
9 have the tool to be able to conduct that review until at
10 least the end of this year; is that correct?

11 A. They didn't say that no matter what that it
12 wouldn't be until the end of the year. What they said
13 was that they want to make sure that what they put
14 together and their processes, that they probably won't
15 have something consistent where, for instance, when we
16 put together an auditing tool and there's measures that
17 they go by. So they're already looking at the process
18 and watching the process and they have access to the
19 tracking system, but they don't expect quite to actually
20 start and -- try to make sure that I accurately reflect
21 how it was told to me, but that they wouldn't have
22 something where they would have a formal review process
23 in place until -- until later and likely towards the end
24 of the calendar year.

25 Q. And the OACC auditing or monitoring that

1 they'll be doing, how will that differ from the OIG
2 monitoring?

3 A. The Office of Audits Court Compliance, of
4 course, is a -- falls under me and my division, and yet
5 they also have that separation from the division of
6 adult institutions at the institutions, and then are
7 separate and apart from OIA. So we -- by the way, we're
8 not in the BCP, the Budget Change Proposal. Although it
9 speaks to having an auditing function, there was not
10 budget authority for that. So we are currently looking
11 at the positions that we have available and how we can
12 create that, as well as creating an auditing tool. I
13 don't know that I can tell you how it will differ from
14 the office of the inspector general because we also are
15 still trying to develop how we will monitor progress and
16 monitor success and have measures that we can use to
17 determine if it is meeting our goals and our needs or
18 not. So I don't know that I have an answer to that
19 exactly but know that our expectation is that we will
20 have those different monitoring functions also.

21 Q. Will OACC have any additional staff to conduct
22 the monitoring of AIMS?

23 A. We're already looking at the staffing that we
24 have available to us. And so, when we restructured our
25 grievance of appeals unit, we restructured the office of

1 appeals specifically, and one of the captain positions
2 in that unit we set aside so that we could move that
3 over to the office of audits and court compliance so
4 that we could start setting up this auditing function
5 for AIMS.

6 Beyond that, we will definitely have to find
7 the resources funding if we need additional resources or
8 maybe we will have the ability to move some staffing
9 resources over. What that looks like we're not certain
10 yet, but we are committed to having a unit that does
11 that in OACC and having the resources there so they can
12 do the job that needs to be done.

13 Q. I just want to make sure I have this clear. It
14 sounds like you have been able to essentially add one
15 captain to work on monitoring AIMS within OACC by
16 transferring that person from some other position within
17 CPRIIO. But otherwise, there is no additional staff at
18 OACC to conduct the AIMS monitoring; is that right?

19 A. That's correct. For -- and we have not moved
20 that position over officially yet. We've identified the
21 position, and we're in the process of moving that
22 position over so that we can hire that particular
23 position, and then we can, with the assistance of that
24 person as well as some other resources, start to
25 developing that auditing tool.

1 Q. Do you have any timeline or any date by which
2 you think OACC may start monitoring AIMS?

3 A. I don't have a timeline for when we will have
4 OACC established to do that monitoring, but I have
5 committed to the secretary of the department of
6 corrections that, absent an official monitoring process
7 that, through my office, that we would establish a more
8 informal process of looking at the different steps in
9 AIMS and using our resources to start to do an informal
10 audit, if you will, an evaluation of the processes until
11 we can get a formal process stood up.

12 And so we are currently working to develop what
13 that will look like so that, by July 1, and so by July 1
14 we're looking at having three months of everybody using
15 the AIMS process, a few extra months in that northern
16 region plus RJD, and so we believe that that will then
17 give us a very good starting place to look at what has
18 been done so far and see if changes need to be made or
19 if we're not meeting the mark or our goal and such.

20 But we haven't developed it yet, but I have
21 committed to the secretary that we will be doing that.

22 Q. I think you mentioned earlier that you created
23 a system for tracking AIMS inquiries; is that correct?

24 A. I did not personally create the tracking
25 system. So just to be clear, I do not have those

1 skills. But we do have a system that has been developed
2 to track the AIMS submission, submissions to AIMS.

3 Q. And so that will be -- it will track all of the
4 referrals made to AIMS; is that correct?

5 A. That is correct. Every single referral will be
6 tracked in that system.

7 Q. And what information does that system track?

8 A. So I don't have it directly in front of me, but
9 I can go over most of it. I think I'll hit most of
10 those items. Of course it includes the name and the
11 CDCR number of the incarcerated person making the
12 allegations. It includes the names of any subjects that
13 have been identified as being involved in staff
14 misconduct.

15 It includes the institution and location of
16 where that misconduct allegedly occurred. It has the --
17 a place to put the grievance log number, but it also
18 creates an independent and separate Allegation Inquiry
19 Management Section log number as well, so it's got a
20 space for that. This particular tracking system also
21 has the ability to enter in what the allegation is.

22 It tracks the movement from the time it comes
23 in and is entered in by the analyst into the system, and
24 then it tracks its movement over to the review by the
25 captain. Then if it's -- then if it's assigned, it

1 tracks the timeline for it to be assigned down to
2 lieutenant. If the decision is made not to move it
3 forward and they believe it needs to be returned, it's
4 tracking all of that as well.

5 It has in it the ability to upload documents
6 into that particular system. So the original claim will
7 be there for review, as well as other evidence that is
8 received as part of the allegation. Ultimately it has
9 the ability. Always the inquiry report, it does not
10 have the ability to digitally enter the inquiry report.
11 The inquiry report still has to be drafted, printed,
12 signed, reviewed and then scanned and put back into the
13 system. So by the way, it's on the list of things to
14 do, but it is not part of the systems yet, so a little
15 archaic there.

16 And then of course, to have the ability to
17 track those different review processes all the way
18 through returns back to the institution.

19 Q. In terms of the victims or the complainant,
20 does it track any of their characteristics, such as if
21 they're an Armstrong class member?

22 A. So it does not currently track whether or not
23 they're an Armstrong class member. We have realized
24 that that is a big issue of concern, and so it is in the
25 development stages as we speak to have the ability to

1 track whether that person is an Armstrong class member,
2 a Clark class member, a Coleman class member, all of the
3 above class members. Also has the ability to -- and
4 also plans to have the ability to track effective
5 communication needs. So making sure that, if there's a
6 need for effective communication, that that's clearly
7 denoted.

8 It does have, by the way, a place to track the
9 inmates -- I'm not sure if they call it ethnicity or
10 race but -- and that's based on what's already entered
11 into our database, our SOMS database. It also has the
12 ability to identify the inmate's gender. Currently it
13 lists -- the options listed are male, female,
14 transgender and other. We are working to change that to
15 actually more appropriately be documented as male,
16 female, nonbinary which, of course, is the third gender
17 approved by the State of California, and then also
18 include a box for gender-nonconforming/transgender,
19 recognizing that persons who identify as either
20 gender-nonconforming or transgender or some other label
21 other than the three above, we want to adequately
22 capture that as well.

23 So those are some of the other things that
24 we're tracking. But definitely when it comes to class
25 members, it was not built into the system originally,

1 and it is something that is at the top of the list to
2 get incorporated in so we can do that tracking.

3 Q. Does the system have any capabilities to run
4 reports to try to identify staff misconduct problems
5 within the system?

6 MR. MAIORINO: Objection. Vague and ambiguous.

7 THE WITNESS: So if the question is can we --
8 so I'm going to rephrase this and make sure I got this
9 right -- that can we track trends data? Can we track to
10 see if there's been multiple allegations that involve a
11 particular staff member or multiple allegations made by
12 a particular inmate or if there's multiple allegations
13 that involve inmates of a certain age or -- and so if
14 that's what the question is, the answer is that
15 currently there's no reports developed, but we do have
16 the ability, through an ad hoc process, to hold that
17 information. And also we hope to have the ability to
18 have that information report automatically set up so
19 that we don't have to manually go through and create
20 them. So currently there's none already developed, but
21 the system is built so that that information can be
22 tracked.

23 BY MR. FREEDMAN:

24 Q. When a new case is opened against a subject who
25 already has an existing case either pending or

1 completed, is there any notification or -- that that is
2 the case, to the person who has been assigned a new
3 case?

4 A. There's not an automatic notification. So
5 that's something that we're looking at developing as
6 well is how we design that so that some of those factors
7 can be readily identified. So there -- but there is not
8 an automatic notification. It would be something that
9 would have to be queried to go back and look to see if
10 there were any others.

11 Q. Do the institutions have any ability to ask
12 that you pull information or data from your tracking
13 system for their own use?

14 A. The institutions can absolutely ask for that,
15 and so --

16 Q. Can they --

17 A. So my answer is yes, they can ask. And the
18 answer is that it would depend on specifically what
19 information they're requesting. But, you know, and so
20 that would all fall into the rules of confidentiality
21 and what we do release. And so, you know, that -- case
22 by case we will be evaluating what the institution can
23 actually ask.

24 Q. Could an institution, for example, ask for a
25 list of all inquiries conducted by AIMS regarding staff

1 at their institution in the last year?

2 A. But to be clear, the institution should be
3 tracking that information as well, and so they should
4 absolutely have access to that and know definitively the
5 submissions to the Allegation Inquiry Management
6 Section. So -- but if they were to ask, Can we get a
7 list of all of the submissions that we've had thus far,
8 I don't see why that would be a concern. But again, we
9 would evaluate that request to make sure that we're not
10 releasing anything we shouldn't be releasing.

11 Q. Has that -- as far as you're aware, has any
12 institutions asked for information from the AIMS
13 tracking system?

14 MR. MAIORINO: Objection. Goes beyond the
15 scope of the PMK designation.

16 THE WITNESS: I don't believe that anybody has
17 asked for that as of -- as of yet.

18 BY MR. FREEDMAN:

19 Q. And will the institutions be able to access the
20 information on their own?

21 A. The system is currently not set up so that the
22 institutions have any access to it, so the answer to
23 that question currently is no. Not to say that that
24 will be the answer forever, but there is no access
25 outside of the AIMS unit, and then those that -- outside

1 of the AIMS unit that have access, for instance the
2 office of the inspector general, myself.

3 Q. Is the AIMS system integrated at all with OIA's
4 case management system?

5 A. It is not.

6 Q. Is the AIMS system integrated at all with the
7 new incident reporting system that I think you mentioned
8 earlier?

9 A. It is not.

10 Q. Is the AIMS system integrated with SOMS at all?

11 A. It is not.

12 Q. Does CDCR believe that AIMS will result in a
13 decrease in instances of staff misconduct against
14 incarcerated people?

15 A. I don't believe that that is necessarily a
16 question that we are prepared to answer. I believe
17 that, because the purpose of the Allegation Inquiry
18 Management Section is to put together very thorough
19 reports of inquiries with evidence and information
20 regarding staff complaints and that that information
21 will be gathered by persons not involved with the
22 institutions and therefore give the hiring authority a
23 more independent and unbiased review, of course I think
24 that we would like to hope that that does act as a
25 deterrent and reduce the number of staff complaints, but

1 I think only time will tell in that regard.

2 Q. CDCR expects that the inquiries conducted by
3 AIMS will be better than the inquiries conducted by
4 local institutions previously; right?

5 MR. MAIORINO: Objection. Vague and ambiguous.

6 THE WITNESS: I don't know that better is
7 appropriate in all cases. So I can tell you that
8 obviously, and as mentioned in some of the reports
9 earlier, that there are concerns about the quality of
10 inquiries they conducted at some of our institutions,
11 but I can also tell you that in some cases our
12 institutions have staff that do exceptional inquiries
13 and that those inquiries, you know, are then used by the
14 hiring authority in order to make decisions.

15 So to say that we believe that the inquiries
16 will be better than inquiries completed at institutions,
17 I don't think that the blanket statement is true, but I
18 think that there are definitely -- in some cases they
19 will be better because the staff are better trained.

20 And in some cases -- and in all cases, because
21 these inquiries that are going to AIMS are being
22 completed outside of the institution, it lends itself to
23 a more unbiased evaluation of the circumstances and the
24 evidence that then provides the hiring authority.

25 Q. Why didn't CDCR decide to have AIMS conduct

1 inquiries in all the instances where the allegation
2 would more likely than not result in adverse
3 disciplinary action if proven true?

4 MR. MAIORINO: Objection to the extent it calls
5 for confidential information.

6 THE WITNESS: So I can speak to some of the
7 areas where the decision was made not to send them to
8 AIMS. For instance, with the Prison Rape Elimination
9 Act, so any allegation of staff sexual misconduct or
10 staff sexual harassment, the timelines for responding to
11 those allegations are very short. Immediate action is
12 required. And so there's -- there's a whole series of
13 things that have to happen when those come through.
14 Recognizing that the Allegation Inquiry Management
15 Section is not at the institution, it means that we have
16 to mobilize staff, and they have to be ready to be
17 mobilized 24/7 because those allegations can happen at
18 any time day or night, and that's not something that we
19 had established in the process.

20 And so to the extent that the decision was made
21 to leave those in the existing process where we already
22 have investigators, locally designated investigators
23 trained by OIA to complete those inquiries, and the
24 expectation is is that, because every allegation of
25 staff sexual misconduct or staff sexual harassment is

1 the hiring authority, if notified so they're aware of
2 it, and in all of those allegations there's also a
3 review process that has to take place at the
4 institution, it looks a lot like the process for use of
5 force but for allegations of -- that would violate the
6 Prison Rape Elimination Act. So because of that, and
7 because of the need for a very quick response in that
8 particular instance, the decision was made that we would
9 leave that process very robust, recognizing that if any
10 time during that process it -- there is information that
11 rises to the level of reasonable belief, again it goes
12 on to Office of Internal Affairs Division 989.

13 And so in the instances where allegations that
14 may -- that could, if proven true, result in adverse
15 disciplinary action have been -- it's been decided to
16 keep them outside of this particular process, in many
17 cases it has everything to do with the processes that
18 are already established, some of which are required for
19 federal compliance, if you will, with the standard or
20 with previous court decisions and settlements and,
21 because those processes exist, allowing those processes
22 to continue. And so that's -- that would be why some of
23 those decisions were made, and that's some of the
24 reasons why those decisions were made.

25 ///

1 BY MR. FREEDMAN:

2 Q. You just spoke about why PREA was excluded, and
3 I think you may have been alluding to some of the other
4 things that were excluded as well. But can you please
5 explain why not all use-of-force allegations of staff
6 misconduct will be -- will have an inquiry conducted by
7 AIMS into those allegations?

8 MR. MAIORINO: Let me just object to the extent
9 it calls for confidential information relating to the
10 attorney-client privilege. I believe that you did ask
11 this question.

12 THE WITNESS: Yeah. I believe that we did
13 answer this question earlier, but again, going back to
14 that, with the use-of-force review process that already
15 exists in the institutions, use of force is not
16 something that is reviewed, that is not reviewed. In
17 every instance it is reviewed. So we already have a
18 process when an allegation is made.

19 That process includes the recorded interview of
20 the incarcerated person. It includes an inquiry, but it
21 also includes a review by the incident commander. Any
22 use-of-force review includes a review by the incident
23 commander, the first-level manager, the second-level
24 manager; it includes a review by the institution
25 executive review committee. In instances where there's

1 serious bodily injury it includes a review by the
2 director executive review committee. If it includes
3 great bodily injury, it automatically goes to Office of
4 Internal Affairs.

5 And so looking at that process in totality, the
6 decision was made that, although that -- the process is
7 robust, and initially and in the request that was put
8 forward for funding, we did not expect to take any
9 allegations out of the use-of-force process because that
10 process exists and is already established and has been
11 agreed to through court action and decisions, ultimately
12 we're compromised with some concerns about those
13 allegations and elected to take any that rose to the
14 level of serious bodily injury knowing that you'd have
15 an allegation -- you have a use-of-force situation, you
16 have the allegation, it resulted in serious bodily
17 injury and that totality, we believe, you know, would be
18 appropriate to do allegation inquiries in AIMS.

19 But for the rest of them, we felt that the
20 processes that existed were satisfactory.

21 BY MR. FREEDMAN:

22 Q. Given what you know about the quality of IERC
23 reviews of allegations of unnecessary and excessive
24 force and what you know about the quality of AIMS
25 inquiries into allegations of unnecessary and excessive

1 force, do you think one process is better than the other
2 for conducting inquiries into those types of
3 allegations?

4 MR. MAIORINO: Objection. Vague and ambiguous.

5 THE WITNESS: I don't think that I would say
6 that one process is better than the other. I would say
7 that they are separate processes. They're different
8 processes. And -- and so to the extent they're both put
9 in place to accomplish the same thing which is to
10 determine if the use of force was appropriate or if the
11 allegation of unnecessary or excessive use of force
12 has -- is credible and can be substantiated.

13 So I don't -- I don't know that I would say one
14 is going to be better than the other. As I mentioned
15 before, in light of the fact that there's been some
16 concern about the inquiries that are completed at the
17 local level, having an inquiry completed outside of the
18 local institution and through the AIMS unit will give it
19 -- you know, will potentially provide for a review that
20 is seen as unbiased and separate and -- separate from
21 the institution. So just a more objective and unbiased
22 review.

23 BY MR. FREEDMAN:

24 Q. Are you implying at all that the IERC
25 investigations are biased and not objective?

1 MR. MAIORINO: Objection. Argumentative. Goes
2 beyond the scope for which she's been designated.

3 THE WITNESS: So I'm not implying that at all.
4 What -- the only thing I intended to mean by what I said
5 is that there is concern about that process, and so that
6 is one of the reasons why the establishment of AIMS
7 exist. And so -- but no, I don't believe that the
8 process for reviewing use of force, especially with this
9 many persons that evaluate our use of force both
10 internally and externally, remembering that use-of-force
11 allegations are not only reviewed by the institution but
12 they're also reviewed by the office of the inspector
13 general who has the ability to be part of our
14 use-of-force review process and incidents are regularly
15 reviewed through associate directors and others and they
16 always have the ability to ask for a director's level
17 review of use of force if they feel that that's
18 necessary as well, so I wouldn't say that they're
19 biased.

20 BY MR. FREEDMAN:

21 Q. At this time does CDCR know if AIMS has reduced
22 staff misconduct against incarcerated people?

23 MR. MAIORINO: Objection. Goes beyond the
24 scope for what she's been designated.

25 ///

1 BY MR. FREEDMAN:

2 Q. When would CDCR expect to know if AIMS has had
3 the effect of reducing -- at this time does CDCR know if
4 AIMS has reduced staff misconduct against incarcerated
5 people?

6 MR. MAIORINO: Objection. Goes beyond the
7 scope for which he's been designated.

8 THE WITNESS: No.

9 BY MR. FREEDMAN:

10 Q. When does CDCR expect to know whether AIMS has
11 reduced staff misconduct against incarcerated people?

12 MR. MAIORINO: Objection. Goes beyond the
13 scope for which she's been designated.

14 THE WITNESS: So I don't know that CDCR has a
15 time frame as to when it would know if this process has
16 reduced allegations of a staff misconduct. I can -- I
17 can tell you that for sure the process is being
18 monitored and tracked. But to the extent that we would
19 know when it's -- if and when it's reducing allegations,
20 I don't know.

21 BY MR. FREEDMAN:

22 Q. As the director, you know, with supervisory
23 responsibility over AIMS, when would you hope to be able
24 to know whether AIMS has had the effect of reducing
25 staff misconduct against incarcerated people?

1 MR. MAIORINO: Objection. Goes beyond the
2 scope for what she was designated as a PMK. Objection.
3 Calls for her personal opinion. Goes beyond the scope.

4 THE WITNESS: So as the director I -- you know,
5 my intent is to continue to monitor the process, the
6 implementation and activation of these units and to, you
7 know, monitor our results as far as getting those
8 inquiries into the institutions and into the hands of
9 the hiring authority so that they can make a decision
10 with the reports that are provided.

11 And so to the extent -- and by the way, I --
12 I'm not sure that that -- there will be a cause and
13 effect, if you will, of AIMS is implemented and now
14 there will be a reduction of allegations of staff
15 misconduct because I don't know that the two are
16 direct -- that they're directly related -- or directly
17 linked and that one will impact the other necessarily
18 because with very good processes in place, there's a
19 chance that the incarcerated person, they may actually
20 submit more allegations of staff misconduct. And I
21 mean, we just don't know what that looks like.

22 So my goal with the Allegation Inquiry
23 Management Section is to make sure that, when those
24 allegations that meet the criteria for an inquiry are
25 submitted, that the unit is doing very thorough,

1 complete inquiries and submitting all the evidence
2 possible to the hiring authorities to make a good
3 decision going forward.

4 Q. Is that the primary way you'll measure whether
5 AIMS has been successful?

6 MR. MAIORINO: Objection. Vague and ambiguous.

7 THE WITNESS: We have -- I'm sorry. I have not
8 established the criteria specifically that will be used
9 to determine if we are successful and if we are meeting
10 the goals and the needs of the department. I think it's
11 bigger than just looking at whether or not we're meeting
12 deadlines, whether or not we're getting reports back.
13 So to the extent that -- I feel like I can't answer that
14 question yet because I have not established benchmarks
15 for that and what that looks like which, of course, is
16 something that we expect to develop as we put together
17 an audit tool and do those reviews. But at this point,
18 because I haven't established those benchmarks or those
19 measures, the only thing I can tell you is that, through
20 the review process, I expect that we will be doing very
21 good inquiries and getting that information back to a
22 hiring authority so that they can make informed
23 decisions.

24 BY MR. FREEDMAN:

25 Q. Can video surveillance evidence be useful to

1 the AIMS lieutenants when they're conducting inquiries
2 into staff misconduct?

3 MR. MAIORINO: Objection. Goes beyond the
4 scope for which she's been designated.

5 THE WITNESS: Video and -- video evidence and
6 audio-video evidence, if you will, is a tool that, for
7 institutions that have that particular capability,
8 they're able to use that tool in some cases to resolve
9 concerns and allegations more quickly because video
10 evidence oftentimes can provide you with a video proof,
11 audio proof if it's audio-video of the situation that
12 happens.

13 So to the extent that it's a useful tool, I
14 would say that it is a useful tool, knowing that we
15 cannot be everywhere all the time in an institution.
16 But I don't believe that that by itself is the best tool
17 or the only tool, and clearly we have others as well
18 that help us to come to a conclusion.

19 BY MR. FREEDMAN:

20 Q. Most CDCR prisons have little or no video
21 surveillance abilities; correct?

22 MR. MAIORINO: Objection. Goes beyond the
23 scope for which she has been designated.

24 THE WITNESS: So I can tell you in my
25 experience as -- coming in the department of

1 corrections, so for the institutions that I either have
2 worked at or the institutions that through my time in --
3 as an associate director I oversaw, that most of our
4 video surveillance in institutions is in either our
5 visiting areas, maybe there's some that oversee yards,
6 recreational yards. In some cases there may be some
7 surveillance in our newer buildings that were
8 constructed with audio-video or just video surveillance
9 automatically put in.

10 A lot of our older facilities do not have a lot
11 of audio-video surveillance. Many of those systems are
12 not connected necessarily to anything aside from just a
13 recording device but can't be monitored from anywhere
14 else, so . . .

15 BY MR. FREEDMAN:

16 Q. Does the lack of video surveillance at many
17 CDCR prisons make it more difficult for AIMS
18 investigators to conduct their inquiries?

19 MR. MAIORINO: Objection. Goes beyond the
20 scope for which she's been designated.

21 THE WITNESS: As I mentioned previously, video
22 evidence is a tool, something that's available -- where
23 it's available, something that can be used by
24 allegation -- by our AIMS lieutenant conducting an
25 inquiry, so it's a tool. And in some cases it could

1 speed up, or it could provide additional evidence to
2 help to answer some of those questions and get the
3 evidence to document. That can be provided to the
4 hiring authority.

5 And I don't know that I answered your question,
6 so I'm sorry.

7 BY MR. FREEDMAN:

8 Q. The question was does the lack of video
9 surveillance evidence make it more difficult for AIMS
10 investigators to conduct inquiry?

11 MR. MAIORINO: Same objection.

12 THE WITNESS: And I'm sorry. And so the answer
13 is is that it is one less thing that they have to use.
14 So if it exists, then it's one more piece of material
15 that can be evaluated in any allegation against staff --
16 regarding staff misconduct. So I don't know that making
17 it more difficult is appropriate, but it does mean that
18 they do not have that material to review; so it's one
19 less piece of material to review.

20 BY MR. FREEDMAN:

21 Q. If there -- if there is an allegation of
22 unnecessary or excessive force that is evaluated by the
23 IERC -- scratch that. Sorry. Give me a second.

24 Are AIMS lieutenants required to defer to
25 finding of the IERC regarding whether force was

1 unnecessary or excessive?

2 MR. MAIORINO: Objection. Vague and ambiguous.

3 THE WITNESS: Are you asking that, if the IERC
4 is already completed, that the AIMS staff assigned to do
5 the inquiry simply refer back to IERC, and that's it?
6 They're done? Is that what you're asking?

7 BY MR. FREEDMAN:

8 Q. Yes, that's my question. So we talked earlier
9 about a hypothetical where the IERC might complete its
10 review before someone makes a complaint of unnecessary
11 or excessive force, and the IERC might find as part of
12 that review that the force was appropriate and in
13 conformance with policy.

14 Can the AIMS lieutenants conduct additional
15 investigation into that use of force, or do they have to
16 defer to the finding of the IERC regarding whether the
17 force was excessive or not?

18 MR. MAIORINO: Incomplete hypothetical.

19 THE WITNESS: So the AIMS lieutenant in this
20 case, if that is who is doing the inquiry rather than
21 the investigation, would not simply defer to the IERC,
22 and they absolutely are expected to ensure that all
23 pertinent witnesses and all evidence that potentially
24 could be gathered is gathered even if IERC has already
25 reviewed the case and even if IERC has already made a

1 decision. Because if we're -- if AIMS is just now
2 getting that allegation inquiry -- or that allegation of
3 unnecessary or excessive use of force, it would stand to
4 reason that the incarcerated person has provided
5 additional information that potentially was not
6 available throughout the IERC process. So they are
7 expected to absolutely conduct additional inquiry work.
8 Not an investigation, but inquiry work into that.

9 BY MR. FREEDMAN:

10 Q. If OIA investigates an allegation of staff
11 misconduct that -- for which AIMS had previously
12 conducted an inquiry, will OIA be reinterviewing the
13 same people as part of their investigation?

14 MR. MAIORINO: Objection. Incomplete
15 hypothetical.

16 THE WITNESS: That goes outside of the AIMS
17 process. But based on the information that I know, I
18 would absolutely expect that, if AIMS has already done
19 an inquiry but then it goes to the Office of Internal
20 Affairs for additional investigations, that there's a
21 pretty good chance that the special agents in charge of
22 that investigation are probably going to reinterview
23 people, including the person who made the allegation,
24 any relevant witnesses and the subject.

25 No guarantee that they will reinterview

1 everybody; they have the allegation inquiry information
2 already. But there's a good chance that they will
3 potentially reinterview some, if not all, of those
4 previous persons.

5 BY MR. FREEDMAN:

6 Q. Isn't it inefficient to have two parts of OIA
7 interviewing the same people as part of the same
8 examination of an allegation of staff misconduct?

9 MR. MAIORINO: Objection. Goes beyond the
10 scope of her PMK designation. Vague and ambiguous.

11 THE WITNESS: So as -- if you're asking for my
12 personal or my -- actually not personal but my
13 professional opinion as someone who has worked in the
14 Department of Corrections for many years, I can tell you
15 that some people may see it as inefficient. And, of
16 course, everybody is entitled to that -- to their
17 concern with regard to that. But I know and have seen
18 many times in my career times when an inquiry was done
19 and they gathered some good information, met the
20 threshold for reasonable belief. And then when it goes
21 to the Office of Internal Affairs and they go into a
22 formal investigation, additional information comes out
23 of that.

24 So I -- I understand the concern, I guess,
25 about inefficiencies, but because the objective --

1 because the threshold and the amount of work that can be
2 done in each of those levels is different and because an
3 investigator with the Office of Internal Affairs of
4 special agents, in putting their evidence together,
5 wants to make sure that they have the most accurate
6 evidence possible, it would stand to reason that it
7 would probably go to interview people if they felt they
8 needed to in order to come up with the evidence to
9 provide the hiring authority.

10 BY MR. FREEDMAN:

11 Q. So far in the implementation of AIMS, have
12 there been any notable problems?

13 MR. MAIORINO: Objection. Vague and ambiguous.
14 Goes beyond the PMK notice.

15 THE WITNESS: To my knowledge they -- there has
16 not been any notable problems. The only issue that
17 really has been an issue at all is with COVID-19 and
18 stay-at-home orders and some changes, you know, some
19 decisions made to try to protect the health and safety
20 of all persons.

21 We -- the Allegations Inquiry Management
22 Section did pause for a short time while they put
23 together the resources so that they can continue their
24 interviews of witnesses and their evidence gathering in
25 a safe way with the appropriate resources, whether it

1 was masks or hand sanitizer and things like that.

2 So -- but other than that, there really -- it's
3 a new process, but there has not been anything that I
4 have been made aware of or that I have seen that is a
5 major concern for the office, for the unit.

6 BY MR. FREEDMAN:

7 Q. Any notable successes so far?

8 MR. MAIORINO: Objection. Vague and ambiguous.
9 Goes beyond the scope for which she's been designated.

10 THE WITNESS: For me the -- I see it as a huge
11 success that we got both the northern unit and southern
12 unit up in a pretty short amount of time. So I think
13 it's a pretty good success that we're active already
14 in -- throughout the state because it was an important
15 initiative, we were given the funding for it. And
16 sometimes it's difficult to get new units to that fund.
17 I'm really -- I consider that as a big success that we
18 are active.

19 I also see it as a big success that we have
20 been able to get a tracking system in place pretty
21 quickly. The tracking system is -- we are referring to
22 it as 1.0, if you will. It is basic, but it is there.
23 And so we felt that that was really important that from
24 Day 1 we had the ability to track every single inquiry
25 request that came in. And so a team was put together to

1 make that happen. And so, although there is a laundry
2 list of things we want to do to improve that system for
3 sure, having it ready to go the day that we activated
4 was really important and it happened, and so I think
5 that's a big success.

6 Making sure staff were trained so that the day
7 that we were active they could begin to accept
8 allegations. Another big success.

9 So to the extent that we have been able to
10 bring this unit up, get staff in the field, get them
11 doing inquiry reports, I find those all to be tremendous
12 successes, especially in a huge department with a ton of
13 bureaucracy, and so I think we have seen some successes
14 there.

15 We are also, as we go through, monitoring
16 progress to make sure that these inquiries are being
17 conducted and completed, and so far we're also doing
18 very well with that. And so I think that, to the extent
19 that we are getting inquiries completed, we're getting
20 them in, we're getting them -- we're seeing the
21 institutions, referring them expeditiously for the most
22 part and then getting the reports completed and returned
23 back to the institutions in the timely manner, I think
24 that we've seen some success there.

25 So I think that we are -- we are proud of the

1 fact that we have gotten going and that we are out there
2 and that it is so far working. Of course, we have a
3 long way to go and we definitely will get further into
4 the auditing function and really looking to make sure
5 that not only are we stood up and we have a process but
6 that that process is effective, so . . .

7 MR. FREEDMAN: We're getting very close to the
8 end, so let's just power through. I think it will only
9 be a few more minutes.

10 BY MR. FREEDMAN:

11 Q. You said that AIMS was paused for a short time.
12 How long was AIMS paused for?

13 A. So we -- and by "paused," all I mean is that
14 the team was not actually going into the field to do
15 interview and to gather data in the field. So to the
16 extent that we could have things sent to them, they were
17 still doing that. But because of social distancing and
18 some concerns about bringing people that do not work on
19 a regular basis inside the institution into the
20 institution, we wanted to make sure we were thoughtful
21 in that.

22 I think it was either two weeks or three weeks
23 that we didn't actually go into the field and do
24 interviews, so there was that short time. I think it
25 was only two weeks. I would have to get back to you for

1 sure. It might have been three.

2 Q. I believe you mentioned earlier that not all of
3 the lieutenant positions have been filled yet; is that
4 correct?

5 A. That's correct that an activation both in
6 northern and then southern and central, the positions
7 have not been completely filled yet, and so we're
8 working on that.

9 Q. Why haven't those positions been filled yet?

10 A. The act of hiring through state service is a
11 little complicated. You know, you canvas, you put out
12 the -- you put out the bulletin saying that we are
13 looking for staff, you receive applications for people
14 entrusted in applying for the job. Those applications
15 are then screened, you go through that process. Then
16 you set up interviews, you interview people, you do
17 background checks. There's a lot that goes into hiring
18 staff. And the goal is to make sure that we hired staff
19 that we believed would do a very thorough job, they'd
20 have the skills to do this type of work efficiently,
21 thoroughly. And so rather than just hire enough to fill
22 the positions which we don't feel is always the best
23 thing to do, we only hire persons we believe could do
24 the job and would be able to do the job successfully.
25 And so in some cases we did not have enough persons in

1 those rounds of interviews that met that threshold to
2 fill those positions, and so the decision was made
3 ultimately to recanvas and see if we got additional
4 interest into those positions rather than to hire people
5 that we did not feel would be successful and would not
6 help to make the unit successful.

7 Q. So AIMS rejected some unqualified candidates;
8 is that correct?

9 MR. MAIORINO: Objection. Vague and ambiguous.

10 THE WITNESS: There were people that applied
11 for and then interviewed for positions in AIMS that were
12 not selected; that's correct. And so to say "rejected"
13 is probably not correct but that they were not selected
14 for hire.

15 BY MR. FREEDMAN:

16 Q. Does CDCR expect to be able to fill all of the
17 remaining positions with qualified candidates?

18 A. Absolutely.

19 Q. Okay. Going back to the impact of COVID-19 on
20 the ability to start inquiries, are the AIMS lieutenants
21 now able to get back into the field to conduct
22 interviews at the facility?

23 A. They absolutely are. They've been given the
24 resources to do that safely to make sure that the
25 incarcerated person is safe, that they're safe and that

1 happens.

2 MR. FREEDMAN: Can we go off the record.

3 MR. MAIORINO: Oh, sure.

4 (Discussion off the record.)

5 THE REPORTER: Mr. Maiorino, do you want to
6 order a copy of the transcript?

7 MR. MAIORINO: Yes, we do. Expedited. I need
8 an expedited -- I think they'll do an expedited to,
9 so --

10 MR. FREEDMAN: Yeah. I'll want it expedited as
11 well, please.

12 THE REPORTER: Okay.

13 BY MR. FREEDMAN:

14 Q. All right. What is the difference between
15 serious bodily injury and grave bodily injury?

16 A. Serious bodily injury as documented is those
17 issues, you know, bone fracture. So serious bodily
18 injury is a serious injury that may involve extensive
19 suturing, a concussion, but it's not likely to lead to
20 death.

21 And so great bodily injury is that higher
22 threshold where you have an injury that is likely to or
23 could result in -- is likely to result in death. So
24 it's a different threshold. It's a much more serious
25 threshold.

1 Q. We've discussed earlier how AIMS will conduct
2 injuries for staff misconduct, allegations related to
3 unreported uses of force and related to reported uses of
4 force with SBI or GBI; correct?

5 A. So that's not completely correct. It would be
6 for unreported uses of force and then it would be for
7 uses of force that resulted in serious bodily injury
8 where there's an allegation of unnecessary or excessive
9 use of force.

10 For great bodily injury, because it already
11 goes to the Office of Internal Affairs automatically,
12 that's an automatic referral, if you will, through
13 deadly force investigation team and then the deadly
14 force review board, it would not go to AIMS because it
15 already has a higher level of review.

16 Q. So let me rephrase it then. So we talked
17 earlier about how AIMS will conduct inquiries for
18 allegations of staff misconduct related to unreported
19 uses of force and related to reported uses of force that
20 resulted in serious bodily injury; is that correct?

21 A. That is correct. It's almost completely
22 correct. That is correct that those will go to
23 Allegation Inquiry Management Section unless reasonable
24 belief already exists, in which case that would go to
25 the Office of Internal Affairs.

1 Q. Does CDCR have any data regarding the
2 percentage of complaints about unreasonable or excessive
3 force that fall into those two categories, unreported
4 uses of force and reported uses of force in which there
5 is serious bodily injury?

6 MR. MAIORINO: Objection. Goes beyond the
7 scope for which she has been designated as a PMK.

8 THE WITNESS: When we were considering whether
9 or not we were going to add anything in the use of force
10 allegations, we did do -- and it was not a formal -- it
11 was not a formal research, if you will, so we didn't do
12 anything to double-check numbers or anything like that,
13 but we did ask for the data from all of the institutions
14 specific to allegations that were made the previous year
15 for unnecessary and excessive use of force.

16 And so we asked them to provide us that
17 information broken down into categories so that we could
18 see how many total allegations there were and how many
19 times that there was use of force that resulted in
20 serious bodily injury but there was not an allegation.
21 So we wanted that captured as well because that's part
22 of that 3013/3014 process. And then how many times
23 there was an allegation of unnecessary or excessive use
24 of force coupled with a use of force that resulted in
25 serious bodily injury. So we did ask for that data.

1 As mentioned it wasn't a formal research, if
2 you will. Instead asking for the information from the
3 institutions and having that sent to us.

4 BY MR. FREEDMAN:

5 Q. And do you recall the percentage that fell into
6 the reported use of force with serious bodily injury and
7 an allegation of unnecessary or excessive use of force?

8 MR. MAIORINO: Objection. Goes beyond the
9 scope for which the witness has been designated.

10 THE WITNESS: To the best of my recollection --
11 and I know I won't get the exact number right, but I
12 believe that the number for the previous year was about
13 60, but I don't -- I don't remember the exact number.

14 BY MR. FREEDMAN:

15 Q. And when you say 60, you mean 60 appeals or 60
16 percent?

17 A. Oh, no. Yeah. Not percentage. I'm sorry. So
18 60 -- so that would be a number. So there were
19 approximately 60 allegations of unnecessary or excessive
20 use of force where that use of force resulted in serious
21 bodily injury.

22 Q. And did the department attempt to collect any
23 information about how many allegations of unnecessary
24 and excessive use of force there were related to
25 unreported uses of force?

1 MR. MAIORINO: Objection. Goes beyond the
2 scope for which she's been designated.

3 THE WITNESS: That wasn't something that --
4 that I requested or something that came through since
5 I've been here, so I don't believe we have that data.

6 BY MR. FREEDMAN:

7 Q. I don't want to mischaracterize your testimony,
8 but have you -- did you already testify that AIMS and
9 OIA have already been reviewing internally the quality
10 of the inquiries that have been produced today?

11 A. No. So I think that is a mischaracterization.
12 Absolutely the chief deputy administrator is reviewing
13 just because his role is to review those inquiry
14 reports. The captains are reviewing those inquiry
15 reports because that's their job as they come through
16 the process. So to the extent those are being reviewed
17 at the level through AIMS, that is taking place.
18 Outside of that there has not been any additional review
19 that I know of.

20 Q. So at this point CDCR does not know whether the
21 inquiry that's being conducted by AIMS do or do not have
22 the -- the problematic attributes of the inquiries that
23 were reviewed at SVSP; is that right?

24 MR. MAIORINO: Objection. Vague and ambiguous.
25 Goes beyond the scope.

1 THE WITNESS: I could tell you that from -- for
2 me that I have not done those reviews at this point yet.
3 I don't know that anybody else has. The only other
4 persons that might would be in the Office of Internal
5 Affairs as well as the office of the inspector general
6 because they -- they too have access to that information
7 already.

8 BY MR. FREEDMAN:

9 Q. But to date you don't know whether the
10 inquiries show less bias towards staff members; is that
11 right?

12 MR. MAIORINO: Objection. Goes beyond the
13 scope for which she's been designated. Vague and
14 ambiguous.

15 THE WITNESS: I can only answer for myself in
16 that regard, and I have -- I have not reviewed those
17 personally.

18 BY MR. FREEDMAN:

19 Q. To date you don't know whether the inquiries
20 that have been produced have done a better job of taking
21 into account the testimony of incarcerated people; is
22 that right?

23 MR. MAIORINO: Objection. Objection. Beyond
24 the scope that the witness has been designated.
25 Argumentative.

1 THE WITNESS: I think that it's important to
2 remember that, with regard to any weight given to
3 information provided by incarcerated persons, the staff
4 that are doing the inquiries, they don't -- they don't
5 give weight to the statements from incarcerated persons.
6 They take that information, they record it and document
7 it, and they provide it to the hiring authority.

8 So -- so the hiring authority is the one who
9 takes that information and then ultimately gives weight
10 to the witness testimony and makes the decision whether
11 or not to sustain or not sustain any allegations of
12 staff misconduct. So that wouldn't be in the scope of
13 AIMS to give weight to witness testimony.

14 BY MR. FREEDMAN:

15 Q. To date do you have any information to suggest
16 that the AIMS lieutenants have maintained the
17 confidentiality of their inquiry?

18 MR. MAIORINO: Objection. Vague and ambiguous.
19 Goes beyond the scope for which she's been designated.

20 THE WITNESS: I think that we have to be very
21 clear about confidentiality. So the -- the Allegation
22 Inquiry Management Section staff are conducting
23 allegation inquiries, and as such, they're not to share
24 the information that they're gathering with others
25 outside of their chain of command, and ultimately

1 putting a report together and providing that over to the
2 hiring authority for decision. But I don't want that to
3 be misconstrued that the allegation inquiry staff do not
4 provide the subjects with the information that they
5 are -- that they are expected to be given to include a
6 summary of the allegation and to include the person that
7 made the allegation specifically.

8 So I don't want there to be a -- there to be a
9 misperception that the Allegation Inquiry Management
10 Section staff, the ones doing the inquiries, do not
11 notice the subject that -- of the allegation made
12 against them, and that that notice includes a summary,
13 as well as who made the allegation.

14 BY MR. FREEDMAN:

15 Q. With that caveat in mind, does CDCR have any
16 information to suggest that AIMS has done a better job
17 maintaining the confidentiality of inquiries than the
18 staff -- the local staff at SVSP did with respect to the
19 inquiries that were reviewed by the office of the
20 inspector general?

21 MR. MAIORINO: Objection. Goes beyond the
22 scope for which she's been designated. Vague and
23 ambiguous.

24 THE WITNESS: I don't believe that at this
25 point that we have any information to suggest one way or

1 the other that there's been more or less of a problem
2 with that, no.

3 BY MR. FREEDMAN:

4 Q. And would that be true in terms of evaluating
5 the inquiry reports produced by AIMS that CDCR does not
6 know if they exhibit the same problems as the OIC
7 identified in the inquiry reports at Salinas Valley
8 State Prison?

9 MR. MAIORINO: Objection. Goes beyond the
10 scope for which she's been designated.

11 THE WITNESS: Not -- I'm not entirely sure that
12 I understand the question because I'm not sure --

13 BY MR. FREEDMAN:

14 Q. I can re-ask it. Let me see if I can ask it a
15 little bit better.

16 A. Okay.

17 Q. Has CDCR done any qualitative review of the
18 inquiry reports produced by AIMS to date?

19 MR. MAIORINO: Objection. Goes beyond the
20 scope for which she's designated. Vague and ambiguous.

21 THE WITNESS: So as mentioned, I have not
22 personally done that review, and we do not have the unit
23 stood up yet to do those audit processes. Those
24 reports, however, are being reviewed by the captains if
25 it was written by a lieutenant, and then, of course, by

1 our chief deputy administrator for the unit who, by the
2 way, is a former special agent with the Office of
3 Internal Affairs, so he has -- he has years of
4 experience in that world.

5 So I would say that he is a skilled
6 investigator and very knowledgeable in the practices of
7 the Office of Internal Affairs and investigations and
8 reports, so -- and he's reviewing those allegation
9 inquiry reports that are being generated. So I would
10 say that absolutely they are being reviewed and that the
11 chief deputy administrator would not be letting those
12 reports go if they were not quality reports.

13 Again, we don't have a unit stood up to oversee
14 the chief deputy administrator's review of that process
15 yet, and I have not done that personally, but I believe
16 that his review of them as an experienced investigator,
17 as well as someone who has worked in the Office of
18 Internal Affairs for many years, he's definitely
19 ensuring that those are quality reports.

20 MR. FREEDMAN: I have no further questions.

21 MR. MAIORINO: So we're concluded?

22 MR. FREEDMAN: Yes.

23 (Deposition concluded at 5:05 p.m. Declaration
24 under penalty of perjury on the following page hereof.)

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DECLARATION UNDER PENALTY OF PERJURY

I, DIRECTOR AMY E. MILLER, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on May 15, 2020; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____
20____ at _____, California.

DIRECTOR AMY E. MILLER

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DEPOSITION ERRATA SHEET

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SIGNATURE: _____ DATE: _____
DIRECTOR AMY E. MILLER

1 REPORTER'S CERTIFICATE

2 I, SUSAN F. MAGEE, RPR, CCRR, CLR, a Certified
3 Shorthand Reporter, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth, at
6 which time the witness was put under oath by me;

7 That the testimony of the witness, the
8 questions propounded, and all objections and statements
9 made at the time of the examination were recorded
10 stenographically by me and were there after transcribed;

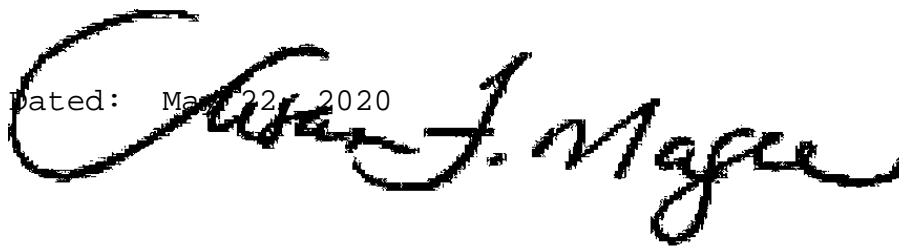
11 That a review of the transcript by the deponent
12 was requested;

13 That the foregoing is a true and correct
14 transcript of my shorthand notes so taken.

15 I further certify that I am not a relative or
16 employee of any attorney of the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the
19 laws of California that the foregoing is true and
20 correct.

21
22 Dated: May 22, 2020

23 

24 _____
25 Susan F. Magee, RPR, CCRR, CLR, CSR No. 11661

1 U.S. Legal Support, Inc. May 22, 2020
2 201 Mission Street, Suite 600
3 San Francisco, CA 94105
4 (888) 575-3376

5 To: DIRECTOR AMY E. MILLER

6 C/O: TRACE O. MAIORINO, DEPUTY ATTORNEY GENERAL
7 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
8 OFFICE OF THE ATTORNEY GENERAL
9 455 Golden Gate Avenue, Suite 11000
10 San Francisco, CA 94102

11 Re: John Armstrong, et al. v. Gavin Newsom, et al.

12 Date of Deposition: May 15, 2020

13 Dear DIRECTOR AMY E. MILLER,

14 The original transcript of your deposition
15 taken in the above-referenced matter is available at
16 this office for your review. If it is more convenient
17 to read a copy of the transcript and waive signature of
18 the original transcript, please notify our office by
19 letter sent certified or registered mail of any changes
20 made, with copies sent to all counsel.

21 In the event you have not read, corrected and
22 signed your deposition within the thirty (30) days of
23 receipt of this letter, it may be used with the full
24 force and effect as though it had been read, corrected
25 and signed.

26 If you wish to arrange an appointment to review
27 the original transcript, please contact this office at
28 (888) 575-3376.

29 Sincerely,

30
31 US LEGAL SUPPORT
32 PRODUCTION DEPARTMENT

33 CC: ALL COUNSEL PRESENT
34 THE DEPONENT

35 Original: Original transcript

EXHIBIT K

Proposed Agenda and Information Requests
Armstrong Telephonic Meet and Confer
May 12, 2020

1. Master Planning Update/Updated Matrix

Unfortunately, due to the COVID-19 pandemic, the planned joint tours will need to be postponed. In the interim, Plaintiffs propose scheduling and moving forward with discussion of Master Plan issues for the next two institutions: DVI and SVSP. This was initially postponed so the parties could finish up with LAC and CIM. However, given our current inability to tour, we should move forward with discussions about DVI and SVSP, and set a meeting for June on these prisons.

During the last meet and confer, Plaintiffs again requested clarification on what version of the Matrix is being used to make housing decisions. By email dated December 16, 2019, Ms. Boyd stated that the matrix currently in use by the PMU is the matrix dated March 9, 2017. That, however, conflicts with what institutions have been reporting. *See* Rita Lomio's November 5, 2019, letter regarding the California Institution for Men (CIM);¹ August 2019 CSP-SAC Tour Report at 3. At the December 2019 meet and confer, Defendants stated that they would get back to Plaintiffs quickly on the specific cases and issues raised in the CIM letter. At the last meet and confer in February 2020, Defendants said that Plaintiffs would receive a response that week. Plaintiffs have not yet received a response.

Plaintiffs request a meeting to discuss the DPP Matrix and Master Plan issues at DVI and SVSP. In advance of the meeting, Plaintiffs renew their request for (1) the DPP Matrix currently being used by the PMU in making housing decisions; (2) all documentation, including policies and memoranda, regarding placement of mainline class members in Reception Centers, including whether and when mainline privileges are provided; and (3) an explanation of why mainline class members were housed in the Reception Center at CIM.

¹ "The Acting ADA Coordinator reported that Joshua Hall is the only housing unit on A Yard that can accommodate people designated DPM, which is consistent with the latest version of the DPP matrix that Plaintiffs have reviewed during the parties' ongoing negotiations. The C&PR and Acting ADA Coordinator reported, however, that the PMU was using a version of the DPP matrix that they had not seen before and that indicated (incorrectly) that all housing units on A Yard could accommodate people designated DPM. They reported that they learned that people designated DPM were being transferred to their institution only through review of the weekly Send and Intake Reports and that, by the time they learned of a pending transfer, it was too late for them to stop or reverse the transfer, even if no accessible beds would be available in the foreseeable future."

posted by the kiosk and when people logged into the kiosk. This, however, is not necessarily sufficient for people who are blind or have low-vision and cannot read the written information or who require hands-on instruction.

Plaintiffs request an update on whether the announcement was, in fact, made and whether Defendants have any other plans to train blind and low-vision class members on tablet accessibility features.

16. Short Walk and Durable Medical Equipment Policy

Defendants substantially revised the short walk/DME memorandum. Plaintiffs are generally supportive of the revisions and provided comments and questions regarding the memo on October 4, 2019. Plaintiffs are awaiting Defendants' response. During the last meet and confer Defendants reported that this memo was signed and was in the Director's office. **What is the status?**

17. Pocket Talker Pilot Project

Defendants have shared the trial implementation with Plaintiffs for review and comment. Comments from Plaintiffs' counsel are forthcoming.

Armstrong-Only Issues

18. Updates from CDCR

This is an opportunity for CDCR to present updates or inform Plaintiffs' counsel of any progress on any issue related to *Armstrong*.

19. Staff Misconduct Against Class Members Based on Disability

Staff misconduct remains an ongoing issue in this case since problems were reported at HDSP years ago. On February 28, 2020 Plaintiffs filed a Motion to Stop Defendants from Assaulting, Abusing, and Retaliating against People with Disabilities at RJD. Defendants still have not provided a date for the PMK deposition of Amy Miller. Failure to provide that date may lead to additional motion practice.

Plaintiffs are also extremely concerned about ongoing reports from class members about severe staff misconduct at other prisons including CSP-Los Angeles County, CSP-COR, SATF, and CIW, as outlined in the Declaration of Gay Crosthwait Grunfeld In Support of Plaintiffs' Motion. (Dkt. 2922-1 at 25.) We are investigating reports of staff misconduct against class members and people with disabilities at those prisons as well and will continue to share our findings with Defendants. **We request an update regarding any effort to remedy statewide staff misconduct since the filing of Plaintiffs' motion.**

EXHIBIT L



GOVERNOR
Gavin Newsom

May 14, 2020

To the members of the Senate and the Assembly of the California Legislature:

The world has changed dramatically since I proposed my budget in January. A global health crisis has triggered a global financial crisis—threatening both lives and livelihoods across the nation and world.

As this emergency has unfolded, Californians have met the moment—acting quickly to protect one another whether serving on the frontlines or staying at home. Together, we flattened the COVID-19 curve and saved lives. Now, we are confronted with a steep and unprecedented economic crisis.

This is no normal year. And this no ordinary May Revision.

In January, California was the rocket fuel powering the American economic resurgence—with 118 consecutive months of growth, stratospheric job creation, and the highest credit rating in nearly two decades. Together, we'd built the largest rainy day fund in state history, made prudent one-time investments and paid off our wall of debt. Because of this work, California is in a far stronger fiscal position today than it has been during previous downturns.

Now, our state is in an unprecedented emergency, facing massive job losses and shortfalls in record time. This budget reflects that emergency. California is once again called to lead—to adopt an on-time, balanced budget that protects our people and progress from the most acute effects of the harm and uncertainty caused by COVID-19.

I am proposing a fiscal blueprint to fund our most essential priorities—public health, public safety and public education—and to support workers and businesses, especially small businesses, who are the lifeblood of our economy. California will do its part to keep our communities healthy and safe, to shorten the economic shadow of the current crisis, and build a bridge to recovery and renewal.

California did not create this problem and should not be required to solve it alone. The federal government must pass a relief package for state and local governments. Without one, deep cuts to core services like schools, universities, and safety net programs will be unavoidable—both in California and across the country.

Our economy has changed, but our values remain the same. I look forward to working with you to pass a budget that aligns with both our shared principles and our reduced means. While we can't be certain how fast recovery and renewal will come, we know California and Californians can and will get through this.

We have the talent, drive, diversity and work ethic to not only persevere but to overcome. We are strong of will and generous of spirit. We've faced—and faced down—unanticipated adversity and, every time, emerged stronger than ever. It's the California story, and this is only the latest chapter.

By standing strong and standing together, we can and will meet this difficult moment and build a bridge to a brighter future.

With respect,

/s/

Gavin Newsom

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PUBLIC SAFETY

DEPARTMENT OF CORRECTIONS AND REHABILITATION

The California Department of Corrections and Rehabilitation (CDCR) incarcerates people convicted of the most violent felonies, supervises those released to parole, and provides rehabilitation programs to help them reintegrate into the community. The department strives to facilitate the successful reintegration of the individuals in its care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, and rehabilitative and restorative justice programs. The May Revision proposes total funding of \$13.4 billion (\$13.1 billion General Fund and \$311 million other funds) for the Department in 2020-21.

The Governor's Budget projected an overall adult inmate average daily population of 123,716 in 2020-21. Spring projections, prior to impacts associated with the COVID-19 pandemic, assumed an average daily population of 122,536, a difference of 1,180. The Governor's Budget projected an overall parolee average daily population of 55,082 in 2020-21. The average daily parolee population is now projected to be 56,966, an increase of 1,884. These projections are prior to proposals outlined below.

PRISON CAPACITY

The adult prison population has steadily declined over many years, presenting opportunities for CDCR to reduce its reliance on contract prison capacity. After more

Prison in Chowchilla. This reduces the Governor's Budget proposal to \$1.3 million in 2020-21 and \$2 million ongoing.

OTHER SIGNIFICANT ADJUSTMENTS

To reduce costs, the May Revision also proposes efficiencies, as follows:

- **Consolidate Fire Camps**—The May Revision proposes the consolidation of fire camps that are currently not at capacity. The May Revision assumes the closure of eight camps, that will be selected in coordination with the California Department of Forestry and Fire Protection (CAL FIRE). The locations selected will take into consideration proximity to other fire camps in an effort to minimize impacts to communities that rely on the services provided by inmate fire crews. CDCR's savings are estimated to be \$7.4 million General Fund in 2020-21 and \$14.7 million ongoing.
- **Draw Down Federal Funds for Health Care for Community Reentry Programs**—Under federal policy, individuals who are considered prison inmates are ineligible for Medicaid benefits. However, this exclusion does not apply to individuals residing in supervised residential treatment facilities, such as reentry facilities designed to transition individuals from prison to the community. The Centers for Medicare and Medicaid Services (CMS), which sets these policies, recently issued guidance outlining how it distinguishes between prisons and supervised residential treatment facilities. Specifically, CMS has stated that in order to qualify for Medicaid eligibility residents must generally have freedom to seek employment in the community and access resources available to the general public, such as education, libraries, and healthcare facilities. CDCR is implementing operational changes at its reentry facilities to adhere to these guidelines in a manner that ensures public safety, thereby allowing the state to draw down federal funding for residents' health care and saving \$4.2 million General Fund in 2020-21 and \$8.5 million ongoing.
- **Eliminate the Integrated Services for Mentally Ill Parolee Program**—The Integrated Services for Mentally Ill Parolee Program provides wraparound services, including some transitional housing for approximately 1,500 of 18,000 mentally ill parolees. While the Administration remains committed to mental health treatment in the community, this program has shown limited effectiveness at reducing recidivism. In an effort to make better use of limited state funding (this program is costly, at \$10,000 per parolee), the May Revision proposes to eliminate the program. The Department will adjust policies to connect these individuals with community resources, which ultimately provides better continuity of care long-term. Elimination

PUBLIC SAFETY

of this program is expected to result in savings of \$8.1 million General Fund in 2020-21 and \$16.3 million ongoing General Fund.

- **Eliminate Parole Outpatient Clinics**—The Department employs mental health clinicians that provide treatment to parolees out of parole offices across the state called Parole Outpatient Clinics. With the passage of the Affordable Care Act, most parolees now have access to mental health services through Medi-Cal or other insurance. Therefore, the services provided in the Parole Outpatient Clinics can otherwise be accessed through Medi-Cal or other insurance. The May Revision proposes to no longer fund Parole Outpatient Clinics to eliminate redundancy in services and utilize services where the state receives financial participation from the federal government through Medi-Cal. This will also help long-term continuity of care since individuals can only access Parole Outpatient Clinic services while on parole. This proposal retains Parole Outpatient Clinic psychiatrists to continue meeting emergency medication needs for parolees with mental illness. This proposal is expected to result in estimated savings of \$9.1 million General Fund in 2020-21, and \$17.6 million ongoing General Fund.
- **Remote Court Appearance**—CDCR will pursue efforts to increase video capabilities to enable remote court appearances by inmates and staff. This will result in efficiencies associated with transportation of inmates from their assigned prison to a prison closer to the court, and daily transportation of inmates to court. This will also reduce inmate absences from rehabilitation and work assignments.

CAP PAROLE TERMS

In an effort to align community supervision terms with evidence that most recidivism occurs earlier in the supervision period, create incentives for positive behavior change, and more effectively use limited state resources, the May Revision proposes to cap supervision for most parolees at 24 months, establish earned discharge for non-Penal Code section 290 registrants at 12 months, and establish earned discharge at 18 months for certain Penal Code section 290 registrants. This proposal is expected to result in estimated savings of \$23.2 million General Fund in 2020-21, increasing to \$76 million ongoing General Fund in 2023-24.

OTHER CHANGES

The May Revision also removes \$20.6 million from CDCR's baseline budget to eliminate the Tattoo Removal Program (\$2.1 million) and to reduce ongoing prison maintenance funding (\$18.5 million).

The state is not in a fiscal position to expand programs given the drastic budget impacts of the COVID-19 Recession. The following significant proposals are withdrawn from the Governor's Budget:

- Academic Information Technology Modernization—\$26.9 million to provide laptops to inmates participating in academic and vocational training to better prepare inmates for reentry.
- Expanding Higher Education Opportunities—\$1.8 million for tuition, books, materials, training, and equipment for inmate-students.
- Expanded Inmate Visitation—\$4.6 million for an additional visitation day at nine institutions.
- Staff Development and Support—\$21.4 million to enhance staff development through new training for correctional officers and counselors.
- Video Surveillance—\$21.6 million General Fund in 2020-21 and \$2.1 million ongoing to expand video surveillance capabilities at three facilities.
- Quality Management and Patient Safety—\$9.9 million General Fund in 2020-21 and \$11.8 million ongoing General Fund to evaluate risks and implement best practices to improve the health care delivery system.
- Health Care Facility Updates at the California Rehabilitation Center—\$5.9 million one-time funding for various maintenance projects.
- Various Capital Outlay Projects—\$70.8 million associated with the withdrawal of various projects proposed in the Governor's Budget. The May Revision also reduces the overall out year costs for CDCR projects by approximately 67 percent.

The May Revision also proposes to modify the following proposals included in the Governor's Budget:

- Centralize Discrimination Complaints—Reduces the proposal from \$1.8 million ongoing to \$943,000 to promote objectivity and fairness in the investigation of equal opportunity complaints.

PUBLIC SAFETY

- Roof Replacement—Reduces the proposal from \$78.2 million over two years for two roof replacement projects to \$37.6 million for one roof replacement at California State Prison, Sacramento.

REALIGN DIVISION OF JUVENILE JUSTICE

The Division of Juvenile Justice currently houses approximately 800 offenders. The Governor's Budget proposed to transfer the Division of Juvenile Justice to a newly created independent department within the Health and Human Services Agency. That approach was intended to align the rehabilitative mission of the state's juvenile justice system with trauma-informed and developmentally appropriate services supported by programs overseen by the state's Health and Human Services Agency.

The May Revision proposes to expand on previous successful efforts to reform the state's juvenile justice system by transferring the responsibility for managing all youthful offenders to local jurisdictions. The May Revision proposes to stop intake of new juvenile offenders effective January 1, 2021 and begin the closure of all three state juvenile facilities and the fire camp through the attrition of the current population. Offenders over the age of 18 that will eventually be transferred to an adult institution will be prioritized for placement in the Youth Offender Rehabilitative Community established at Valley State Prison.

Closing state juvenile facilities and directing a portion of the state savings to county probation departments will enable youth to remain in their communities and stay close to their families to support rehabilitation. Local juvenile detention facilities have a significant number of vacant beds, providing an opportunity to house a greater number of youthful offenders locally. In 2019, the average daily population for local juvenile halls and camps and ranches was about 3,600, and their rated capacity is currently about 11,200. In recognition that some youth currently housed in state juvenile facilities have sex behavior treatment or mental health treatment needs, the May Revision includes \$2.4 million General Fund in 2020-21, increasing to \$9.6 million ongoing, to be awarded as competitive grants by the Board of State and Community Corrections. Grants will be awarded to county probation departments that will serve as hubs to meet the specific treatment needs of youth throughout the juvenile justice system.

EXHIBIT M

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
ON PUBLIC SAFETY

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

MONDAY, MARCH 2, 2020

2:30 P.M. – STATE CAPITOL, ROOM 437

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

ISSUE 1: POPULATION OVERVIEW AND THE GOVERNOR'S PRISON CLOSURE PROPOSAL

The California Department of Corrections and Rehabilitation (CDCR) will open this issue with an overview of population trends and the Governor's prison closure proposal.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office
- Don Specter, Prison Law Office

BACKGROUND

Proposed Funding and Prison Closure Proposal

The Governor's proposed budget includes \$13.4 billion (\$13.1 billion General Fund and \$307 million other funds) for CDCR in 2020-21. The Governor's Budget also included the following narrative: "The Department [CDCR] projects that the population will decline by approximately 4,300 inmates between June 2021 and June 2024. If these population trends hold, the Administration will close a state-operated prison within the next five years."

The Brown Administration and CDCR first announced plans for a prison closure in 2012. CDCR recognized that it was "**essential to catalogue both how the prison budget would be reduced and how the prisons would operate with a significantly reduced population.**" The closure proposal assumed that the prisons could operate at 145 percent capacity¹ and named California Rehabilitation Center (Norco) to close by 2015-16. To support this closure plan, the Legislature provided resources for the construction of three infill projects in three existing prisons for approximately 3,300 beds and the renovation of the Dewitt Juvenile Facility for adult prisoners, which would provide approximately 1,100 beds. Ultimately, Norco was not closed due to CDCR's incorrect assumption that the court would allow the department to operate at 145% capacity.

¹ CDCR was denied this request by the courts. CDCR is required to maintain the total prison capacity at or under 137.5% of design capacity, although each prison may exceed this capacity as long as the total capacity is at or below this number.

Population Projections from CDCR

CDCR Adult Institution Population. The adult inmate average daily population is projected to decline by 1,216 in 2019-20 and decrease by 2,155 in 2020-21, to a total of 124,655 and 123,716, respectively. These changes result in a decrease of \$30.9 million General Fund in 2019-20 and a decrease of \$54.8 million General Fund in 2020-21.

Adjusted Population Projections from the Subcommittee

The following shows prison population projections from 2019 thru 2024 based on analysis of estimated projections that reflect adjustments made to CDCR's Fall 2019 population projections, to account for the estimated effects of Chapter 590 of 2019 (SB 136).

| | 2019 (Actual) | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------------|---------------|---------|---------|---------|---------|---------|
| Prison Population | 125,472 | 123,831 | 121,983 | 119,879 | 118,019 | 116,572 |

Available Capacity Assessment from the Subcommittee

According to the prioritization language from the 2018 Budget Act, private contract beds must be eliminated first, but the Legislature may wish to consider maintaining in-state public contract beds for a period of time to provide the state with maximum flexibility. Additionally, local officials state there have been \$4.1 million in investments public contract facilities, including cameras and a new roof to accommodate the state contracts. Staff notes it is very likely that these facilities are in much better habitable conditions than CDCR's prisons. As of February 19, 2019, there are 123,283 individuals in CDCR's custody as shown below:

| | Occupied | Available Capacity |
|--------------------------------------|---|--------------------------------|
| State Prisons | 114,354 | 116,989 |
| State Camps | 3,069 | 4,580 ² |
| In-State Contract Beds | 4,399 (490 are private male beds ³) | 3,909 public beds ⁴ |
| Department of State Hospitals | 304 | 304 ⁵ |
| CRPP (community beds) | 1,157 | 1,500 ⁶ |
| Total | 123,283 | 126,785 |

² State camp beds are not subject to the 137.5% population cap.

³ Excludes CA City Correctional Facility which is a private facility leased by the state but staffed by state employees.

⁴ The number assumes all private beds will be drawn down, with the exception of California City which is staffed by CDCR employees, but keep open publicly contracted beds

⁵ Assumes DSH beds remain constant but this number can fluctuate based on actual need.

⁶ Estimated capacity based on pending bed expansions.

Capital and Infrastructure Needs

The 2016 Budget Act provided \$5.41 million to fund a state-wide study for the renovation/replacement of CDCR's twelve oldest prisons. The study aimed to evaluate housing, program, and services buildings and infrastructure systems. The study would also include recommendations regarding renovations or replacements necessary to maintain the current level of operations. Twelve individual reports on each prison were produced and submitted at the end of 2019. The report noted that "there is little uniformity in the types of physical plants in the 12 prisons...[there are] significant differences in types of construction methods and materials...[they] also have varied missions [which] lead to different plan layouts, building types, and construction types." The report also stated that some of the prisons have been expanded over time with "newer semi-autonomous facilities" and that that "significant investments over time" were made to repair or replace building components. The total costs for repairs and replacements are summarized below:

| Prison | Year Built | Cost of Repairs/ Replacement | Design Capacity (beds) | Specialized Missions |
|-----------------------------------|------------|---------------------------------|---------------------------|--|
| San Quentin | 1852 | \$1.65 billion | 3,082 | CTC, PIP, Condemned, RC, ASU |
| Folsom State Prison | 1880 | \$799.58 million | 2,469 | ASU |
| CA Institution for Men | 1941 | \$1.23 billion | 2,976 | OHU, MHCB, ASU, RC |
| Correctional Training Facility | 1946 | \$1.32 billion | 3,312 | OHU, ASU |
| CA Institution for Women | 1952 | \$413.05 million | 1,078 | CTC, EOP, MHCB, OHU, PIP, PSU, SHU, CAMPS, ASU |
| Deuel Vocational Institution | 1953 | \$803.55 million | 1,681 | OHU, ASU, RC |
| CA Correctional Institution | 1954 | \$530.69 million | 2,783 | OHU, ASU |
| CA Men's Colony | 1954 | \$1.56 billion | 3,838 | CTC, EOP, MHCB, ASU |
| CA Medical Facility | 1955 | \$763.5 million | 2,361 | ACU, CTC, EOP, ICF, MHCB, OHU, ASU |
| CA Rehabilitation Center | 1962 | \$1.16 billion | 2,491 | OHU |
| CA Correctional Center | 1963 | \$502.52 million | 1,733 | OHU, ASU, CAMPS |
| Sierra Conservation Center | 1965 | \$504.42 million | 1,726 | OHU, CAMPS, ASU |
| TOTAL | | \$11.24 billion | | |

ASU: Administrative Segregation Unit, CAMPS: conservation camps, CTC: Correctional Treatment Center, EOP: Enhanced Outpatient Program, ICF: Intermediate Care Facility, MHCB: Mental Health Crisis Bed, OHU: Outpatient Housing Unit, PIP: Psychiatric Inpatient Program, PSU: Psychiatric Services Unit, RC: Reception Center, SHU: Security Housing Unit

While the study provided specific information related to CDCR's 12 oldest prisons, there are 22 other state owned and operated prisons that are in need of critical repairs and investments. According to CDCR's Master Plan Annual Report for Calendar Year 2018⁷ (report), the other 22 prisons have \$8 billion in capital outlay and infrastructure needs based on their Facility Condition Index (FCI). An FCI is a standard facility management benchmark that is used to objectively assess the current and projected condition of a building asset. When a prison's FCI has reached 50% or more, it is "an indicator that a significant portion of the asset's constituent systems can no longer reliably sustain their design level of function. The FCI range is interpreted as follows:

0 to 5 percent: Excellent
5 to 10 percent: Good
10 to 25 percent: Fair to Poor
25 to 50 percent: Poor to Very Poor
51 Percent and beyond: Very Poor to Extremely Poor

According to the report, 26 of 34 prisons have an FCI of over 50%. The average FCI of all prisons is 60.

2018 Budget Act Prioritization Language

As part of the 2018 Budget Act, the Legislature enacted, in Penal Code 2067, a response to continued declines in the state prison population, which requires the ending of all private contract beds staffed by non-public employees as the population is drawn down. It further states the following in subdivision (b):

As the population of offenders in private in-state male contract correctional facilities identified in subdivision (a) is reduced, and to the extent that the adult offender population continues to decline, the Department of Corrections and Rehabilitation shall accommodate the projected population decline by reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities, ***in a manner that maximizes long-term state facility savings, leverages long-term investments, and maintains sufficient flexibility to comply with the federal court order*** to maintain the prison population at or below 137.5 percent of design capacity.

⁷ The 2019 report was unavailable at the time of the drafting of this agenda.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The Legislative Analyst's Office provides the following analysis and recommendations:

- The proposed operational funding is \$75 million more than the previous year but does not include anticipated increases in employee compensation costs because they are accounted for elsewhere in the budget. These increases are currently budgeted to exceed \$100 million.
- The Governor's budget proposes \$497 million in capital outlay spending.
- CDCR will make budget adjustments in May based on updated population projections that will include the estimated effects of two policy changes:
 - Chapter 590 of 2019 (SB 136) which eliminates a one-year sentence enhancement for prior offenses in certain cases.
 - A planned regulatory change that will advance certain inmates' release consideration dates when they earn credits for certain significant educational achievements.

STAFF COMMENTS

In 2009, a three judge panel ordered CDCR to reduce its total prison population to no more than 137.5% of the design capacity. This would require CDCR to reduce its population to approximately 117,000 prisoners in its 34 state owned and operated prisons. All out of state contracts in private and public facilities have ended. Currently, CDCR, in addition to its state owned and operated beds (116,989) utilizes approximately 9,300 additional beds within the state, broken down in the following manner:

- 490 private contract beds for males
- 200 private contract beds for females
- 1,600 publicly contracted beds for males
- 6,700 beds in various other placements, including conservation camps.

Using the Subcommittee's population projections provided on page 2 of this agenda, the following can be concluded:

- By 2024, comparing the population projections and available bed capacity the state may experience a 10,000 empty bed buffer. Even in just two years, a 6,000 bed buffer is likely to exist. These projections warrant the consideration of the following:
 1. Early prison closure planning, to maximize savings to the state and sufficient transition planning for impacted staff.
 2. The consideration on assessing more than one facility for closure.

In past years, CDCR has communicated to the Subcommittee regarding the need for a sufficient empty bed buffer to allow for fluctuations in the prison population as well as the ability to meet the federal court ordered population cap. In 2018, the comfortable buffer was estimated to be 2,500 beds. The Administration and CDCR has communicated a desire to prioritize the closure of public contracts prior to the closure of state owned and operated facility. Currently, these beds account for 1,611 beds as of February 19, 2020. Staff would recommend leaving these public contract beds open for the following reasons:

- More than \$4 million in improvements have been made in these facilities and they are in more habitable conditions than many of CDCR's prisons.
- The beds provide the state with more flexibility in developing a closure plan of a state owned and operated facility, particularly in light of the urgent capital needs of the majority of the state's prisons.

Even if the public contract beds are closed prior to the closure of a prison, sufficient capacity exists for the earlier planning of a prison closure (4,400 bed buffer by 2022) and the consideration of more than one facility for closure (8,600 bed buffer by 2024). This capacity is based on current projections without the consideration of additional reforms that may get adopted that further reduce the prison population.

Staff has requested additional information from the Administration and CDCR regarding capital needs and their prioritization, so that the Subcommittee can make more informed decisions in assessing capital outlay and facility improvement budget change proposals in facilities that the state intends to fund in the long-term.

Lastly, staff notes that the Administration and CDCR point to potential increases to the prison population due to a pending ballot initiative and other policies that may come down the pipeline. As a result, the Administration and CDCR caution any prison closure planning that is premature. If history is any indicator, staff notes that the vast majority of policies introduced, signed, and implemented in the last decade, including several voter initiatives, have all resulted in reforms aimed at lowering incarceration terms, increasing diversion programs, and increasing rehabilitation and reentry opportunities. And as a reminder, under Proposition 57, CDCR has the authority to award and expand credits for participation in programs to further reduce the prison population and enhance reentry outcomes.

Staff Recommendation: Hold Open.

ISSUE 2: UPDATE ON STAFF COMPLAINT PROCESS (AIMS)

The California Department of Corrections and Rehabilitation will provide a progress update on the new staff complaint process known as the Allegation Inquiry Management Section (AIMS).

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office
- Don Specter, Prison Law Office

BACKGROUND

The 2019 Budget Act included \$9.8 million ongoing General Fund and 47 positions to the California Department of Corrections and Rehabilitation (CDCR) to implement a new regional model for reviewing and investigating prisoner complaints of staff misconduct, as well as revise CDCR's staff complaint process into the new "grievance review process."⁸ As of the drafting of this agenda, CDCR is still in the process of finalizing the emergency regulations for this new process.

The impetus for this new grievance review process was partially based on a 2019 report, released by the Office of Inspector General (OIG), regarding staff complaints at Salinas Valley State Prison (SVSP). The Secretary of CDCR and the Prison Law Office requested the OIG to assess SVSP's handling of prisoner allegations against staff. Findings by the OIG included an inadequate staff review inquiry process for the majority of allegations that were reviewed, deficient training of staff, and the presence of bias in conducting reviews. The OIG also made several recommendations as a result of these findings, including a complete overhaul of the system to address independence and quality issues, the provision of comprehensive and ongoing training of staff, and audio and/or video recording of witness interviews.

CDCR is under federal court orders (*Coleman*, since 1995, and *Plata*, since 2006) for failing to provide a constitutional level of mental and medical health care. In addition, CDCR is under the *Armstrong* remedial plan, stemming from violations of the Americans with Disabilities Act and the *Clark* remedial plan to address issues specific to prisoners with developmental disabilities.

⁸ For the purposes of clarification and this agenda, the current process for prisoners with complaints for staff misconduct will be referred as the "staff complaint process" and the new proposed process which is scheduled for implementation in March will be referred as the "grievance review process."

New Process: Allegation Inquiry Management Section (AIMS)

The new AIMS has not been finalized at the time of the drafting of this agenda. In January of 2020, CDCR shared the proposed new regulations with the Prison Law Office (PLO). PLO expressed concerns with the proposed regulations, noting also inclusion of problematic provisions that were not included in the previous version that was shared with them in the fall of 2019. PLO requested that CDCR not submit these to the Office of Administrative Law or take any action to implement them. CDCR provided the following information related to components of the new process:

Training. The Office of Internal Affairs and Office of Appeals will provide statewide grievance training to all staff attending the supervisory academy. CDCR will send the correctional lieutenants, who review staff complaints, to a POST-certified interview and interrogation techniques course. CDCR is adding reference material and refresher training through an online system to ensure staff stay current on regulatory updates and training. In addition, CDCR, through its Office of Legal Affairs and Office of Training and Professional Development, will provide training to current hiring authorities specific to their responsibilities in the grievance process, and will include this training for all new hiring authorities upon assignment.

Internal Auditing and Review of the Inquiry Process. To ensure the fidelity of the revised regulations and processes, CDCR's Office of Audits and Court Compliance will audit the prisons' handling of grievances both by tracking data department-wide and performing quality reviews of inquiries and related paperwork.

Restructuring the Grievance Process and Office of Appeals. CDCR will revise its regulations regarding administrative remedies for prisoners and parolees. The general grievance process (non-specialty grievances) will be reduced from the current three-level approach to two levels divided into "grievances" reviewed at the local level, and "appeals of grievances" reviewed by the Office of Appeals. To enhance the independent review of appeals of grievances, CDCR moved the Office of Appeals from the Division of Adult institutions and placed it under the purview of the Division of Correctional Policy Research and Internal Oversight (CPRIO). CDCR proposes to use existing resources within its Office of Audits and Court Compliance (OACC), which reports to CPRIO, to provide oversight of the new inquiry process. CDCR believes that this change is significant because CPRIO reports to a different undersecretary through a separate chain of command than the Division of Adult institutions within the CDCR's structure, with the goal of eliminating conflicts of interest between these two divisions. Final grievance decisions will be approved by the chief deputy administrator level or higher. Specialty grievances will continue to adhere to existing expedited review timeframes. New regulations will eliminate reasons to "cancel" or "reject" a grievance for technical problems, such as lack of signature, illegible handwriting, insufficient documentation, or excessive or obscene verbiage. The intended result is for institutional appeal offices to conduct more inquiries at the Institution level.

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| STAFF COMMENTS |
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CDCR has recently changed its mission. Its prior mission was to “enhance public safety through safe and secure incarceration of the most serious and violent offender, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our community.” The new mission is as follows:

To facilitate the successful reintegration of the individuals in our care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, rehabilitative, and restorative justice programs, all in a safe and humane environment.

In addition to this mission statement change, several of CDCR’s budget change proposals indicate a growing commitment to provide more and improved rehabilitative programming, provide more targeted support for young adults in prisons, and continuing to challenge the prevailing culture that has persisted despite decades of lawsuits and reform efforts. Amongst its proposed programs this year, CDCR will be expanding visitation hours in seven of its prisons with a future goal of adding an additional day of visitation in all of its prisons. CDCR proposes to partner with Cal State University to provide bachelor programs in several of its prisons, in recognition of higher education as a pathway to successful reentry. In addition, CDCR is proposing to target intensive programs and services to its young adult population who typically have the highest recidivism rates once they are released. All of these efforts are commendable and fall under the new mission they have adopted.

Ongoing staff complaints at R.J. Donovan State Prison and the California Institution for Women

Despite these efforts, CDCR continues to face challenges in shifting a culture that has yet to fully embrace the tenets of this new mission. In order for any of the proposed programs and policies aimed at reducing recidivism and improving outcomes to be successful, the “safe and humane environment” portion of the mission is critically fundamental. Without the ability to maintain a safe and humane environment, many, if not all of these endeavors, will ultimately fail. The Subcommittee is in receipt of a series of legal documents from Rosen, Bien, Galvan, and Grunfeld, LLP, (RBGG) who serve as plaintiffs’ co-counsel in both the *Coleman* and *Armstrong* class action lawsuits against the state. Under *Armstrong*, CDCR was found in violation of adhering to the Americans with Disabilities Act, including conditions in parole hearings and access to programs for individuals with physical disabilities. Under *Coleman*, CDCR is required to overhaul its mental health care system.

The documents submitted to the Subcommittee show ongoing cases of alleged staff misconduct against the class of individuals protected under *Coleman* and *Armstrong* and indicate deficient responses from CDCR. Below are some excerpts from the letters:

Letter from RBGG to CDCR Office of Legal Affairs dated November 13, 2019

**Re: Armstrong v. Newsom/Coleman v. Newsom
Staff Misconduct at Richard J. Donovan Correctional Facility**

“...one [prisoner] asked for help carrying a package that he was unable to lift while using his walker, a staff member allegedly discharged an entire can of pepper spray in his face, struck him with the empty can, and then kicked him in the ribs and stomach.” In another case staff reportedly denied a person with a mobility impairment an extra shower as an accommodation for his disability and, after he filed a grievance regarding the issue, threatened him and ultimately orchestrated an assault on him by other incarcerated people. One person was allegedly thrown out of his wheelchair and then, while on the ground, was kned in the head by staff so hard it caused bleeding in his brain such that he had to be placed into a medically-induced coma.”

“In one attack, five staff members broke a mentally ill Person’s arm without any apparent justification for the use of force. Then, staff denied him access to medical care for nearly six hours...while other incarcerated people pleaded with staff to allow him to be taken to be seen by medical staff. In another brazen incident that is now the subject of a federal lawsuit, three incarcerated people with disabilities were publicly attacked by multiple officers in the middle of an occupied dayroom for doing nothing more than yelling at those officers to stop beating a fellow prisoner.”

Letter from RBGG to Special Master Matthew A. Lopes, Coleman Special Master Team dated November 7, 2019

**Re: Coleman v. Newsom
Plaintiffs’ Pre-Tour Monitoring Memorandum
28th Round Monitoring Tour, CA Institution for Women (CIW)**

“Plaintiffs’ counsel conducted nineteen interviews with CIW class members...[a] significant number of interviewees reported to Plaintiffs that there is a pervasive culture of misconduct among staff members at CIW. Numerous CIW class members, who did not want to be named due to fear of retaliation, provided detailed and credible accounts of being sexually assaulted by male correctional officers. Among other examples, CIW class members described staff members who solicited class members for sexually explicit photos; staff members who traded contraband in exchange for sexual favors from class

members, verbal sexual harassment...and staff members that retaliated against class members who reported sexual assault.”

RBGG sent copies of 16 different advocacy letters to the Office of Inspector General (OIG). Upon review of the actions taken by CDCR in response to the letters and the complaints filed (some prisoners filed complaints with the prison prior to CDCR’s receipt of the letters from RBGG), the OIG concluded that CDCR’s “handling of these advocacy letters revealed a pervasive lack of timely follow through” and that in all cases, “the staff misconduct described was serious, and if true, would result in disciplinary action for the subject employees.” Of the 31 allegations raised in the letters, CDCR conducted an inquiry into only 3 of the allegations. One allegation of misconduct was referred to the Office of Internal Affairs (OIA), requesting an investigation, but OIA rejected the request and returned it back to the prison for further inquiry. The prison did not conduct any further inquiry.

The Subcommittee is also in receipt of legal correspondence between the Prison Law Office and CDCR and its institutions.

Letter from Prison Law Office to Warden Molly Hill of the California Institution for Women (CIW) dated October 18, 2019 regarding Prison Rape Elimination Act (PREA) Retaliation at CIW

This letter addressed retaliation experienced by two female prisoners after they reported sexual abuse under the Prison Rape Elimination Act (PREA). The female prisoners reported that a correctional officer (CO) solicited sex in exchange for contraband. After soliciting sexual acts, the CO provided them with chocolate bars. The CO later threatened the women for “insulting his gift” and that he “doesn’t like to be insulted.” The women indicated plans to report his conduct and initiated PREA complaints. The women were not provided access to a victim advocate/victim support during the investigation process. They were both charged with extortion; one woman is in administrative segregation as a “threat to the safety and security of the institution” and the other woman is in a Psychiatric Inpatient Program where she attempted suicide in September of 2019. She reported harassment from the administrative segregation staff prior to her suicide attempt.

PLO also expressed concerns about deaf prisoners in CDCR, who have limited knowledge of PREA due to low literacy rates and are unable to make confidential PREA reports in American Sign Language (ASL) due to videophones located in conspicuous places. The mandated PREA video that is required to be shown to prisoners does not have any captions or an ASL inset. In addition, blind prisoners have no way to submit written complaints electronically, and since information is not included in braille, they have to rely on others, losing confidentiality. CDCR had communicated to PLO that they would start a workgroup into this issue and submit

recommendations by the end of 2019; however, no such workgroup was ever started and no recommendations were provided.

Prison Rape Elimination Act (PREA)

PREA defines sexual abuse to include, “with our without the consent of the inmate,” various forms of sexual contact with a staff member, as well as voyeurism by a staff member.⁹ PREA requires that victims have access to “outside victim advocates for emotional support services.” PREA also has policies related to retaliation against individuals that file complaints. It states; “For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignment of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.”

Staff Assessment

The Subcommittee’s discussions on this issue last year prioritized the independence of a new staff complaint process to address concerns regarding quality issues and bias. CDCR’s proposal to move the process into the Office of Internal Affairs was one of the recommendations of the Subcommittee. While many staff complaints will be handled through this more independent process, staff complaints regarding use of force and sexual abuse, the most serious types of complaints, will not; they will still be addressed internally through existing processes. While use of force and PREA complaints have different timelines and response processes from general staff complaints, the very nature of these types of complaints warrant higher scrutiny and the same independence as other complaints. Based on the Legislature’s interest in the proper implementation of the new staff complaint process, staff recommends requiring CDCR to follow up with the Subcommittee (prior to the implementation of the new AIMS process) as to how it will address the need for independence regarding use of force and PREA complaints, including the consideration of moving these types of complaints into the existing Office of Internal Affairs.

Staff Recommendation: Hold Open.

This agenda and other publications are available on the Assembly Budget Committee’s website at: <https://abgt.assembly.ca.gov/sub5hearingagendas>. You may contact the Committee at (916) 319-2099. This agenda was prepared by Jennifer Kim.

⁹ 28 C.F.R. §115.6

EXHIBIT N

**California State Assembly
Budget Subcommittee No. 5 – Public Safety
March 2, 2020**

Beginning at about 1 Hour 50 Minutes of the Audio Recording

Subcommittee Chair Shirley Weber (“Chair”)

We want to go to our next item, which is our Update of Staff Complaint Process. And we’ll begin, California— Mr. Secretary. Yes.

Secretary Diaz

I guess I’ll be— I didn’t draft up or write up large talking points about population, but I will say that since the Department has been venturing, and we are in the finalized language, as it relates to the Allegation Inquiry Management Section, and it is a new, it’s a new policy that we are drafting and proposing to submit on the ninth of this month for submittal to the Office of Administrative Law by the first of April to implement this new draft language that, I believe revamps how we, as a Department handle allegation inquiries in our prisons and complaints from inmates.

The original concern developed from an Office of Inspector General visit to Salinas Valley State Prison and how the institution was handling their staff complaints. What we found, and after discussion as the report was drafted, what we found is that the concern where prison staff themselves were assigned to answer allegation inquiries and write reports to the hiring authority or the Warden on investigations that were done— that were being alleged inside that same prison. What the concern—and rightly so now, we changed the regulations here—was that staff members were forced to write reports on fellow staff members, and would be like, the pressure was too intense, the objectivity was not there. So a decision was made through these regulations, and even before, to move that out of the prison system.

Out of the prisons, thank you, Don. You want to testify? *[laughter]* Out of the prison itself, and that’s through this section, Allegation Management Section which now doesn’t exist under the Division of Adult Institutions, which is the entity that oversees the prisons, the 35 institutions, so that under the Office of— Office— Office of Internal Affairs, it now sits under a separate undersecretary, which is under the— another director, which sits outside of the prison, and they are in charge of the oversight of this policy and this change and how we handle appeals and grievances. So what that does, it gives a more objective review of complaints submitted by inmates and that gives wardens a better understanding from a— from outside entities on what’s in front of them versus what’s been generated by the institution, and also solidifies a language that there will be no reprisals by anybody for filing a complaint. It also eliminates the screening process, what we used to screen out in the old days before this policy, less things are screened out. It also mandates that the staff that are going to be conducting these allegation inquiries

are trained by CPOST, which is a change from the past. And I think they're going to be trained in a more professional way, one that meets more industry standard. But then it also it also allows for complaints if they do come back, and there is a disagreement on what is accepted as a staff complaint or allegation inquiry. There's also backstops within this regulation that allow the new director over the oversight to refer this over to the Director of the Adult Institutions to have them take a second look at what a warden has chosen not to accept and refer to Office of Internal Affairs.

So, in the end, I believe removing the appeals from the prison itself, it is a good change. Moving it to an outside entity is a good change. Removing the review process outside of the prison is a good change. I know this work. We've been in discussion with many people over it to include Mr. Specter. I've had numerous conversations with Mr. Specter and I know he doesn't agree with some aspects of this, in the final conclusion of it, but I believe we have moved move this policy in an area to where I believe we will see gains. I know there is a request and an ask that this new policy and regulation take on more than it was originally intended, to include uses of force—all uses of force—to include Prison Rape Elimination, to almost move all inquiries under this new section. But I need to—I need to be clear that that's not what this ori—that's not what it was originally intended for. It was intended to have a more transparent or objective review of inmate allegation inquiries. What—what I would say is that I think this changes the dynamic on how the prisons are dealing with issues. I think it has others, other eyes on them that traditionally weren't there. And in the end, I believe that they're going to be issues that are being addressed in here, change how inmates will receive information and their complaints remedied. I think it's—it's in a better place now.

Now, I know Mr. Specter, and I, we disagree on some sections of this, but as a whole, I think we're better off with this, this new policy.

Unidentified Subcommittee Staff

As you'll recall, we had raised some concerns with this proposal when it came through last spring, and which I'm happy to reiterate, but we don't have any new comments at this time. And we do plan to look at the regulations when they become available.

Donald Specter

Thank you very much. I think it's important for you to evaluate this in the broader context of what's happened in this Department for the last few decades. I won't go back that long. But if you'll just bear with me for a few minutes. First of all, I'd like to start with a proposition about your emphasis in the last part of the hearing on rehabilitation. I think that's everybody's goal. But I think Mr. Diaz will agree with me that you can't do rehabilitation in a place where people don't feel safe. And in many places in the Department of Corrections, especially over time, people who are incarcerated don't feel

safe, and in some cases, the staff don't feel safe either. So my comments are devoted to making the best use of this appeals process, so that the staff misconduct is minimized as much as possible.

So in a fully functioning system, where you have good staff account— accountability for staff, the problems with staff misconduct are identified by the Department and they're resolved by the Department so that they don't get out of hand and you have safely running prisons. Unfortunately, that hasn't been the case through the history of this Department, as long as I've been doing this. And I think it's fair to say that, for the reasons I will articulate in a second that the staff account— accountability system in the Department is broken, has been broken for decades, because it's been essentially one scandal after another. It just depends on whether we or some other entity like the Office of Inspector General has been able to discover it.

So as you may— as some of you may remember, in the 1980s Corcoran was involved with gladiator fights which were set up by correctional staff. Then in the 90s, there was Pelican Bay where the Court found that there was an intentional pattern of excessive force used for administrative purposes as punishment. That was cured through legal action and a court order in the *Madrid* case. More recently, at High Desert we uncovered through our monitoring of people with disability— the ADA case, *Armstrong*, we did we discovered a pattern and practice of staff misconduct ranging from excessive use of force to racially— racial comments— racial slurs to treating people with disabilities in a discriminatory manner. And then this Office of Inspector General did a report about that and found— found exactly what we had alleged to occurred has happened.

In— even more recently, in Salinas Valley State Prison, there was a pattern of excessive misconduct. It wasn't cured by any— none of these were cured or even identified by the Department to our knowledge. And the Office of Inspector General, when they looked at Salinas Valley, found that the whole inquiry process into whether there is staff misconduct was completely broken because the staff weren't trained. They were often colleagues of some other staff members who were doing the review. The wardens weren't referring matters up the chain to the Office of Internal Affairs in an appropriate way. And the system of accountability lacked independence from the institution.

So now, I don't know whether you knew it, but my colleagues and my co-counsel filed a motion recently— just on Friday, about Richard J. Donovan facility which they alleged pervasive staff misconduct against people with disabilities who are housed in that facility. And I'd just like to kind of read you a couple of sentences from that motion, which says basically— which are based on fifty-some-odd declarations signed by people who are incarcerated, says that officers are throwing people with disabilities out of wheelchairs. They're punching deaf people when they cannot hear spoken orders. They're beating people with disabilities who request help carrying heavy packages.

They're closing cell doors on people who use walkers and wheelchairs, and attacking suicidal people when they ask for mental health care. Witnesses report at least one and possibly two instances where staff used force in a way that contributed to the deaths of people who were incarcerated.

That— those declarations were reviewed and other information were reviewed by the former secretary of the Washington State Department of Corrections who is an ex—nationally recognized expert on prison. And he said, to date, CDC appears to be incapable of changing the staff culture despite having a wealth of information from credible sources about the nature and depth of the problems of staff misconduct.

The Ombudsman for the Secretary of Corrections wrote an email to the Director of Adult Institutions. And it's worth quoting at a little length. She said, or he said, what we heard was overwhelming accusations of abuse by the officers and sergeants, with sergeants and lieutenants looking in the other direction. I have never heard accusations like this in all my years. I would strongly suggest placing a strike team on this yard immediately. Many of the inmates have expressed fear of what will happen to them tomorrow when the team is not there. This is a very serious situation and needs immediate attention. If there is any means of installing cameras immediately, I would strongly suggest it at least in the blind spots in the back door of the gym. A review of the appeal process, rule violation reports and staff complaints of that yard also needs to take place as soon as possible. That's— that's not us. That's the Ombudsman.

Later, the Chief Ombudsman wrote, there has been little to no progress since September. I am not typically an alarmist, but again, I have never heard such [despair], hopelessness and fear from inmates. And I have been on quite a few of these teams to review and interview inmates. The CIW tour results don't come close to this and CIW was very bad.

So, in addition to that, we have the situation at the Sacramento County— Sacramento State Prison at Folsom, where there were nine suicides in 2019. That's an astronomical rate of suicides per population. There were three homicides. And we've just learned from a tour last week that not only inmates are fearful of get— of leaving their cells to get health care, but that doctors, nurses and other clinicians are scared to provide the care because of their fear of violence. So what you have right now is that CDCR really has no working system to identify these problems. That system is us, the Prison Law Office, my colleagues at Rosen Bien Galvan & Grunfeld, and the Inspector General to some extent. If I were to characterize this situation in the most global terms, I would say that the staff accountability system is not independent of the institutions. And it's not completely centralized. It's still working at the institutions. So last year, you all, as the Legislature and the Administration appropriated \$10 million to hire specially trained investigators, and those are the ones that Mr. Diaz was referring to. And we appreciate that very much, and we appreciate the fact that the Administration, including Mr. Diaz, supported that, in order to start to ameliorate some of these problems. And

those investigators will be a step in the right direction because they will— like Mr. Diaz said, they will get enhanced training and they work for the Office of Internal Affairs, which, you know, has been— it's— that had— their ability to properly investigate cases in the prisons hasn't been questioned. So my— the place I start from is you have a working part of the Department of Corrections. What you need to do is put more of the cases into that Department for them to investigate because they've been trained as investigators, they know what they're doing, and they can— they— you can have the right— more accurate and reliable results.

So the new regulations—draft regulations—that Mr. Diaz referred to, some of them are positive changes. He mentioned a number of them and I fully support them, but some of them have fatal flaws— but they have fatal flaws, because in my opinion, they reduce the effectiveness of the investigators by reducing their independence essentially. There are two— there are three ways I think that they do this. One is that only cases in which there is no report of a use of force, which happens, but it's very, it's very rare that you actually find out about it, or cases in which somebody suffers serious bodily harm or injury as defined by the Penal Code.

So for example, if you have an officer who threw a person who couldn't walk out of a wheelchair and kick them but didn't— and wrote a report about it, but there was no serious bodily injury, then the Office of Internal Affairs investigators are not going to do that investigation. Or if I punch you in the face, and I'm an officer and you're a person who's incarcerated, and I— I just give you a bloody nose or I give you a black eye, there's no serious bodily injury, so that also wouldn't be investigated by the Office of Internal Affairs investigators called— they're called the AIMS investigators.

And the second major problem is that the Warden still decides whether which of the two investigative systems the case goes to. The Warden decides whether his staff are going to investigate it or the Office of Inspector— Office of Internal Affairs, investigates it. And that has been one of the major problems is that the Wardens have had these situations under their direction and super— immediate supervision and yet they haven't been able to elevate these issues to the Office of Internal Affairs in a sufficient way so that Mr. Diaz and his subordinates understand that there's a crisis. So what, what we've been advocating for and so far we haven't really been successful in convincing the Secretary or the administration that it's crucial, is that all these use of force cases should be turned over to the Office of Internal Affairs in order for them to make a determination how they should be investigated, not the Warden.

And I can give you an example of the fact that I've sat in on some of these committees where the Warden reviews these instances and the situation is, the Warden is sitting there and so are all the captains and Associate Wardens. It's basically a sea of green uniforms. And he has to decide whether all the people that they know. their friends are going to be investigated by the Office of Internal Affairs rather than by him and its— or her. And it's a very difficult decision to make. And I think the way the regulations are

drafted the moment really reduces the independence of the investigation and plays into the fact that we're going to have these instances of continued staff misconduct, which are not going to be properly investigated.

There are also some other technical problems, but so we haven't been able to— Mr. Diaz is correct that we have had many discussions. I've had it with him, I've had it with the Governor's office. And we really haven't been able to come to an agreement. And I think it will really reduce the effectiveness of the \$10 million you spent, in order to have this— try and solve some of these problems.

Chair

Okay, I don't know if you had any comments. Yeah, I— well, I think we were relatively clear last time when we talked about this. And I find it very alarming that these things are still taking place in our prisons, and I read a lot of the stories and they're absolutely horrible, absolutely horrible, that they're committed by our staff. You know, we try to hopefully keep the violence down among the inmates. But it seems that a lot of this stuff is instigated by people who work for us and who should not be doing this. I don't know where that we have difficulty finding people to work, or what but, this stuff is— it's absolutely horrible. And I guess, so often I hear about folks who are incarcerated who come out and who tell me some of the things that are just absolutely horrible that are happening to them, whether it was sexual assault, and those kinds of things, and it's just— it's horrible that we would have a system that we would protect in some way, the kind of things that occur. I find it totally unacceptable. And I know it's been going on forever and it bothers me that becomes the culture of incarceration in this nation, you know that a person gets incarcerated, the first thing someone says to them, oh, you're going to become Joe's girlfriend. I mean, that says we condone this level of behavior. You know, whether it's stated by the police officer or whomever it is, it's like we expect abuse to occur in our prison system, which is to me totally unacceptable. And, you know, going to prison is frightening enough, but knowing that there will be, you know, all kinds of violence on folks when they're there, with no effort to seem to stop it at some point, or you have no means of trying to correct it or, or you have no rights to say what took place because then there'll be retaliation to you, either by other inmates or by the folks who are running the prisons that— I mean, that is— that— that, to me is very frightening and unacceptable. And I can't figure out how we could ever expect to run a system of incarceration and expect people to come up better if they're in that kind of environment.

It's, you know, it's worse than the violence they face on the street. So I'm just— I'm very concerned. And I know we're going to look at the regulations, I hope. And because we're spending money on this, but asking folks who have historically done violence against others to once again have the authority to determine who does the investigation and those kinds of things is just— you know, I can't see how we can expect

anything different and maybe you can, but I can't see how we expect any different results.

Secretary Diaz

If I didn't emphasize in the beginning, Assemblymember, Chair, Chairwoman, if I didn't emphasize in the beginning that we— we do take this seriously. We do. I know, Don and I have had many discussions and this type of activity that Don described is not acceptable in our prisons. And we do have due process for these individuals, but in the end, I want to weed out these types of individuals that commit these acts. And we have, at the particular institution that Don speaks about, at RJD, we have terminated 14 individuals at that prison. At another institution where we had issues, we dismissed six individuals. We do seek prosecution and refer for prosecution for individuals who do commit these acts because it does tarnish CDCR. It does tarnish the good work that's done by the thousands of employees and the thousands of peace officers who go there to do the right thing, to be role models. What I think what was spoken about by Mr. Specter— I think part of it is a simplification of various processes that occur, like our use of force process. Every report or every use of force that is— that is done in our institutions from the lowest levels to the highest level, there's a review process that occurs and I know Mr. Specter did speak of a roomful of Associate Wardens and captains and which I sat in there, myself, but also in that room is the Inspector General, they're in that room also, listening to the review process from the beginning. From the time the officer wrote the report of the staff member of the report, to the end to whether they clear it or not. And along the way, that there— there are referrals that do occur for inappropriate uses of force, or excessive uses of force in that process. And it's well documented, it's well audited by the OIG, they put out a semi-annual report.

I could go into numbers, but I'll just go into actual uses of force in the prison system in 2018. So there were 6247 uses of force that were deemed in-policy by the committee. Out of all that 6247, 41 of those the OIG disagreed with. Now I can— out of those 41, they varied in the level of disagreement, whether it be on the punishment or whether it be on the process or referral. What I'm explaining today is that this new regulation will address some of these concerns. Don and I do disagree on one particular area where that— where there's a fork in the road after the investigation is done, that the inquiry is done by the new unit, that who determines whether it should go to Office Internal Affairs, should it be the new AIMS unit, which is a captain or lieutenant because the way that this is designed, it's going to be broken up into three regions, Northern, Central, Southern. There'll be a captain overseeing each one of those units, and lieutenants that work and do these inquiries. So the thought is once a complaint is referred up to the AIMS unit, the lieutenants go and they do an inquiry, they review the documents that interview inmates, they generate a document, refer it back, and it's up to that hiring authority, then they can make that decision. Is it going to go to the Office of Internal Affairs, or are they going to do a more localized training or other matters?

But there's also another step that I spoke of briefly. That if there's a disagreement or there— if there's a decision made by that Warden, they're going to have to articulate in this policy, why they chose not to refer. That referral, and those documents that will be audited by this new— new unit. And if there's any disagreements with that, it gets referred to the Director of Adult Institutions, the Associate Directors, and then they can make the determination where it goes. That's where Mr. Specter and I disagree, on that piece.

Chair

Are those regulations available now for us to review?

Secretary Diaz

They're in— They're in draft.

Donald Specter

I thought I sent it to you, Jennifer. Didn't I?

Secretary Diaz

Did you get the latest one?

Donald Specter

We have them. We can. Well, both of us have them. He sent it to me. So I—

Chair

Well, hopefully we'll get a chance to see them before they're fully implemented. The committee can see them.

Donald Specter

Yeah, please look quickly because he's going to submit them to the OAL in a week.

Chair

Oh, is that right. Okay.

Donald Specter

Which I think it would be nice if—

Chair

Well, we need to see them before they're fully implemented for the committee to review them if we're paying that kind of money for it. For the report. Yeah.

Donald Specter

I just have one final comment, which is given all the terrible abuses that have happened over the years, I just don't understand why... I— I know this is a professional disagreement and I understand Mr. Diaz. He answers to a lot more constituents than I do. But given the situation, I just don't understand why the State as a whole isn't going for the most independent situation that they can have and the most vigorous investigations that they can have. Both of the things I'm suggesting are aimed in that direction. And given the situations that we just discovered at RJD, I just— which is, you know, there have been a history of these kinds of cases, I think that's what's needed.

When I— I have a friend who's a director of the Pennsylvania Department of Corrections, he's the Secretary of that. And I called him up when the Salinas Valley case was getting going, and the OIG was doing the report, and I said, what— John, what do you do? And he said, what I did was, I found somebody, a former FBI agent. I made him in charge of the Office of Internal Affairs and I took all the discretionary decisions away from the wardens. And located in the Office of Internal Affairs. And my— the situation has substantially improved. I can't verify that, but that's what he said. So I think that's the direction that the Department has to go in if it's going to have any hope of identifying these problems and fixing them.

Chair

All right, thank you. Thank you. Did you have anything to add, Mr. Stone?

Subcommittee Member Mark Stone ("Mr. Stone")

I do. I guess I'm a little disappointed in how this is ultimately rolling out, because the— we have to be very careful in the message that we're sending with the regulations, and I appreciate your— that you are, Mr. Secretary, absolutely serious about this. But because what you're trying to change, in its essence, is cultural and a culture that's been built up over decades, to do that, I think we need to take a bit more dramatic step than otherwise. And anything that— I think without a default, Madam Chair, to a very, very clear independence, we're not sending that right message. And we often up here talk about the prison system in general, but— and not always then about specific populations but— by example, and some of it is in the staff report, I think women who are incarcerated face some very dramatic circumstances that are hard to get out of and hard to change. In fact, I've been recently talking, just beginning to have conversations with some people who have gone into some of the women's facilities there. And the culture

seems to be fairly pervasive. How much I think is going to be very difficult to ascertain because a number of the women who, even when they come out, are so traumatized by what happened and so fearful of talking. I've asked if there's a willingness come talk to me to help explain so that— that I can understand what happened inside. There's a real unwillingness for women who have come out to even articulate what happened inside. They're so afraid of consequences—they're outside, not inside anymore—that it's hard, I think, for us to sit here and imagine what it's like, and the trauma and the fear inside. So this Committee hasn't always focused on the institutions for women. And that is one of my suggestions, Madam Chair, is that we take a look at that, and see if there's a way that we can get better information in a productive way about what's happening there. So if there's an investigation that has any possibility of being dealt with inside, I think that's going to change very dramatically the character of somebody who is inside—a woman who is inside—their willingness to come forward at all, in the first place. Because of that— that— if it— that fear will be, I think very debilitating to the case. If they have confidence that there will always be an outside investigation. And— and the ability to protect them from retaliation. Although I think the culture is such that they're not going to believe it. That you can say, and the regulations can say, and the structure can be that they will be protected from retaliation—they will not believe it. If they're still carrying that fear once they come out. I don't see how they on the— anyone on the inside, will be able to trust something until that process starts to show real results.

So I would hope that this committee can take a little bit look— and let's— I think we should take a look at the facilities for women specifically—maybe this committee and/or Public Safety and— and see if we can get a better sense of what's happening, how it's happening, and how we really find a truly independent and effective way of getting the stories told, and then starting to drive that— to drive that change.

So it's those patterns that we're trying to break down, those patterns that have been developed a long time. And the institution, both the women are in the institution and the institution itself have relied on those patterns for so long, that breaking those patterns and breaking the expectations, I don't think is going to be an easy task at all, especially when people are so afraid to come forward. So I'd be very interested to see the regulations. I think we need to see the regulations. But if those regulations do not foster, enough of a guarantee of that independence of that outside look, and that real sense of protection from retaliation, and that'd be demonstrated that would be articulated and then demonstrated, I don't know that we're going to get the information about what's really happening in the cases that we need to understand the sense of the crisis that that I feel is there, but is not able to be really explained that at the level that that I think will be helpful. Because if it's at all partially true, it is frightening. And if the— what I'm hearing, if it seems as pervasive as it is entirely unacceptable, and really absolutely out of control.

So I understand your process in setting the regulations. But for me, I think and I think, hopefully for this committee, that if we're not comfortable with the level of independence that's there, that that's not going to be acceptable here and is not going to fly because that's going to be a cornerstone to really being able to have access to the information and to the state of what's inside. Inside. I think it's been— it's gone on for such a long time, that without a real dramatic statement— these regulations should not be just a next step and opening a way in, but should be a dramatic step to show that the Department, that we, everyone is very, very serious about making the kinds of cultural structural, those changes to ensure safety on the inside.

Donald Specter

So, Assemblyman Stone, we have some women we've been talking to at the California Institution for Women who we've been advocating for publicly, if you want to know, if you want to talk to them, we'd be happy to go down there with you. And I think they would probably be willing to talk to you about some of the issues that they've experienced.

Mr. Stone

Okay, because I'm hearing this from some folks who have gone inside and they're relaying back to me. So I would be happy to I think, from this committee formally, should make that request and potentially go do some tours and sort of see what we can do. Because I also— for— for all the work that we have done with the rehabilitation side and the reforms and all, the— the message that I'm getting back—and again, this is third hand—they're not feeling any appropriate attention being paid in the women's facilities because we are talking more generally. And I think that's something that that we need the Legislature to take responsibility for addressing the fact that we have not always been there and been available. And I think if we take some more affirmative steps and show that there's attention being paid, that we're willing to listen and be a part of this process, I think just that will— will also go a long ways, but also Mr. Secretary, I'm hoping that what you present and I think that what we would expect is something that is even beyond kind of current status, but is that with the greatest amount of independence of review, because it's going to be a credibility question for that whole system.

Secretary Diaz

I agree. And I appreciate both of your comments and I take them very seriously. To the— I mean, I— to the point to where I knew I was going to be here, and I sent out the link to this hearing to all the wardens so they can understand the importance of this. So they can see what we're doing, and what we're discussing, that it is important. One of these allegations is far too many, far too many. I take it very seriously. We— we are seeking funding for cameras in these facilities to expand our cameras on the yards at RJD, at the woman's facility, at CIW, at Salinas Valley, to assist with some of these

cultural issues. But you know, like you sitting here listening to the criticisms of the agency that I believe is doing good work, but definitely can be doing better. It does affect me, you know, not only professionally but personally. Because I care about the population. I do care about these prisons, and I do care about what we're producing once they release. And I'm saddened to hear about you know, stories of people leaving that don't even want to talk about it. I experience other stories that are opposite of that. So I'm sure somewhere in the middle that we need to improve that.

Chair

Obviously, most of us are concerned about the— the regulations and so I'm going to suggest that they that before you submit them that this committee have access to them, and that we have an opportunity to discuss them. Prior to the submit. I mean, you know, we would like to see it before it's submitted, rather than having to respond to it after the fact. And we haven't seen it, so we would like to be able to weigh in on it and get some sense of feeling that it— that it is— that is acceptable. As you— since it's so much work has gone into it, another week or two won't probably delay it that much. Okay?

Secretary Diaz

I'm not sure the mechanics of it. I don't know. But clearly, Don's already sent it over to the staff.

Chair

Okay, we—

Secretary Diaz

I believe any review there, I think there needs to be some context with explanations—

Chair

Sure, sure—

Secretary Diaz

as part of, a portion of it, I—

Chair

and that's why I said if it's sent to us, then we would have an opportunity to meet about it and have conversation with you and whomever else is involved in it, either the authors of it, to find out exactly what the rationale is for it, and whether or not they believe it's going to answer the issues that we've raised and that we're going to see a

dramatic change in what is taking place. That will be very important because as pointed out by Mr. Stone, the historic nature of the abuses that have occurred and limited response from us to those issues, we want to make sure that we are responding, that people know that there is, as they say, a new sheriff in town, or a new group of people who have a different set of eyes, different set of values or whatever it may be that this is a serious effort, that we want to make sure that it takes place. And that will be important for us as well as for those who are— that we have responsibility for that are in our custody.

I want to thank you all for coming. We do have public comments. I'm not sure if anyone wants to make a comment. You have one minute to comment, not very long, concerning it, make sure you give us your name and your— just your name and if you have an affiliation, but we'll take comments for one minute. If you plan to make comments, please get in line. So we have one person who's going to comment, is that correct? If you if you plan to comment, please get in line now so we have some sense of the amount of time. We are up against a deadline to a close out the hearing. Okay, thank you. Yes.

[Public comments omitted]

Chair

Thank you very much.

I want to thank all of you who came today. We will take all of your recommendations into consideration. Thank those staff who's here to do the reporting. We will go and go over some of the other things that we've mentioned, that we think need to happen in terms of the us reviewing this, the procedures prior to that, and many of the things that some of you've talked about are things that we've heard before, when we've done some site visits at Donovan this past year, and some of the other places. So thank you for coming. Thank you for sharing. Anytime you feel you need to submit your documents that you have of the things that you read, feel free to do that to submit it to our committee so we'll have access to it as a part of the record. Once again, thank you all for coming and the meeting is adjourned.

EXHIBIT O

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PROGRAM EVALUATION

SELECT COMMITTEE
CHAIR: CAMPUS CLIMATE

March 10, 2020

Secretary Ralph Diaz
California Department of Corrections and Rehabilitation
1515 S Street, Suite 101n
Sacramento, CA 95811

Dear Secretary Diaz,

In budget hearings last year, our Subcommittee began a series of conversations with your department on the important issue of staff complaints and how they are handled. The progress made in those discussions and the resources that were provided to your department in the 2019-20 Budget to embark on a new approach laid a promising path forward. This is why your recent actions discussed below were both surprising and disappointing considering the progress we had made together. On March 2, 2020, you testified at an Assembly Budget Subcommittee on Public Safety hearing on issue 2 of the agenda ("Update on Staff Complaint Process (AIMS)"). During that discussion item, it was brought to the Subcommittee's attention that CDCR had completed a draft of the new regulations for the AIMS process but they had not yet been submitted to the Office of Administrative Law (OAL). At the conclusion of the discussion item, I asked you to provide the Subcommittee with the opportunity to review the draft regulations before submission. This request was further clarified and repeated by two follow up emails from the staff of the Subcommittee on March 2, 2020 and March 9, 2020. In addition, Assemblymember Ting left you a voicemail to repeat this request on March 6, 2020. On the evening of March 9, 2020, your staff notified our Subcommittee that the department had submitted the regulations earlier that afternoon, without providing the Subcommittee an opportunity to review the draft regulations or even responding to the communications from Mr. Ting and subcommittee staff.

First, the lack of response to either honor the Subcommittee's request or offer an explanation as to why it cannot be honored is deeply troubling and disrespectful to our Subcommittee. As you are keenly aware, the issue of staff complaints and a solution that addresses the concerns raised in budget hearings is a priority for this Subcommittee. A cornerstone of the Legislature's role is its oversight responsibilities. Your decision to proceed without allowing for legislative review of the draft regulations directly impedes the Legislature's ability to provide oversight of this important issue. Your department has special authority under Penal Code 5058.3 to promulgate emergency regulations with only a showing of operational necessity, which you use regularly. If



this special regulatory power is used to impede the Legislature's ability to provide meaningful oversight, the Legislature may need to consider reducing this authority.

Second, the urgency of a solution to a problematic staff complaint process should be coupled with a thoughtful approach. Reviewing the proposed regulations is within the purview of this Subcommittee. Your unwillingness to allow time for our Subcommittee to engage in meaningful review is particularly troubling considering the issues at stake. Recent reports of allegations of violent acts by staff against prisoners with disabilities, female prisoners, and mentally ill prisoners serve as further examples of the necessity of a process that provides an appropriate review and response that is unbiased.

Third, an initial review of the regulations that you submitted to OAL, have raised the following serious concerns:

1. The most serious allegations of staff misconduct will not be handled by the Office of Internal Affairs.

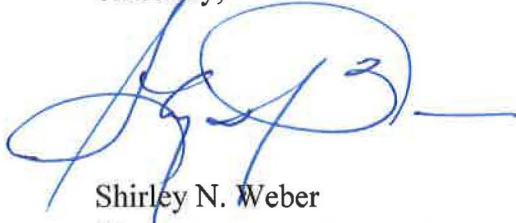
- a. Allegations that fall under the Prison Rape Elimination Act (PREA) are excluded from the AIMS process and will remain under the current process at each prison.
- b. Section 3484(d) states: "When the allegation of staff misconduct concerns a use of force incident, then the Reviewing Authority shall refer the claim to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation *if the alleged use of force by staff resulted in serious bodily injury or the alleged use of force was not reported in accordance with sections 3268.1 or 3268.3.*" All use of force allegations should be under the purview of the Office of Internal Affairs. Inappropriate use of force, whether or not it leads to serious bodily injury, should be reviewed outside of the prison's chain of command. For example, many inappropriate uses of force (i.e. throwing a disabled prisoner from a wheelchair, emptying a can of pepper spray on an individual, or punching a person in the face) will not lead to "serious" injuries but nevertheless indicate unacceptable behavior that should be addressed outside of the prison's chain of command.
- c. Section 3484 states that the Reviewing Authority must have "a reasonable belief" that misconduct occurred in order for a referral to the Central Intake Unit for a formal investigation. It's unclear as to what would constitute "reasonable belief" and how it would be operationalized. This creates both ambiguity and discretion for institutional staff on referrals.

2. Discretion for referral to an investigation lies with the prison leadership, rather than the Office of Internal Affairs, leading to serious concerns of bias.

- a. Section 3481(b) says "the Director of DAI shall appoint Institutional Reviewing Authorities authorized to approve or disapprove each claim in a grievance received by an inmate, but in no case shall that official be of a rank lower than a Chief Deputy Warden."

The Subcommittee has been provided with numerous examples of the department's inability to effectively handle allegations of staff misconduct. I am deeply disappointed at your unwillingness to engage with our Subcommittee to arrive at a solution that addresses the problems we have outlined in budget hearings. As a result, the Legislature must consider other options to address these urgent issues, including placing policy governing the department's processes for handling grievances in state law, rather than regulations.

Sincerely,



Shirley N. Weber
Chair, Assembly Budget Subcommittee No. 5
Assemblymember, 79th District



Philip Y. Ting
Chair, Assembly Budget Committee
Assemblymember, 19th District

Cc: Members of the Assembly Budget Subcommittee No. 5 on Public Safety

EXHIBIT P

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3084, 3480, 3481, 3482,
3483, 3484, 3485, 3486,
3487, 3488

Amend sections: 3000, 3045, 3077.3, 3078.4,
3134.1, 3136, 3137, 3141,
3173.1, 3179, 3193, 3220.4,
3230, 3282, 3378.4, 3383,
3475 (renumbered to
3465), 3476 (renumbered
to 3466), 3477
(renumbered to 3467),
3478 (renumbered to
3468), 3479 (renumbered
to 3469), 3480
(renumbered to 3470),
3480.1 (renumbered to
3471), 3481 (renumbered
to 3472), 3482
(renumbered to 3473),
3483 (renumbered to
3474), 3484 (renumbered
to 3475), 3485
(renumbered to 3476),
3486 (renumbered to
3477), 3491, 3492, 3548,
3563, 3630, 3723

Repeal sections: 3084, 3084.1, 3084.2,
3084.3, 3084.4, 3084.5,
3084.6, 3084.7, 3084.8,
3084.9, 3085, 3086, 3369.5

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

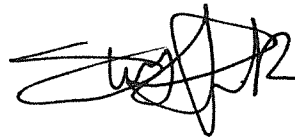
OAL Matter Number: 2020-0309-01

**OAL Matter Type: Emergency Operational
Necessity (EON)**

In this emergency of operational necessity rulemaking by the Department of Corrections and Rehabilitation (the "Department") pursuant to Penal Code section 5058.3, the Department is amending and restructuring the inmate and parolee grievances and appeals process.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 6/1/2020 and will expire on 11/10/2020.
The Certificate of Compliance for this action is due no later than 11/9/2020.



Date: March 25, 2020

Steven J. Escobar
Attorney

Original: Ralph Diaz, Secretary
Copy: Anthony Carter

For: Kenneth J. Pogue
Director

STD. 400 (REV. 10/2019)

| | | | |
|------------------|---------------------------------|--------------------------|---|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2020-0309-01 EON |
|------------------|---------------------------------|--------------------------|---|

For use by Office of Administrative Law (OAL) only

2020 MAR -9 A 10:15 jo.
 OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

ENDORSED - FILED
 in the office of the Secretary of State of the State of California

MAR 25 2020
1:51 PM

AGENCY WITH RULEMAKING AUTHORITY
 Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
 19-0029

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|--|---------------------------|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | 5. NOTICE REGISTER NUMBER | 6. PUBLICATION DATE | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|---|
| 1a. SUBJECT OF REGULATION(S) Grievances and Appeals | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ACTION ON PROPOSED NOTICE |
| 15 | ADOPT See attachment AMEND See Attachment REPEAL See Attachment |

3. TYPE OF FILING

| | | | |
|--|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity- PC 5058.3</u> | | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

| | | | |
|---|--|--|---|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input checked="" type="checkbox"/> Effective other (Specify) <u>June 1, 2020</u> |
|---|--|--|---|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) | | |

| | | | |
|-------------------------------------|----------------------------------|-----------------------|---|
| 7. CONTACT PERSON Anthony Carter | TELEPHONE NUMBER 916-445-2220 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) Anthony.Carter@cdcr.ca.gov |
|-------------------------------------|----------------------------------|-----------------------|---|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|---|-----------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE <u>3/6/20</u> |
| TYPED NAME AND TITLE OF SIGNATORY Jeffrey Macomber, Undersecretary, Administration, CDCR | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 25 2020

Office of Administrative Law

per agency request
 SE, 3/23/2020, 3:25 PM

In the following text, ~~strikethrough~~ indicates deleted text; underline, indicates added text. Additionally, an asterisk (*) indicates omitted and unchanged text.

**California Code of Regulations, Title 15. Crime Prevention and Corrections
Division 3. Adult Institutions, Programs and Parole**

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

*

~~Appeal means a formal request for, or the act of requesting, an official change of a decision, action, or policy.~~

*

~~Grievance means a complaint about a decision, action, or policy which an inmate, parolee or staff wish to have changed.~~

*

Project, as used in sections ~~34753465~~ through ~~34783468~~, means a proposal of something to be done for which a contract has not yet been awarded.

*

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8, and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

3045. Timekeeping and Reporting.

(a) Inmate timekeeping logs. The attendance and/or participation of each assigned inmate shall be recorded on an approved timekeeping log. If the assignment began or ended during the reporting month, the date(s) of such activity shall be recorded on the timekeeping log. Only the symbols designated on the timekeeping log shall be used to document the inmate's attendance. The symbol(s) and applicable hours for each day shall be recorded in the space corresponding to the calendar day. This log shall be the reference for resolving ~~complaints~~grievances or appeals and shall be retained at a secure

location designated by the facility management for a period of 4 years from the date of completion.

Subsections 3045(a)(1) through 3045(b) remain unchanged.

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224.

3077.3. Senate Bill 618 Participant Institutional Programming.

Section 3077.3(a) through 3077.3(f)(2)(C)(3) remains unchanged.

(4) An SB 618 Participant who is determined to no longer be eligible for the SB 618 Program, may appeal the Advisory Group decision by utilizing the ~~inmate appeal process~~administrative remedies procedures as provided in the California Code of Regulations, Title 15, Chapter 1, Subchapter 5.1, Article 81, sections ~~30843480~~ through ~~30853487~~.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8 and 5054, Penal Code.

3078.4. Alternative Custody Program Processing.

Subsections 3078.4(a) through (d) remain unchanged.

(e) The inmate may ~~appeal~~file a grievance regarding the decision through the procedures detailed in section ~~30843480~~ et seq. or reapply for participation in the program 30 days after the notice of the denial.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

Article 8. Appeals Inmate Sexual Safety

~~3084. Definitions.~~

~~For the purpose of Article 8, the following definitions shall apply:~~

~~(a) Appellant means an inmate or parolee who has submitted an appeal.~~

~~(b) General allegations means allegations that lack specificity or factual evidence to support them.~~

~~(c) Material adverse effect means a harm or injury that is measurable or demonstrable, or the reasonable likelihood of such harm or injury. In either case, the harm or injury must be due to any policy, decision, action, condition, or omission by the department or its staff.~~

~~(d) Modification order means an order by the institution, parole region, or third level Appeals Chief directing a previous decision to be modified.~~

~~(e) Remedy means a process or means to address an issue or correct a wrong.~~

~~(f) Reviewer means the individual with signature authority for the approval or disapproval of an appeal response at any level.~~

~~(g) Staff misconduct means staff behavior that violates or is contrary to law, regulation, policy, procedure, or an ethical or professional standard.~~

~~(h) Supporting documents means documents that are needed to substantiate allegations made in the appeal including, but not limited to, classification chronos, property inventory sheets, property receipts, disciplinary reports with supplements, incident reports, notifications of disallowed mail, trust account statements, memoranda or letters, medical records and written requests for interviews, items or services. Supporting documents do not include documents that simply restate the matter under appeal, argue its merits, or introduce new issues not identified in the present appeal form.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.~~

3084. Inmate-on-Inmate Sexual Violence, Staff-on-Inmate Sexual Misconduct, and Sexual Harassment of Inmates.

(a) A grievance in whole or part containing allegations of inmate-on-inmate sexual violence, staff-on-inmate sexual misconduct, or sexual harassment of inmates shall be immediately reviewed by the Hiring Authority or designee. When the grievance alleges or indicates that the inmate may be in substantial risk of imminent inmate-on-inmate sexual violence, imminent staff-on-inmate sexual misconduct, or imminent sexual harassment, then a risk assessment shall be undertaken.

(b) An inmate shall not submit a grievance on behalf of another person unless the grievance contains an allegation of inmate-on-inmate sexual violence, staff-on-inmate sexual misconduct, or sexual harassment of any inmate.

(c) Staff-on-Inmate Sexual Misconduct.

(1) There shall be no time limit for allegations of staff-on-inmate sexual misconduct.

(2) A risk assessment determination of all staff-on-inmate sexual misconduct related grievances shall be immediately completed by the Hiring Authority to determine if the inmate is in substantial risk of imminent staff-on-inmate sexual misconduct. If the assessment results in a determination that the inmate is in substantial risk of imminent staff-on-inmate sexual misconduct, the Hiring Authority shall take immediate corrective action.

(3) The Hiring Authority shall provide an initial response to the inmate within 48 hours.

(4) An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the inmate was determined to be in substantial risk of imminent staff-on-inmate sexual misconduct and the action(s) taken in response to the grievance.

(5) The inmate may consider an absence of a timely response at any level a denial at that level.

(d) Inmate-on-Inmate Sexual Violence.

(1) There shall be no time limit for allegations of inmate-on-inmate sexual violence.

(2) A risk assessment determination of all inmate-on-inmate sexual violence related grievances shall be immediately completed by the Hiring Authority to determine if the inmate is in substantial risk of imminent inmate-on-inmate sexual violence. If the

assessment results in a determination that the inmate is in substantial risk of imminent inmate-on-inmate sexual violence, the Hiring Authority shall take immediate corrective action.

(3) The Hiring Authority shall provide an initial response to the inmate within 48 hours.

(4) An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the inmate was determined to be in substantial risk of imminent inmate-on-inmate sexual violence and the action(s) taken in response to the grievance.

(5) The inmate may consider an absence of a timely response at any level a denial at that level.

Note: Authority cited: Section 5058, Penal Code; Reference: Section 5054, Penal Code; 28 CFR Sections 35.107 and 115.52.

3084.1. Right to Appeal.

~~The appeal process is intended to provide a remedy for inmates and parolees with identified grievances and to provide an administrative mechanism for review of departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on the welfare of inmates and parolees. All appeals shall be processed according to the provisions of Article 8, Appeals, unless exempted from its provisions pursuant to court order or superseded by law or other regulations.~~

~~(a) Any inmate or parolee under the department's jurisdiction may appeal any policy, decision, action, condition, or omission by the department or its staff that the inmate or parolee can demonstrate as having a material adverse effect upon his or her health, safety, or welfare.~~

~~(b) Unless otherwise stated in these regulations, all appeals are subject to a third level of review, as described in section 3084.7, before administrative remedies are deemed exhausted. All lower level reviews are subject to modification at the third level of review. Administrative remedies shall not be considered exhausted relative to any new issue, information, or person later named by the appellant that was not included in the originally submitted CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, which is incorporated by reference, and addressed through all required levels of administrative review up to and including the third level. In addition, a cancellation or rejection decision does not exhaust administrative remedies.~~

~~(c) Department staff shall ensure that inmates and parolees, including those who have difficulties communicating, are provided equal access to the appeals process and the timely assistance necessary to participate throughout the appeal process.~~

~~(d) No reprisal shall be taken against an inmate or parolee for filing an appeal. This shall not prohibit appeal restrictions against an inmate or parolee abusing the appeal process as defined in section 3084.4, nor shall it prohibit the pursuit of disciplinary sanctions for violation of department rules.~~

~~(e) The department shall ensure that its departmental appeal forms for appeal of decisions, actions, or policies within its jurisdiction are readily available to all inmates and parolees.~~

~~(f) An inmate or parolee has the right to file one appeal every 14 calendar days unless the appeal is accepted as an emergency appeal. The 14 calendar day period shall commence on the day following the appellant's last accepted appeal.~~

~~(g) An appellant shall adhere to appeal filing time constraints as defined in section 3084.8. Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; and Wolff v. McDonnell (1974) 418 U.S. 539, 558-560.~~

~~**3084.2. Appeal Preparation and Submittal.**~~

~~(a) The appellant shall use a CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under appeal and the relief requested. A CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment, which is incorporated by reference, shall be used if additional space is needed to describe the issue under appeal or the relief requested.~~

~~(1) The inmate or parolee is limited to one issue or related set of issues per each Inmate/Parolee Appeal form submitted. The inmate or parolee shall not combine unrelated issues on a single appeal form for the purpose of circumventing appeal filing requirements. Filings of appeals combining unrelated issues shall be rejected and returned to the appellant by the appeals coordinator with an explanation that the issues are deemed unrelated and may only be submitted separately.~~

~~(2) The inmate or parolee is limited to the space provided on the Inmate/Parolee Appeal form and one Inmate/Parolee Appeal Form Attachment to describe the specific issue and action requested. The appeal content must be printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font. There shall be only one line of text on each line provided on these forms.~~

~~(3) The inmate or parolee shall list all staff member(s) involved and shall describe their involvement in the issue. To assist in the identification of staff members, the inmate or parolee shall include the staff member's last name, first initial, title or position, if known, and the dates of the staff member's involvement in the issue under appeal. If the inmate or parolee does not have the requested identifying information about the staff member(s), he or she shall provide any other available information that would assist the appeals coordinator in making a reasonable attempt to identify the staff member(s) in question.~~

~~(4) The inmate or parolee shall state all facts known and available to him/her regarding the issue being appealed at the time of submitting the Inmate/Parolee Appeal form, and if needed, the Inmate/Parolee Appeal Form Attachment.~~

~~(b) The inmate or parolee shall submit the signed original appeal forms and supporting documents. If originals are not available, copies may be submitted with an explanation why the originals are not available. The appeals coordinator shall have the discretion to request that any submitted copy is verified by staff.~~

~~(1) Only supporting documents, as defined in subsection 3084(h), necessary to clarify the appeal shall be attached to the appeal. Attachments shall not raise new issues, but shall only serve to clarify the present appeal issue and action(s) requested as stated in Parts A and B of the Inmate/Parolee Appeal form. New issues raised in the supporting documents shall not be addressed and any decision rendered will pertain only to the present appeal issue and requested action(s).~~

~~(2) Inmates or parolees shall submit their appeal documents in a single mailing and shall not divide their appeal documents into separate mailings.~~

~~(3) Inmates or parolees shall not deface or attach dividers or tabs to their appeal forms.~~

~~(4) Inmates or parolees shall not contaminate or attach physical/organic objects or samples to their appeal documents. Examples of these objects or samples include, but are not limited to, food, clothing, razor blades, books, magazines, tape, string, hair, blood, and/or bodily fluids/excrement.~~

~~(c) First and second level appeals as described in section 3084.7 shall be submitted to the appeals coordinator at the institution or parole region for processing.~~

~~(d) If dissatisfied with the second level response, the appellant may submit the appeal for a third level review, as described in section 3084.7, provided that the time limits pursuant to section 3084.8 are met. The appellant shall mail the appeal and supporting documents to the third level Appeals Chief via the United States mail service utilizing his or her own funds, unless the appellant is indigent in which case the mailing of appeals to the third level of review shall be processed in accordance with indigent mail provisions pursuant to section 3138.~~

~~(e) If the appeal has been accepted and processed as an emergency appeal and the appellant wishes a third level review, the appellant must forward the appeal to the appeals coordinator who shall electronically transmit it to the third level Appeals Chief. The third level review shall be completed within five working days.~~

~~(f) An inmate or parolee or other person may assist another inmate or parolee with preparation of an appeal unless the act of providing such assistance would create an unmanageable situation including but not limited to: acting contrary to the principles set forth in sections 3163 and 3270, allowing one offender to exercise unlawful influence/assume control over another, require an offender to access unauthorized areas or areas which would require an escort, or cause avoidance or non-performance in assigned work and program activities. Inmates or parolees shall not give any form of compensation for receiving assistance or receive any form of compensation for assisting in the preparation of another's appeal. The giving or receiving of compensation is considered misconduct and is subject to disciplinary action.~~

~~(g) An inmate or parolee shall not submit an appeal on behalf of another person, unless the appeal contains an allegation of sexual violence, staff sexual misconduct, or sexual harassment.~~

~~(h) Group appeal. If a group of inmates/parolees intend to appeal a policy, decision, action, condition or omission affecting all members of the group, one CDCR Form 602, Inmate/Parolee Appeal, shall be submitted describing the appeal issue(s) and action requested, accompanied by a CDCR Form 602-G (08/09), Inmate/Parolee Group Appeal, which is incorporated by reference, with the legible name, departmental identification number, assignment, housing, and dated signature of the inmate or parolee who prepared the appeal. Each page of the CDCR Form 602-G must contain the appeal issue, action requested, and a statement that all the undersigned agree with the appeal issue/action requested.~~

~~(1) The legible names of the participating inmates/parolees, departmental identification numbers, assignments, housing, and dated signatures shall be included in the space provided on the Inmate/Parolee Group Appeal form and no other signature page shall be accepted by the appeals coordinator.~~

~~(2) The inmate or parolee submitting the appeal shall be responsible for sharing the appeal response with the inmates or parolees who signed the appeal attachment.~~

~~(3) If the inmate or parolee submitting the appeal is transferred, released, discharged, or requests to withdraw from the group appeal, responses shall be directed to the next inmate or parolee listed on the appeal attachment who remains at the facility/region, and who shall be responsible for sharing the response with the other inmates or parolees identified on the appeal.~~

~~(4) An appeal shall not be accepted or processed as a group appeal if the matter under appeal requires a response to a specific set of facts (such as disciplinary and staff complaint appeals) that are not the same for all participants in the appeal. In such case,~~

~~the group appeal shall be screened out and returned to the inmate or parolee submitting the appeal with directions to advise all those who signed the appeal attachment to submit individual appeals on their separate issues.~~

~~(5) Every inmate or parolee who signs a group appeal is ineligible to submit a separate appeal on the same issue.~~

~~(6) A group appeal counts toward each appellant's allowable number of appeals filed in a 14 calendar day period.~~

~~(i) Multiple appeals of the same issue. When multiple appeals are received from more than one inmate or parolee on an identical issue, each such appeal shall be individually processed. However, if other issues in addition or extraneous to the multiple appeal issue are contained in the submitted appeal, this particular complaint shall not be processed as a multiple appeal, but will be subject to processing as a separate, individual appeal.~~

~~(1) The original inmate or parolee, and as needed for clarification of issues, one or more of the other inmates or parolees, shall be interviewed.~~

~~(2) The appellant shall be provided with an appeal response. A statement shall be included in the response indicating that the appeal has been designated as one of multiple identical appeals for processing purposes and the same response is being distributed to each appellant.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5(a) and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and 28 CFR Sections 35.107 and 115.52.~~

3084.3. Supporting Documents.

~~(a) An inmate or parolee shall obtain and attach all supporting documents, as described in section 3084(h), necessary for the clarification and/or resolution of his or her appeal issue prior to submitting the appeal to the appeals coordinator.~~

~~(b) The inmate or parolee shall not delay submitting an appeal within time limits established in section 3084.8 if unable to obtain supporting documents, but shall submit the appeal with all available supporting documents and in Part B of their CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, provide an explanation why any remaining supporting documents are not available. Time limits for filing an appeal are not stayed by failure to obtain supporting documentation and commence as set forth in subsection 3084.8(b).~~

~~(c) Failure to attach all necessary supporting documents may result in the appeal being rejected as specified in subsection 3084.6(b)(7). The appeals coordinator shall inform the inmate or parolee that the appeal is rejected because necessary supporting documents are missing. The appellant shall be allowed an additional 30 calendar days to secure any missing supporting documents and resubmit the appeal.~~

~~(d) The appeals coordinator may grant additional time extensions beyond the initial 30 calendar day extension if the inmate or parolee submits a reasonable explanation of why the supporting documents still are not available.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.~~

3084.4. Appeal System Abuse.

~~(a) The following are deemed misuse or abuse of the appeals process and may lead to appeal restriction as described in subsection 3084.4(g).~~

~~(1) The submittal of more than one appeal for initial review within a 14 calendar day period is considered excessive, unless the inmate or parolee is submitting an emergency appeal.~~

~~(2) The repeated filing of appeals that have been cancelled pursuant to subsection 3084.6(c).~~

~~(3) The appeal submission contains information the appellant knows to be false or consists of a deliberate attempt at distorting the facts.~~

~~(4) The appeal contains threatening, grossly derogatory, slanderous or obscene statements and/or organic contamination is included in or makes up any part of the appeal package.~~

~~(5) The description of the problem and/or requested action deliberately exceeds the space provided on the 602 forms or the appeal is intentionally filed contrary to instructions.~~

~~(b) When an inmate or parolee submits appeals as described above in subsections 3084.4(a)(1)-(a)(5):~~

~~(1) The first appeal received shall be screened for routine processing.~~

~~(2) All subsequent non-emergency appeals submitted by that individual shall be screened and the appeals coordinator shall begin documenting any abuse as evidenced by the screening results.~~

~~(c) If an inmate or parolee persists in submitting excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), he or she shall receive a warning letter from the appeals coordinator that will document the history and nature of appeal system abuse.~~

~~(d) If the abuse of process continues after the issuance of a warning letter, the appeals coordinator shall meet with the inmate or parolee in a timely manner before imposition of any restriction to provide instruction for the appropriate use of the appeals process and to rule out any unintended basis for non-compliance. If a face-to-face meeting is not possible, an agent acting on behalf of the appeals coordinator shall conduct the meeting.~~

~~(e) Excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), submitted by an inmate or parolee after the issuance of a warning letter, pursuant to subsection 3084.4(c) above, shall be screened by the appeals coordinator to ensure they do not contain qualifying emergency issues.~~

~~(1) If the appeal contains emergency issues, as described in subsection 3084.9(a)(1), it shall be processed as an emergency appeal.~~

~~(2) If no such issue is determined to be present, the appeal shall be retained by the appeals coordinator pending placement of the appellant on appeal restriction by the third level Appeals Chief. The appellant shall be informed in writing why the appeal constitutes abuse of the appeal process and informed that appeal processing has been suspended pending determination of appeal restriction status.~~

~~(f) If the appeal abuse continues after the issuance of a warning letter and a face-to-face meeting, the request for placement on restriction shall be referred to the third level Appeals Chief for approval.~~

~~(g) Upon confirmation of continued abuse and verification that a face-to-face interview and warning letter have occurred, the third level Appeals Chief shall have the discretion to authorize preparation of a notice by the Appeals Coordinator restricting the inmate or parolee to one non-emergency appeal every 30 calendar days for a period of one year. Any subsequent violation of the appeal restriction shall result in an extension of the restriction for an additional one-year period upon approval by the third level Appeals Chief.~~

~~(h) If the third level Appeals Chief makes a decision not to place the inmate or parolee on appeal restriction, any appeal submitted by the inmate or parolee and retained pursuant to subsection 3084.4(e)(2) shall be returned to the inmate or parolee who may then resubmit a returned appeal if he or she desires to do so. Resubmitted appeals are not exempt from the standard submittal requirements set forth in this Article, except that the~~

~~appellant's original submittal date of the appeal may serve to satisfy filing time requirements.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6(a), 832.5(c) and 5054, Penal Code.~~

~~3084.5. Screening and Managing Appeals.~~

~~(a) Each institution head and parole region administrator shall designate an appeals coordinator at a staff position level no less than a Correctional Counselor II or Parole Agent II.~~

~~(b) The appeals coordinator or a delegated staff member under the direct oversight of the coordinator shall screen all appeals prior to acceptance and assignment for review.~~

~~(1) When an appeal indicates the inmate or parolee has difficulty describing the problem in writing or has a primary language other than English, the appeals coordinator shall ensure that the inmate or parolee receives assistance in completing and/or clarifying the appeal.~~

~~(2) When an appeal is received as an emergency appeal that does not meet the criteria for an emergency appeal as defined in subsection 3084.9(a), the appellant shall be notified that the appeal does not meet the criteria for processing as an emergency appeal and has been either accepted for regular processing or is rejected for the specific reason(s) cited.~~

~~(3) When an appeal is not accepted, the inmate or parolee shall be notified of the specific reason(s) for the rejection or cancellation of the appeal and of the correction(s) needed for the rejected appeal to be accepted.~~

~~(4) When an appeal is received that describes staff behavior or activity in violation of a law, regulation, policy, or procedure or appears contrary to an ethical or professional standard that could be considered misconduct as defined in subsection 3084(g), whether such misconduct is specifically alleged or not, the matter shall be referred pursuant to subsection 3084.9(i)(1) and (i)(3), to determine whether it shall be:~~

~~(A) Processed as a routine appeal but not as a staff complaint.~~

~~(B) Processed as a staff complaint appeal inquiry.~~

~~(C) Referred to Internal Affairs for an investigation/inquiry.~~

~~(5) If an appeal classified as a staff complaint includes other non-related issue(s), the provisions of 3084.9(i)(2) shall apply.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5, 832.7, 832.8, 5054 and 5058.4(a), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.~~

~~§ 3084.6. Rejection, Cancellation, and Withdrawal Criteria.~~

~~(a) Appeals may be rejected pursuant to subsection 3084.6(b), or cancelled pursuant to subsection 3084.6(c), as determined by the appeals coordinator.~~

~~(1) Unless the appeal is cancelled, the appeals coordinator shall provide clear and sufficient instructions regarding further actions the inmate or parolee must take to qualify the appeal for processing.~~

~~(2) An appeal that is rejected pursuant to subsection 3084.6(b) may later be accepted if the reason noted for the rejection is corrected and the appeal is returned by the inmate or parolee to the appeals coordinator within 30 calendar days of rejection.~~

~~(3) At the discretion of the appeals coordinator or third level Appeals Chief, a cancelled appeal may later be accepted if a determination is made that cancellation was made in error or new information is received which makes the appeal eligible for further review.~~

~~(4) Under exceptional circumstances any appeal may be accepted if the appeals coordinator or third level Appeals Chief conclude that the appeal should be subject to further review. Such a conclusion shall be reached on the basis of compelling evidence or receipt of new information such as documentation from health care staff that the inmate or parolee was medically or mentally incapacitated and unable to file.~~

~~(5) Erroneous acceptance of an appeal at a lower level does not preclude the next level of review from taking appropriate action, including rejection or cancellation of the appeal.~~

~~(b) An appeal may be rejected for any of the following reasons, which include, but are not limited to:~~

~~(1) The appeal concerns an anticipated action or decision.~~

~~(2) The appellant has failed to demonstrate a material adverse effect on his or her welfare as defined in subsection 3084(c).~~

~~(3) The inmate or parolee has exceeded the allowable number of appeals filed in a 14 calendar day period pursuant to the provisions of subsection 3084.1(f).~~

~~(4) The appeal contains threatening, obscene, demeaning, or abusive language.~~

~~(5) The inmate or parolee has attached more than one CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment.~~

~~(6) The appeal makes a general allegation, but fails to state facts or specify an act or decision consistent with the allegation.~~

~~(7) The appeal is missing necessary supporting documents as established in section 3084.3.~~

~~(8) The appeal involves multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact.~~

~~(9) The appeal issue is obscured by pointless verbiage or voluminous unrelated documentation such that the reviewer cannot be reasonably expected to identify the issue under appeal. In such case, the appeal shall be rejected unless the appellant is identified as requiring assistance in filing the appeal as described in subsection 3084.1(c).~~

~~(10) The inmate or parolee has not submitted his/her appeal printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font or failed to submit an original.~~

~~(11) The appeal documentation is defaced or contaminated with physical/organic objects or samples as described in subsection 3084.2(b)(4). Appeals submitted with hazardous or toxic material that present a threat to the safety and security of staff, inmates, or the institution may subject the appellant to disciplinary action and/or criminal charges commensurate with the specific act.~~

~~(12) The appellant has attached dividers or tabs to the appeal forms and/or supporting documents.~~

~~(13) The appeal is incomplete; for example, the inmate or parolee has not provided a signature and/or date on the appeal forms in the designated signature/date blocks provided.~~

~~(14) The inmate or parolee has not submitted his/her appeal on the departmentally approved appeal forms.~~

~~(15) The inmate or parolee has submitted the appeal for processing at an inappropriate level bypassing required lower level(s) of review, e.g., submitting an appeal at the third level prior to lower level review.~~

~~(16) The appeal issue or complaint emphasis has been changed at some point in the process to the extent that the issue is entirely new, and the required lower levels of review and assessment have thereby been circumvented.~~

~~(c) An appeal may be cancelled for any of the following reasons, which include, but are not limited to:~~

~~(1) The action or decision being appealed is not within the jurisdiction of the department.~~

~~(2) The appeal duplicates an inmate or parolee's previous appeal upon which a decision has been rendered or is pending.~~

~~(3) The inmate or parolee continues to submit a rejected appeal while disregarding appeal staff's previous instructions to correct the appeal including failure to submit necessary supporting documents, unless the inmate or parolee provides in Part B of the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, a reasonable explanation of why the correction was not made or documents are not available.~~

~~(4) Time limits for submitting the appeal are exceeded even though the inmate or parolee had the opportunity to submit within the prescribed time constraints. In determining whether the time limit has been exceeded, the appeals coordinator shall consider whether the issue being appealed occurred on a specific date or is ongoing. If the issue is ongoing, which may include but is not limited to, continuing lockdowns, retention in segregated housing, or an ongoing program closure, the inmate or parolee may appeal any time during the duration of the event; however, the inmate or parolee is precluded from filing another appeal on the same issue unless a change in circumstances creates a new issue.~~

~~(5) The appeal is submitted on behalf of another person, unless it contains allegations of sexual violence, staff sexual misconduct, or sexual harassment of another inmate.~~

~~(6) The issue is subject to a department director level review independent of the appeal process such as a Departmental Review Board decision, which is not appealable and concludes the appellant's departmental administrative remedy pursuant to the provisions of section 3376.1.~~

~~(7) The appellant is deceased before the time limits for responding to an appeal have expired and the appeal is not a group appeal.~~

~~(8) The appellant refuses to be interviewed or to cooperate with the reviewer.~~

~~(A) The appellant's refusal to be interviewed or to cooperate with the reviewer shall be clearly articulated in the cancellation notice.~~

~~(B) If the appellant provides sufficient evidence to establish that the interviewer has a bias regarding the issue under appeal, the appeals coordinator shall assign another interviewer.~~

~~(9) The appeal is presented on behalf of a private citizen.~~

~~(10) Failure to correct and return a rejected appeal within 30 calendar days of the rejection.~~

~~(11) The issue under appeal has been resolved at a previous level.~~

~~(d) Group appeals shall not be cancelled at the request of the submitting individual unless all of the inmate signatories are released, transferred, or agree to withdraw the appeal.~~

~~(e) Once cancelled, an appeal shall not be accepted except pursuant to subsection 3084.6(a)(3); however, the application of the rules provided in subsection 3084.6(c) to the cancelled appeal may be separately appealed. If an appeal is cancelled at the third level of review, any appeal of the third level cancellation decision shall be made directly to the third level Appeals Chief.~~

~~(f) An appeal may be withdrawn by the appellant by requesting to have the processing stopped at any point up to receiving a signed response. The request for the withdrawal shall identify the reason for the withdrawal in section H of the CDCR Form 602, Inmate/Parolee Appeal and shall be signed and dated by the appellant. If there is an agreed upon relief noted in writing at the time of a withdrawal and the relief is not provided when and as promised, then the failure to provide the agreed upon relief may be appealed~~

~~within 30 calendar days of the failure to grant the promised relief. The withdrawal of an appeal does not preclude further administrative action by the department regarding the issue under appeal. A withdrawn staff complaint shall be returned to the hiring authority to review for possible further administrative action.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; Sections 19570, 19575.5, 19583.5 and 19635, Government Code; and 28 CFR Section 115.52.~~

~~3084.7. Levels of Appeal Review and Disposition.~~

~~(a) All appeals shall be initially submitted and screened at the first level unless the first level is exempted. The appeals coordinator may bypass the first level for appeal of:~~

~~(1) A policy, procedure or regulation implemented by the department.~~

~~(2) A policy or procedure implemented by the institution head.~~

~~(3) An issue that cannot be resolved at the division head level such as Associate Warden, Associate Regional Parole Administrator, CALPIA manager or equivalent.~~

~~(4) Serious disciplinary infractions.~~

~~(b) The second level is for review of appeals denied or not otherwise resolved to the appellant's satisfaction at the first level, or for which the first level is otherwise waived by these regulations. The second level shall be completed prior to the appellant filing at the third level as described in subsection 3084.7(c).~~

~~(1) A second level of review shall constitute the department's final action on appeals of disciplinary actions classified as "administrative" as described in section 3314, or of minor disciplinary infractions documented on the Counseling Only Rules Violation Report, pursuant to section 3312(a)(2), and shall exhaust administrative remedy on these matters.~~

~~(2) Movies/videos that have been given a rating of other than "G", "PG", or "PG-13" by the Motion Picture Association of America are not approved for either general inmate viewing pursuant to section 3220.4 or for viewing within the classroom, and will not be accepted for appeal at any level. The first level shall be waived for appeals related to the selection or exclusion of a "G", "PG", or "PG-13" rated or non-rated movie/video for viewing and the second level response shall constitute the department's final response on appeals of this nature.~~

~~(c) The third level is for review of appeals not resolved at the second level, or:~~

~~(1) When the inmate or parolee appeals alleged third level staff misconduct or appeals a third level cancellation decision or action.~~

~~(2) In the event of involuntary psychiatric transfers as provided in subsection 3084.9(b).~~

~~(d) Level of staff member conducting review.~~

~~(1) Appeal responses shall not be reviewed and approved by a staff person who:~~

~~(A) Participated in the event or decision being appealed. This does not preclude the involvement of staff who may have participated in the event or decision being appealed, so long as their involvement with the appeal response is necessary in order to determine the facts or to provide administrative remedy, and the staff person is not the reviewing authority and/or their involvement in the process will not compromise the integrity or outcome of the process.~~

~~(B) Is of a lower administrative rank than any participating staff. This does not preclude the use of staff, at a lower level than the staff whose actions or decisions are being appealed, to research the appeal issue.~~

~~(C) Participated in the review of a lower level appeal refiled at a higher level.~~

~~(2) Second level review shall be conducted by the hiring authority or designee at a level no lower than Chief Deputy Warden, Deputy Regional Parole Administrator, or the equivalent.~~

~~(3) The third level review constitutes the decision of the Secretary of the California Department of Corrections and Rehabilitation on an appeal, and shall be conducted by a designated representative under the supervision of the third level Appeals Chief or equivalent. The third level of review exhausts administrative remedies; however, this does not preclude amending a finding previously made at the third level.~~

~~(e) At least one face-to-face interview shall be conducted with the appellant at the first level of review, or the second level if the first level of review is bypassed, unless:~~

~~(1) The appellant waives the interview by initialing the appropriate box on the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal. An appellant's waiver of the interview shall not preclude staff from conducting an interview in the event of staff determination that an interview is necessary.~~

~~(2) The reviewer has decided to grant the appeal in its entirety.~~

~~(3) The appeal is a request for a Computation Review Hearing, in which case the initial interview shall occur at the second level of review.~~

~~(4) The appellant is not present at the institution or parole region where the appeal was filed.~~

~~(A) In such case, a telephone interview with the appellant shall meet the requirement of a personal interview. If the appeal concerns a disciplinary action, the telephone interview may be waived if the appeals coordinator determines an interview would not provide additional facts.~~

~~(B) The response must note that the interview was conducted by telephone, explain the extraordinary circumstances that required it, and state why a face-to-face interview was not possible under the circumstances.~~

~~(C) If the appellant is not available for a telephone interview, the reviewer may request that a suitable employee in the jurisdiction where the appellant is located complete the interview and provide a report.~~

~~(f) An interview may be conducted at any subsequent level of review when staff determine that the issue under appeal requires further clarification.~~

~~(g) When a group or multiple appeal is received, one or more of the participating inmates/parolees shall be interviewed to clarify the issue(s).~~

~~(h) At the first and second level of review, the original appeal, within the time limits provided in section 3084.8, shall be returned to the appellant with a written response to the appeal issue providing the reason(s) for each decision. Each response shall accurately describe the matter under appeal and fully address the relief requested. If the decision is a partial grant, the response shall clarify for each requested action whether it is granted, granted in part, or denied, and shall also state the action taken.~~

~~(i) Modification orders issued by the institution, parole region, or by the third level of review shall be completed within 60 calendar days of the appeal decision which determined the need for a modification order. Reasonable documented proof of completion of the modification order shall accompany the completed order, or a statement shall be added by the responder clarifying the action taken and why documentation is not available.~~

~~(1) If it is not possible to comply with the modification order within 60 calendar days, staff responsible for complying with the modification order shall advise the local appeals coordinator every 30 calendar days of the reason for the delay and provide a projected date of completion. If the modification order was imposed by the third level of review, the~~

local appeals coordinator shall notify the third level Appeals Chief every 30 calendar days of the reason for the delay and provide a projected date of completion.

~~(2) When it is clear that the modification order cannot be completed in the allotted time, the appeals coordinator shall advise the appellant of the reason for the delay and the anticipated date of completion. This process shall occur every 30 calendar days until the modification order is completed. All time constraints for an appellant to submit an appeal to the next level are considered postponed up to 120 days until the completion of a previous level modification order. Thereafter, the appellant must submit his/her appeal to the next level within 30 calendar days of receiving the modification order response.~~

~~(3) If the modification order is not completed after 120 calendar days of the issuance, the appellant may submit the appeal to the next level for administrative review within 30 calendar days.~~

~~(4) If the appellant transfers prior to the completion of the modification order, the originally assigned institution or parole region shall retain responsibility for completion of the modification order as specified in subsection 3084.7(i), including cases where the receiving institution or parole region provides the actual relief.~~

~~(5) In cases where a modification order is issued on an emergency appeal, the order shall specify the timeframe for the completion of the action granted. The appeals coordinator, if granted at the second level of review, and the third level Appeals Chief or designee, if granted at the third level of review, shall notify the hiring authority by electronic transmission of the emergency timeframe for completion of the granted action.~~

~~(j) An Appeals Coordinator or member of the Office of Appeals may review audio, video, or both forms of recordings related to an inmate grievance or appeal.~~

~~Note: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 5054 and 10006(b), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.~~

3084.8. Appeal Time Limits.

~~(a) Time limits for reviewing appeals shall commence upon the date of receipt of the appeal form by the appeals coordinator.~~

~~(b) Except as described in subsection 3084.8(b)(4), an inmate or parolee must submit the appeal within 30 calendar days of:~~

~~(1) The occurrence of the event or decision being appealed, or;~~

~~(2) Upon first having knowledge of the action or decision being appealed, or;~~

~~(3) Upon receiving an unsatisfactory departmental response to an appeal filed.~~

~~(4) There shall be no time limits for allegations of sexual violence or staff sexual misconduct.~~

~~(c) All appeals shall be responded to and returned to the inmate or parolee by staff within the following time limits, unless exempted pursuant to the provisions of subsections 3084.8(f) and (g):~~

~~(1) First level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.~~

~~(2) Second level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.~~

~~(3) Third level responses shall be completed within 60 working days from date of receipt by the third level Appeals Chief.~~

~~(d) Exception to the time limits provided in subsection 3084.8(c) is authorized only in the event of:~~

- ~~(1) Unavailability of the inmate or parolee, or staff, or witnesses.~~
 - ~~(2) The complexity of the decision, action, or policy requiring additional research.~~
 - ~~(3) Necessary involvement of other agencies or jurisdictions.~~
 - ~~(4) State of emergency pursuant to subsection 3383(c) requiring the postponement of nonessential administrative decisions and actions, including normal time requirements for such decisions and actions.~~
 - ~~(e) Except for the third level, if an exceptional delay prevents completion of the review within specified time limits, the appellant, within the time limits provided in subsection 3084.8(c), shall be provided an explanation of the reasons for the delay and the estimated completion date.~~
 - ~~(f) An appeal accepted as an emergency appeal shall be processed within the time frames set forth in subsections 3084.9(a)(4) and (a)(5).~~
 - ~~(g) An appeal of the involuntary psychiatric transfer of an inmate or parolee shall be made directly to the third level pursuant to subsection 3084.9(b), within 30 calendar days of receipt of the hearing decision on the need for involuntary transfer.~~
- ~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and 28 CFR Sections 35.107 and 115.52.~~

~~§ 3084.9. Exceptions to the Regular Appeal Process.~~

- ~~(a) Emergency appeals. Emergency appeals should not be used by inmates or parolees as a substitute for verbally or otherwise informing staff of an emergency situation requiring immediate response.~~
 - ~~(1) When circumstances are such that the regular appeal time limits would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm, the appeal shall be processed as an emergency appeal. Emergency circumstances include, but are not limited to:
 - ~~(A) Threat of death or injury due to enemies or other placement concerns.~~
 - ~~(B) Serious and imminent threat to health or safety.~~~~
 - ~~(2) An emergency appeal shall be submitted directly to the appeals coordinator and shall include a clear description of the circumstances warranting emergency processing. A request for emergency processing of an appeal that clearly does not meet the criteria for emergency processing or is made for the purpose of circumventing normal procedures or obtaining an expedited response may be considered misuse or abuse of the appeals process.~~
 - ~~(3) If the appeals coordinator determines emergency processing is unwarranted, the inmate or parolee shall be notified and the appeal shall be processed pursuant to subsection 3084.5(b)(2).~~
 - ~~(4) If emergency processing is warranted, the first level shall be waived and the second level review shall be completed within five working days.~~
 - ~~(5) Prison Rape Elimination Act (PREA) Sexual Violence (Inmate on Inmate) and Staff Sexual Misconduct Appeals.~~

~~A grievance in whole or part containing allegations of sexual violence or staff sexual misconduct shall be processed as an emergency appeal. The appeal shall be immediately reviewed by the Hiring Authority or designee and processed directly at the Second Level of Review. When the appeal alleges or indicates that the inmate may be in substantial risk of imminent sexual violence or imminent staff sexual misconduct, a risk assessment shall be undertaken.~~

 - ~~(A) Staff Complaints: While the department maintains the right to defend against an inmate lawsuit on the grounds of the applicable statute of limitations, a time limit shall not~~

~~be imposed upon when an appellant may file such a grievance. The time limits for processing an emergency Staff Complaint are as follows:~~

- ~~1. There shall be no time limit for allegations of staff sexual misconduct, but once received by the appeals coordinator, the appeal shall be screened in accordance with subsection 3084.5(b)(4).~~
- ~~2. A risk assessment determination of all staff sexual misconduct related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent staff sexual misconduct. If the assessment results in a determination of the appellant being in substantial risk of imminent staff sexual misconduct, the Hiring Authority shall take immediate corrective action.~~
- ~~3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency Staff Complaint.~~
- ~~4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent staff sexual misconduct and the action(s) taken in response to the appeal.~~
- ~~5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.~~
- ~~6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.~~
- ~~7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).~~

~~(B) PREA Allegations Against Another Offender: A time limit shall not be imposed upon when an appellant may file a grievance alleging inmate on inmate sexual violence. The time limits for processing an emergency sexual violence appeal are as follows:~~

- ~~1. Once received by the appeals coordinator, the appeal shall be screened in accordance with section 3084.8. When the appeal alleges or indicates that the inmate is at substantial risk of imminent sexual violence, a risk assessment shall be undertaken.~~
- ~~2. A risk assessment determination of all sexual violence related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent sexual violence. If the assessment results in a determination of the appellant being in substantial risk of imminent sexual violence, the Hiring Authority shall take immediate corrective action.~~
- ~~3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency PREA appeal.~~
- ~~4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent sexual violence and the action(s) taken in response to the appeal.~~
- ~~5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the~~

~~appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.~~

~~6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.~~

~~7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).~~

~~(b) Involuntary psychiatric transfers. An inmate or parolee may appeal the written decision of an involuntary psychiatric transfer, pursuant to subsection 3379(d), directly to the third level. A copy of the hearing decision shall be attached to the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, but the absence of such documentation shall not be cause for rejection of the appeal.~~

~~(c) Joint Venture Program (JVP) employer related grievances.~~

~~(1) Any current or former Joint Venture inmate employee who believes he/she has a grievance regarding a wage and hour or retaliation claim against a JVP employer shall submit the written grievance to the JVP Chief.~~

~~(2) The JVP Chief shall attempt to resolve all complaints.~~

~~(3) Time frames for filing grievances will be governed by the Division of Labor Standards Enforcement's (DLSE) statutes of limitations, including but not limited to, Labor Code section 98.7 and Code of Civil Procedure sections 337, 338, and 339, for the appropriate type of complaint.~~

~~(4) If the inmate is dissatisfied with the JVP Chief's decision, the inmate may file a complaint with the Labor Commissioner.~~

~~(d) Parole period and term computation appeals. Parole period and term computation appeals shall be reviewed at the first level by the department's records staff. The inmate or parolee must state in detail the alleged error or reason for disputing the calculation of his or her release date.~~

~~(1) Records staff shall research the relevant case factors and document the findings. If the appeal is denied, the denial shall be delivered by records staff or by the appropriate caseworker to the appellant who shall sign and date a CDC Form 1031 (8-88), Acknowledgment of Receipt.~~

~~(2) The inmate or parolee may request a Computation Review Hearing that constitutes the second level review. The inmate or parolee shall be notified at least 24 hours prior to the hearing via the CDC Form 1032 (12/86), Notice of Time, Date, and Place of Computation Review Hearing, but may sign a voluntary waiver of such notice.~~

~~(3) The inmate or parolee shall be provided a copy of the CDC Form 1033 (8-88), Computation Review Hearing Decision, at the conclusion of the hearing.~~

~~(e) California Prison Industry Authority (CALPIA) health and safety complaints.~~

~~(1) A health and safety complaint should not be used by inmates as a substitute for verbally or otherwise informing staff of an urgent health or safety situation requiring immediate response.~~

~~(2) Pursuant to Labor Code and Industrial Relations regulations, an inmate who believes a health or safety hazard exists in a CALPIA operation shall deposit a written complaint in a readily accessible complaint box or give the complaint to any CALPIA staff member who shall submit it to the CALPIA health and safety committee for review and response. The committee shall undertake all authorized levels of review and referral.~~

~~(f) Property appeals. All property loss or damage arising from the same event or action for a single appellant shall be included in one appeal.~~

~~(1) An inmate or parolee who is appealing missing/damaged property that he or she believes occurred as a result of an error made by the receiving entity or by the~~

~~transportation unit during the transfer of his/her property shall submit the appeal to the appeals coordinator of the receiving institution/region.~~

~~(2) An inmate or parolee who is appealing missing/damaged property that he or she alleges occurred as a result of an error made by the sending entity during the transfer from one institution/region to another institution/region, shall submit the appeal to the appeals coordinator of the receiving institution/region who will forward it to the sending institution/region for processing.~~

~~(3) The appeals coordinator shall process the appeal for a first level response.~~

~~(A) An attempt shall be made by staff to assess the damaged property and/or conduct a thorough search to locate the missing property.~~

~~(B) An attempt shall be made by staff to research the appellant's claim utilizing departmental inmate property records.~~

~~(4) If an administrative decision is made that the department is responsible for loss or damage to the appellant's property pursuant to section 3193, an attempt by staff to use donated property to substitute for or replace lost property at no cost to the state, or any effort to repair damaged property at institution expense, will be made prior to awarding monetary compensation for the loss.~~

~~(5) An appellant's refusal to accept repair, replacement, or substitution of like items and value shall be cause to deny the appeal. When denying an appeal on this basis, the reviewer must state why the replacement offered to the appellant is considered an equivalent item and value.~~

~~(6) The provisions of subsection 3193(b) shall apply when monetary compensation is determined to be the appropriate remedy.~~

~~(7) Before payment of any granted claim, the inmate or parolee shall discharge the state from further liability for the claim if required pursuant to Government Code section 965.~~

~~(8) The document denying a property claim appeal shall inform the appellant of the right to submit a claim directly with the Victim Compensation and Government Claims Board and shall provide the mailing address for such filing.~~

~~(9) An inmate or parolee who intends to submit a claim with the Victim Compensation and Government Claims Board shall adhere to the rules and timeframes governing those claims, which may be more restrictive than those of the CDCR appeals process.~~

~~(g) Disciplinary Appeals:~~

~~(1) A disciplinary action cannot be appealed until the hearing process is completed, including any re-hearing.~~

~~(2) Inmates who wish to exhaust their administrative remedies for "serious" disciplinary issues pursuant to section 3315 must appeal through the third level of review.~~

~~(h) Transfer Appeals. A decision for transfer to another institution may be appealed by the affected inmate after the transfer endorsement by the classification staff representative.~~

~~(1) Filing of an appeal of a transfer decision shall not normally be cause to stay or delay a transfer except in extraordinary circumstances and at the discretion of the Warden or designee.~~

~~(2) Regular transfer appeals:~~

~~(A) The first level of appeal shall be waived.~~

~~(B) If the appeal is granted at second level, the appellant's case shall be presented to a second classification staff representative for reconsideration.~~

~~(C) If the second classification staff representative disagrees with institution's recommendation, the institution head may submit the case to the departmental review board for final decision.~~

~~(D) If the appeal is denied at second level or the institution head does not refer the case to the departmental review board, the appellant may appeal at the third level.~~

~~(3) Reception center transfer appeals:~~

~~(A) First level review shall be conducted by the reception center's correctional administrator.~~

~~(B) If the appeal is granted, the appellant may be retained at the reception center until the case is presented to a second classification staff representative only if the proposed transfer poses a threat to the health or safety of the appellant.~~

~~(C) If the second classification staff representative disagrees with the first level appeal decision, the appellant may resubmit the appeal for second level review.~~

~~(D) Second level review shall be conducted by the institution head, who may retain the appellant at the reception center as a second level review action and refer the appeal to the departmental review board for resolution. The board's decision shall constitute final review.~~

~~(i) Staff complaints. A staff complaint filed by an inmate or parolee shall be processed as an appeal pursuant to this Article, not as a citizen's complaint. However, any appeal alleging misconduct by a departmental peace officer as defined in subsection 3291(b) shall be accompanied by the subsection 3391(d) Rights and Responsibility Statement.~~

~~(1) An inmate or parolee alleging staff misconduct by a departmental employee shall forward the appeal to the appeals coordinator. Only after the appeal has been reviewed and categorized as a staff complaint by the hiring authority or designee at a level not below Chief Deputy Warden, Deputy Regional Parole Administrator, or equivalent level shall it be processed as a staff complaint. If the hiring authority makes a determination that the complaint shall not be accepted as a staff complaint, it shall be processed as a routine appeal pursuant to subsection 3084.5(b)(4)(A).~~

~~(2) When an appeal is accepted alleging staff misconduct that also includes any other issue(s), the appeals coordinator at the time the appeal is accepted as a staff complaint shall notify the inmate or parolee that any other appeal issue(s) may only be appealed separately and therefore resubmission of those issues is required if the intention is to seek resolution of such matters. Upon receiving such a notice, the inmate or parolee has 30 calendar days to submit separate appeal(s) regarding the other issue(s).~~

~~(3) All appeals alleging staff misconduct will be presented by the appeals coordinator to the hiring authority or designee within five working days. The hiring authority will review the complaint and determine if:~~

~~(A) The allegation warrants a request for an Internal Affairs investigation as the alleged conduct would likely lead to adverse personnel action. The case will be referred for an Internal Affairs investigation as instructed by the hiring authority.~~

~~(B) The allegation does not warrant a request for an Internal Affairs investigation in which case a confidential inquiry shall be completed by the reviewer. An inquiry shall be conducted whenever the appeal is designated as a staff complaint but is not referred to the Office of Internal Affairs (OIA) or when the matter is declined by the OIA.~~

~~1. A confidential report shall summarize the review and include a determination of the findings concerning the allegation. This document shall not be provided to the appellant. It shall be kept in the appeal file in the Appeals Office and no other copies shall be kept or maintained except as herein described or as needed for Third Level review or litigation. This document is strictly confidential to all inmates and any staff except those involved in the inquiry process or litigation involving the department.~~

~~2. The accused staff may review the confidential report in the appeals office upon approval of the litigation coordinator, but if any information relating to other staff is~~

~~contained in the confidential document, a copy shall be made and that information redacted prior to the review. Neither the original nor the copy shall leave the appeals office except as required for litigation and any redacted copy shall be placed with the original after review.~~

~~3. The assigned reviewer will interview the appellant and as many witnesses as necessary to reach a determination concerning the allegation. The subject(s) of the staff complaint may be interviewed by a person trained to conduct administrative interviews and will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he/she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.~~

~~4. A confidential inquiry shall review the information available to determine whether policy was violated.~~

~~(4) The institution's appeal response to a staff complaint shall inform the appellant of either:~~

~~(A) The referral for investigation and the status of the investigation. Additionally, the appellant shall be notified of the outcome at the conclusion of the investigation.~~

~~(B) The decision to conduct a confidential inquiry and whether the findings determined that the staff in question did or did not violate departmental policy with regard to each of the specific allegation(s) made.~~

~~(5) A staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2.~~

~~(6) An appeal alleging staff misconduct by an appeals coordinator shall be reviewed by the hiring authority for determination of processing.~~

~~(j) Appeal to the DRB of transfer decision to place an inmate in the RCGP.~~

~~(1) An inmate may appeal an ICC decision to the DRB when ICC determines placement in a RCGP facility is appropriate based on the inmate being found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports while housed in the Security Housing Unit (SHU) Step Down Program (SDP).~~

~~(2) The appellant shall use a CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under appeal. A CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment, shall be used if additional space is needed to describe the issue under appeal or the relief requested. Such appeals shall bypass the first and second levels of review.~~

~~(3) The appellant shall submit the appeal within 30 days of receiving the CDC Form 128-G, (Rev. 10/89) Classification Chrono, in which the ICC decision is documented.~~

~~(4) The appellant shall mail the appeal and supporting documents to the third level Appeals Chief via the United States mail service utilizing his or her own funds, unless the appellant is indigent in which case the mailing of appeals to the third level of review shall be processed in accordance with indigent mail provisions pursuant to section 3138.~~

~~(5) The Appeals Chief or designee shall log the appeal and forward to the Chief, Classification Services Unit (CSU) for response.~~

~~(6) The Chief, CSU shall review the materials provided and prepare the appeal for discussion with the DRB.~~

~~(7) The DRB will review the inmate's disciplinary history which caused placement in RCGP, pursuant to section 3378.9 and determine whether removal from the SHU SDP and transfer to the RCGP was appropriate. An appearance before the DRB by the inmate is not required for a determination on such an appeal.~~

~~(8) The decision of the DRB shall be documented on the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal and returned to the Appeals Chief where it will be logged and forwarded to the inmate.~~

~~Note: Authority cited: Section 5058, Penal Code; and Section 6304.3, Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054 and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5 and 19635, Government Code; Sections 98.7 and 6304.3, Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; 28 CFR Sections 35.107 and 115.52; *Wolff v. McDonnell* (1974) 418 U.S. 539, 558-560; and *Vasquez v. State of California*, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No. GIC-740832.~~

~~§ 3085. Americans With Disabilities Act.~~

~~Explanation: Departmental compliance with the Americans with Disabilities Act (ADA) is currently under the supervision of federal courts as specified in Court Ordered Remedial Plans articulated in the *Armstrong v. Schwarzenegger* (previously: *Armstrong v. Davis*) case. Accordingly, departmental ADA practices, including offender ADA appeal rights are currently carried out in accordance with an Armstrong Remedial Plan (ARP) established by the court of jurisdiction.~~

~~Note: *Armstrong v. Schwarzenegger* (2002) USDC ND (No. C-94-2307-CW); Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.~~

~~Article 8.5 Written Request Process~~

~~3086. Inmate/Parolee Request for Interview, Item or Service.~~

~~(a) Inmates and parolees may request interviews with staff and/or request items and services via a written request process. The objectives of timely resolution of routine matters through an effective and non-conflictive communication process shall be facilitated by the practices set forth in this article, which shall be henceforth applied uniformly toward that end. Department staff shall attempt to resolve inmate and parolee issues expeditiously.~~

~~(b) The written request process may be used when the inmate or parolee seeks a response to an issue or concern related to his or her confinement or parole.~~

~~(c) The department shall ensure that inmates and parolees will have access to the CDCR Form 22 (10/09), Inmate/Parolee Request for Interview, Item or Service, which is incorporated by reference. This form shall be made readily available in:~~

~~(1) All inmate housing units, general or segregated.~~

~~(2) All institutional libraries.~~

~~(3) Any facility under the department's jurisdiction, whether residential or medical, where inmates are required to remain more than 24 hours.~~

~~(4) All parole field offices.~~

~~(d) The Inmate/Parolee Request for Interview, Item or Service form will provide:~~

~~(1) A written method for an inmate or parolee to address issues and concerns with staff and/or to request items and services.~~

~~(2) A record of the date the form was first presented to staff, and the date of each staff response.~~

~~(e) When seeking response to a written request for an interview, item, or service, the inmate or parolee shall complete the Request for Interview, Item or Service form to describe his or her request. The inmate shall deliver or mail via institutional mail the completed form to any staff member who is able to respond to the issue. The parolee shall deliver or mail via the United States Postal Service the completed form to his or her parole agent, who shall respond to the issue or, as appropriate, route the form to another staff member who is able to respond to the issue.~~

~~(1) If the inmate or parolee mails the form, the receipted copy of their request may also be returned by staff via the mail.~~

~~(2) As the written request process does not stay the time constraints for filing an appeal, the inmate or parolee is not precluded from filing an appeal on the same issue prior to receiving a response to their written request. However, the appeal may be rejected by the appeals coordinator or designee with instructions to complete the request form process before resubmitting the appeal.~~

~~(f) Upon receipt of an inmate or parolee completed Request for Interview, Item or Service form, the employee shall:~~

~~(1) Accept, date and sign the form.~~

~~(2) Provide to the inmate or parolee the bottom copy of the employee signed form, which shall serve as the inmate's or parolee's receipt to verify the date of submittal. The employee, at his or her discretion, can respond to the request at this time or wait until he or she has more time to respond within the constraints of this article.~~

~~(3) The receipt of an inmate or parolee completed form does not preclude a staff member from forwarding the document to a more appropriate responder; however, employees shall either deliver the form to the staff member or place it in institutional mail addressed to the intended staff member within 24 hours.~~

~~(4) Within three working days after receipt of the form, the responding employee shall:~~

~~(A) Note his or her decision or action on the form.~~

~~(B) Sign and date the form.~~

~~(C) Retain a copy for his or her records.~~

~~(D) Return the original and remaining copy of the form to the inmate or parolee.~~

~~(g) If the inmate or parolee is dissatisfied with or disagrees with the staff member's response, he or she may submit the Request for Interview, Item or Service form to the employee's supervisor for review, while retaining a copy for his or her records. Only in the absence of the staff member's supervisor may the inmate or parolee submit the form to another supervisor of the office or unit in question.~~

~~(h) Within seven calendar days of receipt of the Request for Interview, Item or Service form, the supervisor shall:~~

~~(1) Indicate a decision or action on the form.~~

~~(2) Sign and date the form.~~

~~(3) Ensure a copy is made and retained in the facility records for a period no less than prescribed for inmate correspondence in the approved departmental records retention schedule.~~

~~(4) Return the original to the inmate or parolee.~~

~~(i) An inmate or parolee's documented use of a Request for Interview, Item or Service form does not constitute exhaustion of administrative remedies as defined in subsection 3084.1(b).~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6, 832.5 and 5054, Penal Code; Section 19583.5, Government Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons~~

~~Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; and Wolff v. McDonnell (1974) 418 U.S. 539, 558-560.~~

3134.1. Processing of Publications.

Subsections 3134.1(a) through 3134.1(c) remain unchanged.

(d) Notifications, to Publisher, to the Inmate, and to the Division of Adult Institutions (DAI) for Disapproval of Publication. When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval from DAI, a letter shall be sent by the institution to the publisher explaining why the item was denied. A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that is not included on the current Centralized List of Disapproved Publications (Centralized List) pursuant to subsection 3134.1(e), shall only require one notification letter pursuant to institution to be sent to the publisher. At a minimum the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR number for all inmates, the applicable CCR section that the publication violates, and a notice to the Publisher of their right to appeal pursuant to subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disallow the book, magazine or publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years. Concurrent to the letter to the publisher, when incoming or outgoing publications addressed to or being sent by an inmate are withheld or disallowed, the institution shall also notify the inmate addressee via CDCR Form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications, which is incorporated by reference. The CDCR Form 1819 shall include the reason, disposition, name of official disallowing the publication, and the name of the official to whom an ~~appeal~~ complaint can be directed. The institution shall also concurrently notify DAI and request that DAI affirm or deny the withholding of the temporarily disallowed publication. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication shall become permanent. If DAI denies the withholding of the publication, the institution shall deliver the publication to the inmate within 15 calendar days, upon receipt of DAI's decision.

For periodicals, as defined in subsection 3133(a)(3), the DAI may include a periodical on the Centralized List, in accordance with subsection 3134.1(e), provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical in accordance with this subsection. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold ~~or~~ disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the inmate within 15 calendar days upon receipt of DAI's decision.

(e) Centralized List Of Disapproved Publications. The Division of Adult Institutions shall distribute to each institution a Centralized List of Disapproved Publications that are prohibited as contraband. Examples of publications that would be included on the Centralized List would include, but not be limited to, publications that contain, obscene material as described in subsection 3006(c)(15), sexually explicit images that depict

frontal nudity as described in subsection 3006(c)(17)(A) warfare or weaponry, bomb making instructions, or STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6). Publications that are enumerated on the Centralized List are not allowed in any institution. Local institutions may not add items to the Centralized List. When a publication is placed on the Centralized List, the Division of Adult Institutions shall send a letter to the publisher explaining why the publication was excluded. At a minimum, the letter must include the reason why the publication is excluded, the applicable CCR section that the publication violates, and a notice to the Publisher of its right to ~~appeal~~complain per CCR subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disapprove the publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procurier v. Martinez* (1974) 416 U.S. 396; and *Bell v. Wolfish* (1979) 441 U.S. 520.

3136. Disapproval of Inmate Mail.

(a) Disapproval of inmate mail that is in clear violation of CCR sections 3006 or 3135 shall be referred to staff not below the level of Captain for determination and appropriate action. Disapproval of inmate mail that is not in clear violation of CCR sections 3006 or 3135 shall be referred to the Warden, but not lower than the Chief Deputy Warden, for determination and appropriate action. When incoming or outgoing mail/~~packages~~, or publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed via CDCR Form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications, of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom ~~an appeal~~a grievance can be directed.

Subsection 3136(b) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601(d), Penal Code.

3137. Appeals and Complaints Relating to Mail and Correspondences.

(a) Inmates, their correspondents, and publishers may ~~appeal~~file a complaint regarding departmental rules, regulations, policies, approved facility procedures and their application relating to mail and correspondence.

(b) Inmates shall use the established ~~inmate appeal procedures as provided in section 3084~~administrative remedies procedures as provided in section 3480, et seq. An inmate's submittal of ~~an appeal~~a grievance within 30 calendar days of a notice that mail is being designated as undelivered will postpone any disposition of the mail until ~~an appeal decision is made at the third level of appeal review. If the inmate's appeal is denied at the third level of appeal review, the item of mail shall be disposed of as provided in subsection 3191(c).~~the administrative remedies procedure is completed. The final decision rendered in the administrative remedies procedure shall determine disposition of mail.

(c) Persons other than inmates should address any ~~appeal~~complaint relating to department policy and regulations to the Director of the Division of Adult Institutions (DAI). ~~Appeals~~Complaints relating to a specific facility procedure or practice should be addressed in writing to the Warden, or Associate Director of the facility where the appeal issue arises. A written response shall be provided within 15 working days. ~~Appeals~~Complaints that are not satisfactorily resolved at this level may be forwarded in writing to the Director of the DAI who shall provide a written response within 20 working days.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601, Penal Code; and In re Muszalski, 52 Cal. App. 3rd 500.

3141. Confidential Correspondence.

Subsections 3141(a) through 3141(b) remain unchanged.

(c) Persons and employees of persons with whom inmates may correspond confidentially and from whom inmates may receive confidential correspondence include:

*

(8) The Secretary, Undersecretary, Chief Deputy Secretaries, Executive Director, Assistant Secretaries, Division Directors, Deputy Directors, Associate Directors, the Chief, ~~Inmate~~Office of Appeals, and the Lead Ombudsman's Office of the Department.

*

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 5054, Penal Code; and In re Jordan, 12 CA 3rd 575 (1974); and King v. Borg, USDC-ED Case No. CIV. S-87-0519 LKK/PAN/P.

3173.1. Visiting Restrictions with Minors.

Subsections 3173.1(a) through (f) remains unchanged.

(g) If an inmate disagrees with the decision of a classification committee, the inmate may file an ~~inmate written grievance via the CDCR Form 602 appeal process~~ as outlined in sections ~~3084 through 3084.93480, et seq.~~

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; Section 362.6, Welfare and Institutions Code; and People v. Glass (2004) 114 Cal. App. 4th 1032.

3179. ~~Appeals~~Complaints Relating to Visiting.

(a) ~~Inmates, and a~~ Approved inmate visitors, and visiting applicants may appeal in writing file a complaint with the institution head regarding department policies, staff decisions, and institution/ or facility procedures relating to visiting.

~~(1) Inmates shall use the established inmate appeal procedures as provided in section(s) 3084 through 3084.9.~~

~~(2) All appeals by approved inmate visitors and visiting applicants related to visiting shall be submitted to the institution head.~~

(b) Visitor ~~appeals~~ complaints related to institution/ or facility procedures or staff decisions shall be addressed to the institution head. A written response shall be provided within 15 working days from receipt of the appeal/complaint. If dissatisfied with the institution/ or facility response or action, the appellant/complainant may refer the appeal, with a copy of the institution/ or facility decision, to the director or designee.

(c) Appeals/Complaints related to visiting shall be addressed to the director. A written response to appeals/complaints addressed to the director shall be provided within 20 working days from the date of receipt.

(d) All subsequent decisions made as the result of an appeal and the reasons for the decisions shall be documented with a copy to the appellant and/or inmate/complainant. Visiting privileges shall be promptly approved or restored when an investigation concludes that no violation of rules, regulations, or procedures took place.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Section 3193. Liability.

Section 3193(a) remains unchanged.

(b) The department shall accept liability for the loss or destruction of inmate personal property when it is established that such loss or destruction results from employee action. Inmates shall utilize the ~~inmate appeal process~~ administrative remedies procedures if unable to resolve a personal property claim pursuant to section ~~3084.13481~~. Upon acceptance of liability, the department shall provide to the inmate similar items of equal or greater value when such items are available via donated property items ~~consistent with sections 3084.9 and 3191(c)~~. If donated items are not available, monetary compensation to the inmate for such loss shall not exceed either the dollar value assigned to the item or items at the time the inmate received authorization to possess the property; the cost of the item, verified by receipt; or the replacement value for the item or a similar item, as determined by the department. Staff recommendations to the Victim Compensation and Government Claims Board regarding monetary reimbursement will be made accordingly.

Subsection 3193(c) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2085, 2600, 2601, 5062 and 5063, Penal Code.

Section 3220.4 Movies/ or Videos for Inmate Viewing.

(a) Only movies/ or videos approved by the institution head or his/her designee (reviewer) may be scheduled for viewing by inmates.

(b) Only those movies/ or videos which have been given a rating of "G," "PG," or "PG-13" by the Motion Picture Association of America (MPAA) or that have been placed on the department's discretionary showing list may be considered for viewing. Movies/ or videos which have been given a rating of other than "G," "PG," or "PG-13" by the Motion Picture Association of America shall not be approved for general inmate viewing. Regardless of their rating or listing, movies/ or videos which, in the opinion of the reviewer, glorify violence or sex, or are inflammatory to the climate of the facility shall not be shown.

(c) The selection or exclusion of a movie/ or video by a facility may be challenged by members of the public by writing to the director, ~~appealed~~ grieved by inmates by following the ~~appeal process~~ administrative remedies procedures as stated in section ~~3084.3480~~ et seq., and grieved by staff by pursuing grievance procedures in accordance with their collective bargaining unit's contract ~~and/or~~ memorandum of understanding.

(d) At the discretion of the director, a movie/ or video review shall be done by the movie review committee, composed of staff named by the director. Movies may be submitted for consideration as follows:

(1) Movies/ or videos which have not been rated may be submitted to the director for the committee's consideration for general inmate viewing.

(2) Movies/ or videos which have an MPAA rating of other than "G," "PG," or "PG-13," or have not been rated by the MPAA, may be submitted to the director by the facility reviewer or a contract vendor for the committee's consideration for specified limited inmate viewing purposes (e.g., education or contracted service vendor programs).

(3) Movies which are challenged by the public, appealed by inmates, and grieved by staff pursuant to subsection (c) of this section shall be reviewed by the committee at the director's discretion.

(e) The committee may determine a movie/ or video to be unacceptable for inmate viewing, acceptable for general inmate viewing, or acceptable for specified limited inmate viewing purposes.

(f) The committee will place movies/ or videos on a statewide "discretionary showing list" under the category of "approved for all purposes," or under the category of "approved for specified limited inmate viewing purposes" (specifying the limited or special purpose for which the movie is being approved), or under the category of "unacceptable for inmate viewing." A movie/ or video's placement on the list as approved will not require that it be shown by a facility.

Note: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 2601(c), 5054 and 10006(b), Penal Code.

3230. Establishment of Inmate Advisory Councils.

Subsection 3230(a) through 3230(c)(5) remain unchanged.

(d) Inmate advisory council representatives shall not, as a council representative, become involved with inmate grievances or appeals unless the matter affects the general inmate population and such involvement is authorized by the warden.

(1) No grievance or appeal concerning an employee shall be discussed by representatives with any employee below the level of correctional lieutenant.

Subsections 3230(d)(2) through 3230(i)(3) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3282. Use of Telephones by Inmates.

Subsections 3282(a) through 3282(f) remain unchanged.

(g) If staff designated by the institution head determine that an incoming call concerns an emergency or confidential matter, the caller's name and telephone number shall be obtained and the inmate promptly notified of the situation. The inmate shall be permitted to place an emergency or confidential call either collect or by providing for the toll to be deducted from the inmate's trust account. A confidential call shall not be made on an inmate telephone and shall not be monitored or recorded. If a call is determined to be an attorney/ and inmate confidential phone call, in order for the inmate to place or receive the call it must have already received approval/ or clearance in accordance with subsections (g)(1), (g)(2) and (g)(4).

*

~~(8) Inmates, approved attorneys/attorney representatives and pending approval confidential phone call applicants may appeal any departmental policies, staff decisions and institution/facility procedures related to confidential phone calls by following the appeals process as contained in Title 15, Section 3179. Appeals Related to Visiting. Title 15, Section 3179 applies in its entirety.~~ Approved attorneys, approved attorney representatives, and confidential phone call applicants still pending approval may file a complaint regarding departmental policies, local procedures, or staff decisions related to confidential phone calls with the Warden or other official responsible for that housing unit.

Subsections 3282(h) through 3282(i) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Article 9.1. Research of Inmates/Parolees

~~3369.5. Research.~~

~~(a) No research shall be conducted on inmates/parolees without approval of the research advisory committee established to oversee research activities within the department. Members of the research advisory committee shall be named by the Secretary, and may include departmental staff and nondepartmental persons who are community academic representatives engaged in criminal justice research.~~

~~(b) No research project shall be considered without submission of a research proposal that shall contain the following:~~

~~(1) A statement of the objectives of the study.~~

~~(2) The specific values of the project.~~

~~(3) A description of the research methods to be used.~~

~~(4) A description of the measuring devices to be used, or if they are to be developed as part of the project, a statement of their intended use and reason.~~

~~(5) The name of the facility or office where the data will be collected.~~

~~(6) The names and titles of personnel involved and their responsibilities in the project.~~

~~(7) An estimate of departmental staff time needed for the project.~~

- ~~(8) Starting and ending dates of the research.~~
 - ~~(9) Any additional costs to the state.~~
 - ~~(10) An estimate of the inmate/parolee subjects' time needed for the project and a plan for the compensation of the inmates/parolees.~~
 - ~~(11) The source of funding.~~
 - ~~(12) A copy of the informed consent form to be used in the project which meets the requirements of Penal Code section 3524.~~
 - ~~(13) A current resume for each professional staff member of the project.~~
 - ~~(14) The full name, date of birth, and social security number of all project staff members who will enter an institution or other departmental facility to carry out the project.~~
 - ~~(15) A certification of privacy signed by the project's principal investigator which outlines the procedure for protecting exempt personal information and certifies that the protective procedures shall be followed.~~
 - ~~(16) If student research is involved, a letter from the student's faculty advisor stating that the student will be working under their supervision and the project is approved by their college/university.~~
 - ~~(17) If the proposal was previously reviewed by a committee of another agency or organization, a copy of the record of that committee's approval.~~
 - ~~(c) A nondepartmental person, agency or organization applying to conduct research within the department shall submit to the committee for approval a signed agreement to adhere to all departmental requirements.~~
 - ~~(d) Any person, agency or organization conducting research shall, as requested by the department's chief of research or designee, submit progress reports on their projects.~~
- ~~Note: Authority cited: Sections 3509.5, 3517 and 5058, Penal Code. Reference: Sections 3500 through 3524 and 5054, Penal Code.~~

3378.4. Security Threat Group Behavior or Activity.

Introductory paragraph through Subsection 3378.4(b)(3)(A)3. remain unchanged.

~~4. The inmate may appeal the RCGP placement to the DRB, in accordance with section 3480 et. seq., without delay of transfer, which would review the inmate's disciplinary history and determine whether removal from the program and transfer to the RCGP is appropriate in accordance with section 3084.9(j). A hearing before the DRB is not required for a determination on such an appeal.~~

~~*~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).~~

3383. State of Emergency.

Subsections 3383(a) through 3383(c)(3) remain unchanged

~~(d) During a state of emergency the institution head or regional parole administrator/ or deputy director, DAPO, may authorize the postponement of nonessential administrative decisions, actions, and the normal time requirements for such decisions and actions as deemed necessary because of the emergency. This may include, but is not limited to,~~

classification committee hearings, disciplinary proceedings, and the review and action on grievances, appeals, and complaints.

Subsection 3383(e) remains unchanged.

Note: Authority cited: Section 5058, Penal Code; and Section 11152, Government Code.
Reference: Section 5054, Penal Code.

34765. Disabled Veteran Business Enterprise Goal.

*

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code.
Reference: Sections 10115 and 10115.11, Public Contract Code.

34766. Disabled Veteran Business Enterprise Bid and Sole Source Requirements.

(a) Within the time frames specified by the department's bid or sole source package, potential contractors shall be required to provide the department with either (1) or (2) below:

(1) Documentation, as required in the department's bid or sole source package, that they have met the disabled veteran business enterprise goal established in the respective package which shall include, but not be limited to, the names of their subcontractors; certification pursuant to section ~~3477~~3467; and dollar amounts of the subcontracts.

(2) Documentation, as required in the department's bid or sole source package pursuant to section ~~3478~~3468 of their good faith effort to meet the disabled veteran business enterprise goal established in the department's bid or sole source package.

*

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code.

34767. Certification of a Disabled Veteran Business Enterprise.

*

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 2050-2053 and 10115.1, Public Contract Code.

34768. Good Faith Effort Documentation.

*

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115.2-10115.4, Public Contract Code.

34769. Monitoring Disabled Veteran Business Enterprise Goals.

*

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115 and 10115.3, Public Contract Code.

348070. Joint Venture Program.

*

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2 and 5058, Penal Code.

~~3480-171~~. Joint Venture Policy Advisory Board.

*

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.4 and 5054, Penal Code.

~~348172~~. Joint Venture Employer Selection Criteria.

*

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2, 2717.5 and 5054, Penal Code; and Section 5, Article XIV of the State Constitution.

~~348273~~. Joint Venture Program Contracts.

Subsections 3473(a) through 3473(a)(3) remain unchanged.

(4) A requirement that inmate-employees shall be paid “comparable wages” as defined by PC section 2717.8. “Comparable wages” means that compensation of inmate-employees by the Joint Venture Employer shall be comparable to the wages paid by the Joint Venture Employer to non-inmate employees performing the same or similar work for that employer. If the Joint Venture Employer does not employ such non-inmate employees in the same or similar work, compensation shall be comparable to wages paid for work of a similar nature in the locality in which the work is to be performed. These wages are subject to the deductions listed in Section ~~3485~~3476(h) and the mandatory savings listed in Section ~~3485~~3476(i).

Subsections 3473(a)(5) through 3473(a)(12)(H) remain unchanged.

(I) Compliance with the requirements of the department's approved inmate appeal procedures as required by Title 15, California Code of Regulations (CCR) Sections ~~3084~~3480 through ~~3084.9~~3487 or relevant Labor Code provisions.

Subsections 3473(a)(12)(J) through 3473(a)(12)(Q) remain unchanged.

(R) Sole responsibility of Joint Venture Employer to comply with all applicable federal, state, and local laws and regulations. (Nothing in this section should be construed to modify the responsibility of the State as defined in the California Code Regulations, Title 15, Division 3, Chapter 1, Subchapter 5, Article 9, Section ~~3484~~3475.)

Subsections 3473(a)(12)(S) through 3473(d) remain unchanged.

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.5, 2717.6, 2717.8, and 5054, Penal Code; Section 5, Article XIV of the State Constitution; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

~~348374~~. Joint Venture Lease.

*

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2 and 5054, Penal Code.

348475. Monitoring Comparable Wages and Wage Plans.

*

Note: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.3, 2717.4, 2717.8 and 5054, Penal Code; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

348576. Inmate Joint Venture Program Participation.

Subsections 3476(a) through 3476(c) remain unchanged.

(d) Inmate participation in the Joint Venture Program shall be voluntary as evidenced by their written consent on the department's CDCR Form 1872, (Rev. ~~9/05~~03/20) Inmate Participation Agreement - Joint Venture Program (JVP), which is hereby incorporated by reference. The Joint Venture Employer shall provide to all inmates hired written information on the conditions of their participation in the Joint Venture Program. Such information shall include, but not be limited to:

(1) Hours of work and the requirements that comparable wages be paid.

(2) Job description.

(3) Right to file complaints regarding claimed violations of their rights under PC section 2717.8, relevant provisions of the Labor Code, and applicable Industrial Welfare Commission Wage Orders.

(4) Inmates shall not be subject to retaliation, as specified in Title 15, CCR, Section ~~3084.13481~~3481(d), by the department for their use of the inmate appeal process, to address Joint Venture Employer-related matters. Neither the Joint Venture Employer nor the department shall retaliate against inmates for exercising rights guaranteed under the State Labor Code or elsewhere in law to address Joint Venture Employer-related matters.

Subsections 3476(e) through 3476(h)(4) remains unchanged.

(i) In addition to (h) of ~~3485~~3476, twenty percent of the inmate's net wages after taxes shall be retained for the inmate in mandatory savings under the control of the department.

Subsection 3476(i)(1) through 3476(i)(3) remain unchanged.

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code.

NOTE TO PUBLISHER – REMOVE PICTURE OF FORM 1872 (REV. 09/05)

STATE OF CALIFORNIA _____ DEPARTMENT OF CORRECTIONS
AND REHABILITATION
**INMATE PARTICIPATION AGREEMENT –
JOINT VENTURE PROGRAM (JVP)**

CDCR 1872 (Rev. 09/05)

~~Earned wages will be distributed to me by the department once per month regardless of the frequency the employer issues payroll. I authorize the CDCR and my employer to issue checks payable to "California Department of Corrections and Rehabilitation for Inmate Name and CDCR Number," and I authorize CDCR's contracted financial services firm to deposit the checks for distribution as described above.~~

~~If I make voluntary supplemental deposits to my mandatory savings account, those funds will also be restricted from my access until release. Upon my parole, my mandatory savings in its entirety will be made available to me. If I am owed funds after my release, they will be forwarded to my Parole Agent in accordance with the established monthly disbursement schedule unless you make other arrangements with the JVP.~~

~~I also understand the above deductions from my net wages after taxes are a requirement to participate in the JVP and the handling of my payroll in the above mentioned manner expedites the disbursement process.~~

~~I agree this agreement shall supersede any provisions in any other document regarding the JVP, which may conflict with this agreement.~~

~~I have read, understand, and agree to the above terms and conditions and know what is expected of me as a participant in the JVP.~~

| | | | |
|---|--------------------------------------|--------------------------------------|------------------------|
| Inmate-Employee's Name (Print) | Inmate-Employee Signature | CDC Number | Date Signed |
| Institution | | JVP Company Name | |
| Staff Witness's Name | | Staff Witness's Signature | Date Signed |

~~ORIGINAL — JVP Headquarters / Canary — Central File / Pink — Inmate-Employee~~

~~STATE OF CALIFORNIA ————— DEPARTMENT OF CORRECTIONS
AND REHABILITATION
**INMATE PARTICIPATION AGREEMENT —
JOINT VENTURE PROGRAM (JVP)
CDCR 1872 (Rev. 9/05)**~~

~~**WELCOME TO THE JOINT VENTURE PROGRAM. CONGRATULATIONS ON BEING
SELECTED FOR EMPLOYMENT WITH A JOINT VENTURE COMPANY. READ THE
TERMS AND CONDITIONS CAREFULLY, AND IF YOU AGREE TO THEM, SIGN
WHERE INDICATED BELOW.**~~

~~I am volunteering to participate in the California Department of Corrections and Rehabilitation (CDCR) Joint Venture Program (JVP). As a participant in JVP, I am responsible for complying with the requirements of my employer and the CDCR. I understand my employment is "at will," and as such is at the discretion of my employer. I understand that I may be lawfully terminated by my Joint Venture employer at any time with or without cause. In addition, I understand that my participation in the JVP may be terminated at any time, with or without cause, by CDCR.~~

~~As a condition of my participation in JVP, I agree to participate in random urine testing.~~

~~I understand that I may appeal or file a complaint regarding any alleged violation of my rights under Penal Code Section 2717.8 or relevant Labor Code provisions, and that I shall not be subject to retaliation or adverse action by CDCR or my employer for exercising rights guaranteed under the Labor Code or elsewhere in law to address employer-related matters. I understand that I may have rights under the State Labor Laws that can be protected through the complaint procedure of the State of California's Division of Labor Standards Enforcement.~~

~~Deductions on my W-4 form will correspond with the information recorded in my Central File, and I will not request withholding of additional amounts of taxes. I hereby authorize the CDCR to make the following deductions which shall not exceed 80 percent of my gross wages in accordance with Section 2717.8 of the Penal Code (Compensation of inmate workers deductions) and Sections 3485(h) and (i) of Title 15 of the California Code of Regulations:~~

~~Federal, state, and local taxes.~~

~~20 percent of my net wages after taxes shall be paid to any lawful restitution fine, or contributed to any fund established by law to compensate victims of crime (generic restitution).~~

~~20 percent of my net wages after taxes shall be remitted to CDCR for payment of room and board.~~

~~20 percent of my net wages after taxes shall be paid for support of family pursuant to state statute or court order. If there is no such state statute or court order, I may designate a family member to receive this portion. If there is no state statute or court order and I choose not to designate a family member, this portion will be held in a mandatory savings account.~~

~~I further authorize the Department of Corrections and Rehabilitation to distribute my net wages after taxes once each month in accordance with the above deductions. The remainder of my net wages after taxes shall be distributed to me as follows:~~

~~20 percent of my net wages after taxes shall be available to me once per month with a statement revealing the disbursements made. These earnings will be placed into my Inmate Trust Account for expenditure per standard institutions rules upon receipt at the institution.~~

~~The remainder of my net wages after taxes shall be deposited in a mandatory savings account and will be available to me upon my release.~~

348677. Compliance.

If a JVE is found to be in non-compliance with PC section 2717.8 or the provisions of sections ~~34823473~~(a)(4) and ~~34823473~~(a)(12)(K), the JVP administrator shall issue a written notice requiring the JVE, within 30 days, to comply with the JVP contract. After 30 days, if the JVE remains non-compliant with the contract, the administrator shall issue to the JVE a written 30-day cancellation notice indicating that the JVE is in material breach of contract. Any bonds held pursuant to ~~34833474~~(a)(12)(J) shall be forfeited if the JVE is found to be non-compliant. At the close of the 30-day cancellation notice, if the JVE has not come into compliance with the contract, the JVE shall be terminated from the JVP.

Note: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

Subchapter 5.1. Inmate and Parolee Programs

Article 1. Administrative Remedies for Inmates and Parolees

3480. Implementation Date and Definitions.

(a) The provisions of this Article shall apply to all inmate and parolee grievances received by the Department of Corrections and Rehabilitation on or after June 1, 2020.

(b) For purposes of this article, the following definitions shall apply:

(1) "Administrative remedy" means the non-judicial process provided by the Department to address inmate and parolee complaints.

(2) "Allegation inquiry" refers to the process of gathering preliminary information concerning a claim that involves an allegation of staff misconduct.

(3) "Appeal" means a written request from a claimant for review by the Office of Appeals of a decision issued by the Institutional or Regional Office of Grievances.

(4) "Appeal package" means a CDCR Form 602-2 (03/20) and all of its supporting documents.

(5) "Claim" means a single complaint arising from a unique set of facts or circumstances.

(6) "Claimant" refers to an inmate or parolee under the custody or control of the Department who files a grievance or appeal with the Department.

(7) "Coordinator" means the official responsible for the administrative functions of the Office of Grievances or Office of Appeals, depending on their assignment.

(8) "Department" and "departmental staff" refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the Department, respectively.

(9) "Formal investigation" refers to a criminal or administrative investigation by the Office of Internal Affairs concerning a claim that involves an allegation of staff misconduct.

(10) "Grievance" means a written request from a claimant for review by the Institutional or Regional Office of Grievances of one or more claims.

(11) "Grievance package" means a CDCR Form 602-1 (03/20) and all of its supporting documents.

(12) "Reviewing Authority" means the official at the Office of Grievances or Office of Appeals who is responsible for reaching a decision on each claim raised in a grievance or appeal, respectively.

(13) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(14) "Staff misconduct" means an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.

(15) "Supervisory review" refers to the process of gathering preliminary information concerning a claim that does not involve an allegation of staff misconduct.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3481. Claimant's Ability to Grieve and to Appeal.

(a) A claimant has the ability to submit a written grievance containing one or more claims, subject to the requirements in section 3482, to dispute a policy, decision, action, condition, or omission by the Department or departmental staff that causes some measurable harm to their health, safety, or welfare. In response, a claimant shall receive a written decision as described in section 3483 from the Institutional or Regional Office of Grievances, hereby established in the Division of Adult Institutions and Division of Adult Parole Operations, respectively, clearly explaining the reasoning for the Reviewing Authority's decision as to each claim. A claimant also has the ability to submit a written appeal concerning one or more claims, subject to the requirements in section 3485, to dispute the decision by the Institutional or Regional Office of Grievances. In response, a claimant shall receive a written decision as described in section 3486 from the Office of Appeals clearly explaining the reasoning for the Reviewing Authority's decision as to each claim.

(b) The Director of the Division of Adult Institutions shall appoint Institutional Reviewing Authorities authorized to approve or disapprove each claim in a grievance received by an inmate, but in no case shall that official be of a rank lower than a Chief Deputy Warden. The Director of the Division of Adult Parole Operations shall appoint Regional Reviewing Authorities authorized to approve or disapprove each claim in a grievance submitted by a parolee, but in no case shall that official be of a rank lower than a Chief Deputy Parole Administrator. The Secretary shall appoint the Reviewing Authority authorized to grant or deny each claim in an appeal submitted by an inmate or a parolee, but in no case shall that official be of a rank lower than the Associate Director of the Office of Appeals.

(c) A claimant may choose to informally resolve a claim; however, any attempt to informally resolve a claim does not extend the time for submitting a grievance or an appeal.

(d) Staff shall not retaliate against a claimant for seeking to informally resolve a claim or for submitting a grievance or appeal.

(e) A claimant does not have the ability to submit a grievance or appeal to dispute a policy, decision, action, condition, or omission that was not made by the Department or

departmental staff but instead was made by an entity or official outside of the Department, including, but not limited to, a county jail, a private hospital, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the Department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the Commission on Correctional Peace Officer Standards and Training. This article does not preclude a claimant from filing a complaint with the outside entity or official.

(f) CDCR Form 602-1 (03/20), "Grievance," hereby incorporated by reference, shall be made available to inmates in all housing units and in all prison law libraries and to parolees at all parole offices statewide.

(g) When submitting a grievance or appeal, or for purposes of a related interview, if a claimant requests assistance based on a disability, lack of literacy, or need for translation services, or departmental staff detect the need for such assistance, then staff shall provide reasonable accommodations and utilize effective communication techniques as required by the Americans with Disabilities Act.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3482. Preparation and Submittal of a Grievance.

(a) Where to Submit a Grievance.

(1) An inmate who wishes to submit a grievance shall do so in writing to the Institutional Office of Grievances at the prison, re-entry facility, or fire camp where they are housed. Every Warden, in consultation with the Director of the Division of Adult Institutions, shall issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code which shall be made available in all the law libraries at that institution, identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, the physical location in each housing unit of all lock-boxes where grievances may be submitted, and the specific departmental staff permitted to collect grievances from those lock-boxes. Grievances shall be collected from lock-boxes at least once per business day by departmental staff not regularly assigned to that housing unit. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Institutions so long as they are consistent with this Article.

(2) A parolee who wishes to submit a grievance shall do so in writing to the Regional Office of Grievances in the parole region where they are supervised. Every Regional Parole Administrator, in consultation with the Director of the Division of Adult Parole Operations, shall issue a written advisement to a parolee within 15 calendar days of the parolee's release from prison identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, and the physical location where grievances may be submitted. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Parole Operations so long as they are consistent with this Article.

(b) A claimant shall submit a claim within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission by the Department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission. The time limit for a parolee to submit a grievance shall not be extended while the parolee is on suspended status, meaning the parolee has absconded. The deadline to submit a claim shall be extended for the period of time that a claimant is:

- (1) in the custody of another authority for court proceedings;
- (2) in the care of an outside hospital; or
- (3) temporarily housed in a medical or mental health crisis bed.
- (c) To submit a grievance, a claimant shall:
 - (1) type or print legibly on an official CDCR Form 602-1 (03/20) or complete the form electronically, if available;
 - (2) describe all information known and available to the claimant regarding the claim, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and names and titles of all witnesses, to the best of the claimant's knowledge;
 - (3) describe any attempt to resolve the claim informally and, if there was such an attempt, provide the details of that attempt, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and the results of that attempt, to the best of the claimant's knowledge;
 - (4) include all supporting documents available to the claimant related to the claim or identify to the best of the claimant's ability all relevant records with sufficient specificity for those records to be located; and
 - (5) sign and date the CDCR Form 602-1 (03/20).
- (d) When completing a CDCR Form 602-1 (03/20), a claimant shall not:
 - (1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;
 - (2) include information or accusations known to the claimant to be false; or
 - (3) contaminate the grievance package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the grievance shall be safely discarded and the entire grievance disallowed.
- (e) The grievance package submitted by the claimant shall be stored electronically by the Department. The CDCR Form 602-1 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3483. Grievance Review.

- (a) The Reviewing Authority for each Office of Grievances shall designate at least one official to assess each written grievance within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall immediately commence an appropriate response as required by all applicable laws and regulations. The claimant shall be notified of the Department's course of action within five business days. Regardless of such notification, the Reviewing Authority shall issue a written response to the claimant as required in subsection 3483(i).
- (b) The Grievance Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.
 - (1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests from the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Grievance Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) The Grievance Coordinator shall ensure that a claim is reassigned to another Institutional or Regional Office of Grievances if a majority of the facts and circumstances that gave rise to the claim occurred there. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the sending Office of Grievances received it.

(2) The Grievance Coordinator shall ensure that a request to implement a remedy is reassigned to the Remedies Compliance Coordinator referred to in subsection 3483(k)(2).

(d) The Reviewing Authority shall refer claims alleging staff misconduct to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation pursuant to section 3484.

(e) A claim may be rejected as described in section 3487.

(f) The Grievance Coordinator shall ensure that an acknowledgment of receipt of a grievance is completed within 14 calendar days of its receipt indicating the date the grievance was received, whether it was disallowed pursuant to subsection 3482(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) A claimant or witness shall be interviewed if departmental staff responsible for reviewing a claim determine it would assist in resolving the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, then those facts shall be documented in the written response prepared by the Reviewing Authority.

(h) The Reviewing Authority shall ensure that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the grievance process as to that claim, including any interview of a claimant conducted as part of the grievance process.

(1) If the individual in question is a Warden, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the individual in question is a Regional Parole Administrator, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(3) Participating in a committee meeting to discuss a claimant or that includes a claimant in attendance does not, by itself, constitute personal interaction.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the grievance, unless other statutory or regulatory

authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the grievance:

(1) "Disapproved," meaning that the Reviewing Authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both);

(2) "Approved," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both), in which case the Reviewing Authority shall order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity or official which requires that the claimant file a complaint with that entity or official, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3483(b);

(5) "Reassigned," as described in subsection 3483(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3482(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3483(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file.

(k) Implementation of Remedy.

(1) If the Reviewing Authority approves a claim, then the corresponding remedy shall be implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then a claimant may submit a CDCR Form 602-3 (03/20), "Request to Implement Remedies," hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Division of Adult Institutions and the Division of Adult Parole Operations so long as they are consistent with this Article.

(m) Exhaustion.

(1) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(1) through 3483(i)(7) does not constitute exhaustion of all administrative remedies available to a claimant within the Department. Nor does completion of the review process resulting in a decision to reject a

claim pursuant to section 3487. Exhaustion requires a claimant to appeal such decisions as provided in section 3485.

(2) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(8) through (i)(10) does constitute exhaustion of all administrative remedies available to a claimant within the Department. No appeal is available because the claim was exhausted at the conclusion of the review by the Institutional or Regional Office of Grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3484. Allegations of Staff Misconduct.

(a) All claims alleging staff misconduct shall be presented by the grievance coordinator to the Reviewing Authority who shall review the claim and determine if:

(1) The claim warrants a request for an allegation inquiry in which case the claim shall be referred to the Office of Internal Affairs, Allegation Inquiry Management Section. An allegation inquiry shall be conducted whenever the claim meets the definition of staff misconduct but the Reviewing Authority does not have a reasonable belief that the misconduct occurred.

(2) The claim warrants a request for a formal investigation in which case the claim shall be referred to the Office of Internal Affairs, Central Intake Unit. A formal investigation shall be conducted whenever the claim meets the definition of staff misconduct and the Reviewing Authority has a reasonable belief that the misconduct occurred.

(b) A confidential report shall be prepared by the Office of Internal Affairs after the completion of an allegation inquiry or formal investigation summarizing all of the evidence that was gathered, including all significant factual findings. This document shall not be provided to the claimant and no other copies shall be kept or maintained except as needed by a Reviewing Authority or the staff working in an Office of Grievances or Office of Appeals in order to respond to a claim, after which the report shall be returned to the Office of Internal Affairs.

(c) Staff with the Office of Internal Affairs may interview the claimant and as many witnesses as necessary to help determine if the allegation is true. The subject of the allegation of staff misconduct may also be interviewed by staff with the Office of Internal Affairs trained to conduct administrative interviews and shall be given notice of the interview at least 24 hours in advance. If the subject chooses to waive the 24-hour notice requirement then the subject may be interviewed immediately.

(d) When the allegation of staff misconduct concerns a use of force incident, then the Reviewing Authority shall refer the claim to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation if the alleged use of force by staff resulted in serious bodily injury or the alleged use of force was not reported in accordance with sections 3268.1 or 3268.3.

(e) If the staff misconduct in question involves a person who is employed by a different hiring authority than the Reviewing Authority, then it shall be the responsibility of the Reviewing Authority to confer with that hiring authority before the referral to the Office of Internal Affairs in order to avoid duplicative referrals.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3485. Preparation and Submittal of an Appeal.

(a) A claimant who wishes to appeal a decision made by an Institutional or Regional Office of Grievances concerning one or more claims they previously submitted in a grievance shall do so in writing by regular mail sent to the "Office of Appeals, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811" or by electronic kiosk or tablet, if available. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(b) A claimant who wishes to appeal a decision found in subsections 3483(i)(1) through 3483(i)(6) shall submit an appeal within 30 calendar days of discovering the decision by the Institutional or Regional Office of Grievances. Discovery occurs when a claimant knew or should have reasonably known of the decision. The time limit for a parolee to submit an appeal shall not be extended while on suspended status, meaning the parolee has absconded. The deadline to submit an appeal of a claim shall be extended for the period of time that a claimant is:

(1) in the custody of another authority for court proceedings;

(2) in the care of an outside hospital; or

(3) temporarily housed in a medical or mental health crisis bed.

(c) To submit an appeal, a claimant shall:

(1) type or print legibly on an official CDCR Form 602-2 (03/20), "Appeal of Grievance," hereby incorporated by reference, or complete the form electronically, if available;

(2) describe in detail why the decision provided by the Institutional or Regional Office of Grievances is inadequate; and

(3) sign and date the CDCR Form 602-2 (03/20).

(d) When completing a CDCR Form 602-2 (03/20), a claimant shall not:

(1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;

(2) include information or accusations known to the claimant to be false; or

(3) contaminate the appeal package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the appeal shall be safely discarded and the entire appeal disallowed; or

(4) include new claims that were not included in the original grievance, in which case the claim shall be reassigned pursuant to subsection 3486(c)(1).

(e) The appeal package submitted by the claimant shall be stored electronically by the department. The CDCR Form 602-2 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3486. Appeal Review.

(a) The Reviewing Authority for the Office of Appeals shall designate at least one official to assess each written appeal within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall refer the matter to the Institutional or Regional Office of Grievances where the majority of the facts and circumstances that gave rise to the claim occurred to be handled pursuant to subsection 3483(a).

(b) The Appeal Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.

(1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or a service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests for the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Appeal Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) A claim which was not first submitted in a grievance to an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date the Office of Appeals received it.

(2) A claim which was first submitted in a grievance but not answered by an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the claim was first received but not answered by an Institutional or Regional Office of Grievances.

(3) A request to implement a remedy shall be reassigned to the Remedies Compliance Coordinator referred to in subsection 3486(k)(2).

(d) If the Office of Appeals determines that a claim involves staff misconduct and that claim was not referred to the Office of Internal Affairs for an allegation inquiry or formal investigation by the Office of Grievances, then the Office of Appeals shall refer that claim to the individuals below who shall consider whether completion of an allegation inquiry or formal investigation is required pursuant to section 3484.

(1) If the claim was made by an inmate, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the claim was made by a parolee, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(e) A claim may be rejected as described in section 3487.

(f) The Appeal Coordinator shall ensure that an acknowledgment of receipt of the appeal is completed within 14 calendar days of its receipt indicating the date the appeal was received, whether it was disallowed pursuant to subsection 3485(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) The full record of each claim shall be made available to the Office of Appeals for purposes of conducting its reviews. The record shall include the claimant's grievance, the claimant's appeal, both acknowledgment letters, all related interviews conducted for the Institutional or Regional Office of Grievances, any relevant documentation prepared for the Office of Grievances, any allegation inquiry reports prepared for the Office of Grievances, any records contained in the Department's information technology system, and all Department rules and memoranda. The record shall not include any new information provided by the claimant to the Office of Appeals that was not made available to the Office of Grievances for their review.

(h) The Reviewing Authority shall exclude any individual whose personal interaction with the claimant forms part of the claim from participating in the appeal process as to that claim. If the individual in question is the Associate Director of the Office of Appeals, then the Director from the Division of Correctional Policy Research and Internal Oversight shall serve as the Reviewing Authority for that claim.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the appeal, unless other statutory or regulatory authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the appeal:

(1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision of the Institutional or Regional Office of Grievances was proper;

(2) "Granted," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that the decision by the Institutional or Regional Office of Grievances was proper, in which case the Reviewing Authority shall set aside the decision of the Institutional or Regional Office of Grievances and order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity which requires that the claimant file a grievance with that entity, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3486(b);

(5) "Reassigned," as described in subsection 3486(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3485(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3486(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file. If the Reviewing Authority grants a claim, then a copy of the decision shall be simultaneously sent to the appropriate Institutional or Regional Grievance Coordinator.

(k) Implementation of Remedy.

(1) If the Office of Appeals grants a claim, then the Institutional or Regional Reviewing Authority shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget

authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then the claimant may submit a CDCR Form 602-3 (03/20) directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Office of Appeals so long as they are consistent with this Article.

(m) Completion of the review process by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant within the Department. A claim is not exhausted if it was disallowed pursuant to subsections 3482(d)(3) or 3485(d)(3) or rejected pursuant to subsection 3487(a).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3487. Rejection of a Claim.

(a) A claim shall only be rejected by an Institutional or Regional Office of Grievances or Office of Appeals for one or more of the following reasons:

(1) the claimant did not submit the claim within the timeframe required by subsection 3482(b) for grievances or subsection 3485(b) for appeals;

(2) the claim concerns an anticipated policy, decision, action, condition, or omission by the Department or departmental staff;

(3) the claim is substantially duplicative of a prior claim by the same claimant, except when the prior claim was rejected pursuant to subsection 3487(a)(2);

(4) the claim concerns harm to a person other than the person who signed the grievance or appeal; or

(5) the claim concerns the regulatory framework for the grievance and appeal process itself.

(b) If a claim is rejected as untimely under subsection (a)(1), then the claimant shall be notified of the following dates as determined by the Reviewing Authority: the date the claim was discovered, the date the claim was received, and the deadline for receipt of the claim pursuant to either subsection 3482(b) or 3485(b), whichever is applicable.

(c) A claim that is rejected may be appealed for review by the Office of Appeals pursuant to the procedures in section 3485. If the Office of Appeals grants the appeal, then the claim shall be reassigned to the Office of Grievances at the institution or region where the majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances shall treat the claim as received on the date that the Office of Appeals issued its decision and shall issue its own decision in compliance with subsection 3483(i).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Article 2. Research Involving Inmates or Parolees

3488. Research.

(a) No research shall be conducted on inmates or parolees without approval of the research advisory committee established to oversee research activities within the department. Members of the research advisory committee shall be named by the Secretary, and may include departmental staff and nondepartmental persons who are community academic representatives engaged in criminal justice research.

(b) No research project shall be considered without submission of a research proposal that shall contain the following:

(1) A statement of the objectives of the study.

(2) The specific values of the project.

(3) A description of the research methods to be used.

(4) A description of the measuring devices to be used, or if they are to be developed as part of the project, a statement of their intended use and reason.

(5) The name of the facility or office where the data will be collected.

(6) The names and titles of personnel involved and their responsibilities in the project.

(7) An estimate of departmental staff time needed for the project.

(8) Starting and ending dates of the research.

(9) Any additional costs to the state.

(10) An estimate of the inmate or parolee subjects' time needed for the project and a plan for the compensation of the inmates or parolees.

(11) The source of funding.

(12) A copy of the informed consent form to be used in the project which meets the requirements of Penal Code section 3521.

(13) A current resume for each professional staff member of the project.

(14) The full name, date of birth, and social security number of all project staff members who will enter an institution or other departmental facility to carry out the project.

(15) A certification of privacy signed by the project's principal investigator which outlines the procedure for protecting exempt personal information and certifies that the protective procedures shall be followed.

(16) If student research is involved, a letter from the student's faculty advisor stating that the student will be working under their supervision and the project is approved by their college or university.

(17) If the proposal was previously reviewed by a committee of another agency or organization, a copy of the record of that committee's approval.

(c) A nondepartmental person, agency or organization applying to conduct research within the department shall submit to the committee for approval a signed agreement to adhere to all departmental requirements.

(d) Any person, agency or organization conducting research shall, as requested by the department's chief of research or designee, submit progress reports on their projects.

Note: Authority cited: Sections 3509.5, 3517 and 5058, Penal Code. Reference: Sections 3500 through 3524 and 5054, Penal Code.

3491. Eligibility Review.

*

(g) Eligibility reviews under this section are subject to the department's inmate appeal process administrative remedies procedures in accordance with Article 8 of Chapter 1 of this Division section 3480, et seq.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

3492. Eligibility Review and Referral to the Board of Parole Hearings.

*

(d) Eligibility reviews and referrals under this section are subject to the department's ~~inmate appeal process~~ in accordance with ~~Article 8 of Chapter 1 of this division~~ section 3480, et seq.

*

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

3548. Payments of Certain Costs by Parolees.

Subsection 3548(a) through 3548(a)(3) remains unchanged.

(b) If the parolee disagrees with the department's finding that the parolee has the ability to pay for the costs associated with the continuous electronic monitoring, the parolee may file an appeal by submitting a ~~CDC Form 602 (rev 12/87), Inmate/Parolee Appeal form to the departmental appeals coordinator~~ CDCR Form 602-1 (03/20), to the Regional Office of Grievances.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3006, 3010.8 and 5054, Penal Code.

3563. Global Positioning System-Payments of Certain Costs by Parolees.

Subsection 3563(a) through 3563(a)(3) remain unchanged.

(b) If the parolee disagrees with the Department's finding that the parolee has the ability to pay for the costs associated with GPS monitoring, the parolee may file an appeal by submitting a ~~CDC Form 602 (Rev. 08/09), Inmate/Parolee Appeal form to the departmental appeals coordinator~~ CDCR Form 602-1 (03/20), to the Regional Office of Grievances.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

3630. Limitations of Parole Services.

Section 3630(a) through (b) remain unchanged.

(c) A determination that an alien is ineligible for the services specified in subdivision (a) may be appealed/grieved as provided in Sections ~~3084 through 3084.9~~ of these regulations 3480, et seq.

Subsection 3630(d) through (e)(4) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: 8 U.S.C. Sections 1621, 1641 and 1642; Section 297.5, Family Code; and Section 5054, Penal Code.

3723. Parolee Rights.

The parolee shall receive a copy of the discharge review decision, including the reasons for a decision not to discharge the parolee, if applicable. The parolee may ~~appeal~~file a grievance regarding any mistake of fact contained in the discharge review report pursuant to the ~~appeals process~~administrative remedies procedures provided in sections ~~3084-3084.93480~~, et seq. If a mistake of fact is substantiated and that mistake results in a change in the recommendation to retain on parole, the corrected discharge review report with the recommendation to discharge shall be corrected and submitted to the Board of Parole Hearings with a request to reconsider the decision to retain.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

GRIEVANCE

CDCR 602-1 (03/20)

STAFF USE ONLY

Grievance #: _____ Date Received: _____

Date Due: _____

Categories: _____

This is the process to ask for help with a complaint.

Claimant Name: _____ CDCR #: _____ Current Housing/Parole Unit: _____

Institution/Facility/Parole Region: _____

In order for the Department to understand your complaint, make sure you have answered the following questions:

- *What is the nature of your complaint?*
- *When and where did the complaint occur?*
- *Who was involved?*
- *Which specific people can support your complaint?*
- *Did you try to informally resolve the complaint?*
- *What rule or policy are you relying on to make your complaint?*
- *Are there documents that would be helpful to support your position? List the documents if you do not have them. Please note that documents submitted with this form will not be returned.*
- *What specific action would resolve your complaint?*

APPEAL OF GRIEVANCE

CDCR 602-2 (03/20)

| | |
|-----------------------|--------------------------------------|
| STAFF USE ONLY | Appeal #: _____ Date Received: _____ |
| | Date Due: _____ |
| | Categories: _____ |
| | Grievance #: _____ |

Claimant Name: _____ CDCR #: _____

Current Housing/Parole Unit: _____ Institution/Facility/Parole Region: _____

There are no claims that can be appealed.

The following claims cannot be appealed:

Claim #s:

This is the process to appeal the decision made regarding a claim that is not listed above.

Claim #: _____

Explain the reason for your appeal of any claims not listed above. Be as specific as you can.

I am dissatisfied with the response I was given because _____

Are there documents that would be helpful to support your position? Attach copies of those documents, if you don't have the documents, identify them as best you can below:

APPEAL OF GRIEVANCE

CDCR 602-2 (03/20)

Page 2 of 2

Claim #: _____

Explain the reason for your appeal. Be as specific as you can.

I am dissatisfied with the response I was given because _____

Are there documents that would be helpful to support your position? Attach copies of those documents, if you don't have the documents, identify them as best you can below:

Reminder: Please attach all documents in your possession that support your claim(s).

Please note that this form and supporting documents will not be returned to you.

Claimant Signature: _____

Date Signed: _____

REQUEST TO IMPLEMENT REMEDIES

CDCR 602-3 (03/20)

| | |
|-----------------------|---|
| STAFF USE ONLY | Grievance or Appeal #: _____ Date Received: _____ |
| | Date Due: _____ |
| | Categories: _____ |

This is the process to ask for a granted or approved remedy to be provided to you.

Claimant Name: _____ CDCR #: _____

Current Facility/Parole District: _____ Current Area/Bed/Parole Unit: _____

Claim #: _____

Decision: APPROVED [or] GRANTED

Institution/Parole Region of Origin: _____ Current Facility/Parole District of Origin: _____

Housing Area/Parole Unit of Origin: _____

Category: _____ Sub-Category: _____

Remedy Approved [or] Granted: _____ Due Date for Implementation: _____

This form shall be submitted by mail to:
 Office of Appeals
 Remedies Compliance Coordinator
 Department of Corrections and Rehabilitation
 P.O. Box 942883
 Sacramento, CA 95811

I, _____, assert that 30 days has passed from the due date for implementation of the
Name of Claimant
 remedy approved (or granted) for the claim referenced above. As a result, I am hereby submitting a request to implement the outstanding remedy.

Please note that this form will not be returned to you.

Claimant Signature: _____ Date Signed: _____

**INMATE PARTICIPATION AGREEMENT—JOINT VENTURE PROGRAM (JVP)
CDCR 1872 (Rev. 03/209/05)**

Page 1 of 2

Earned wages will be distributed to me by the department once per month regardless of the frequency the employer issues payroll. I authorize the CDCR and my employer to issue checks payable to "California Department of Corrections and Rehabilitation for Inmate Name and CDCR Number," and I authorize CDCR's contracted financial services firm to deposit the checks for distribution as described above.

If I make voluntary supplemental deposits to my mandatory savings account, those funds will also be restricted from my access until release. Upon my parole, my mandatory savings in its entirety will be made available to me. If I am owed funds after my release, they will be forwarded to my Parole Agent in accordance with the established monthly disbursement schedule unless you make other arrangements with the JVP.

I also understand the above deductions from my net wages after taxes are a requirement to participate in the JVP and the handling of my payroll in the above mentioned manner expedites the disbursement process.

I agree this agreement shall supersede any provisions in any other document regarding the JVP, which may conflict with this agreement.

I have read, understand, and agree to the above terms and conditions and know what is expected of me as a participant in the JVP.

| | | | |
|--------------------------------|---------------------------|-------------|-------------|
| Inmate-Employee's Name (Print) | Inmate-Employee Signature | CDC Number | Date Signed |
| Institution | JVP Company Name | | |
| Staff Witness Name | Staff Witness Signature | Date Signed | |

DISTRIBUTION White: JVP Headquarters, **Canary:** Central File, **Pink:** Inmate-Employee

~~ORIGINAL—JVP Headquarters / Canary—Central File / Pink—Inmate-Employee—~~

INMATE PARTICIPATION AGREEMENT—JOINT VENTURE PROGRAM (JVP)
CDCR 1872 (Rev. 03/20~~09~~05)

Page 2 of 2

WELCOME TO THE JOINT VENTURE PROGRAM. CONGRATULATIONS ON BEING SELECTED FOR EMPLOYMENT WITH A JOINT VENTURE COMPANY. READ THE TERMS AND CONDITIONS CAREFULLY, AND IF YOU AGREE TO THEM, SIGN WHERE INDICATED BELOW.

I am volunteering to participate in the California Department of Corrections and Rehabilitation (CDCR) Joint Venture Program (JVP). As a participant in JVP, I am responsible for complying with the requirements of my employer and the CDCR. I understand my employment is "at will," and as such is at the discretion of my employer. I understand that I may be lawfully terminated by my Joint Venture employer at any time with or without cause. In addition, I understand that my participation in the JVP may be terminated at any time, with or without cause, by CDCR.

As a condition of my participation in JVP, I agree to participate in random urine testing.

I understand that I may appeal or file a complaint regarding any alleged violation of my rights under Penal Code Section 2717.8 or relevant Labor Code provisions, and that I shall not be subject to retaliation or adverse action by CDCR or my employer for exercising rights guaranteed under the Labor Code or elsewhere in law to address employer-related matters. I understand that I may have rights under the State Labor Laws that can be protected through the complaint procedure of the State of California's Division of Labor Standards Enforcement.

Deductions on my W-4 form will correspond with the information recorded in my Central File, and I will not request withholding of additional amounts of taxes. I hereby authorize the CDCR to make the following deductions which shall not exceed 80 percent of my gross wages in accordance with Section 2717.8 of the Penal Code (Compensation of inmate workers deductions) and Sections ~~34763~~3485 (h) and (i) of Title 15 of the California Code of Regulations:

Federal, state, and local taxes.

20 percent of my net wages after taxes shall be paid to any lawful restitution fine, or contributed to any fund established by law to compensate victims of crime (generic restitution).

20 percent of my net wages after taxes shall be remitted to CDCR for payment of room and board.

20 percent of my net wages after taxes shall be paid for support of family pursuant to state statute or court order. If there is no such state statute or court order, I may designate a family member to receive this portion. If there is no state statute or court order and I choose not to designate a family member, this portion will be held in a mandatory savings account.

I further authorize the Department of Corrections and Rehabilitation to distribute my net wages after taxes once each month in accordance with the above deductions. The remainder of my net wages after taxes shall be distributed to me as follows:

20 percent of my net wages after taxes shall be available to me once per month with a statement revealing the disbursements made. These earnings will be placed into my Inmate Trust Account for expenditure per standard institution rules upon receipt at the institution.

The remainder of my net wages after taxes shall be deposited in a mandatory savings account and will be available to me upon my release.

REPEAL

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY

Institution/Parole Region: Log #: Category:

FOR STAFF USE ONLY

You may appeal any California Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations (CCR), Title 15, Section 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that led to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

| | | | |
|---------------------|-------------|-------------------|-------------|
| Name (Last, First): | CDC Number: | Unit/Cell Number: | Assignment: |
|---------------------|-------------|-------------------|-------------|

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

B. Action requested (If you need more space, use Section B of the CDCR 602-A):

Supporting Documents: Refer to CCR 3084.3.

Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):

No, I have not attached any supporting documents. Reason:

Inmate/Parolee Signature: Date Submitted:

By placing my initials in this box, I waive my right to receive an interview.

STAFF USE ONLY

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? Yes No

This appeal has been:

- Bypassed at the First Level of Review. Go to Section E.
- Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____
- Cancelled (See attached letter) Date: _____
- Accepted at the First Level of Review.

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include Interviewer's name, title, interview date, location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: Granted Granted in Part Denied Other: _____

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____
(Print Name)

Reviewer: _____ Title: _____ Signature: _____
(Print Name)

Date received by AC: _____

AC Use Only
Date mailed/delivered to appellant ____ / ____ / ____

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

Inmate/Parolee Signature: _____ Date Submitted: _____

E. Second Level - Staff Use Only Staff - Check One: Is CDCR 602-A Attached? Yes No

This appeal has been:

By-passed at Second Level of Review. Go to Section G.
 Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____
 Cancelled (See attached letter)
 Accepted at the Second Level of Review

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: Granted Granted in Part Denied Other: _____

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____
(Print Name)

Reviewer: _____ Title: _____ Signature: _____
(Print Name)

Date received by AC: _____

AC Use Only
Date mailed/delivered to appellant ___/___/___

F. If you are dissatisfied with the Second Level response, explain reason below; attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

Inmate/Parolee Signature: _____ Date Submitted: _____

G. Third Level - Staff Use Only

This appeal has been:

Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
 Cancelled (See attached letter) Date: _____
 Accepted at the Third Level of Review. Your appeal issue is Granted Granted in Part Denied Other: _____

See attached Third Level response.

Third Level Use Only
Date mailed/delivered to appellant ___/___/___

H. Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason. (If withdrawal is conditional, list conditions.)

Print Staff Name: _____ Inmate/Parolee Signature: _____ Date: _____
Title: _____ Signature: _____ Date: _____

REPEAL

STATE OF CALIFORNIA
 INMATE/PAROLEE APPEAL FORM ATTACHMENT
 CDCR 602-A (08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

| | | | |
|--------------------|----------------------------|--------|-----------|
| IAB USE ONLY | Institution/Parole Region: | Log #: | Category: |
| FOR STAFF USE ONLY | | | |

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

| | | | |
|---------------------|-------------|-------------------|-------------|
| Name (Last, First): | CDC Number: | Unit/Cell Number: | Assignment: |
|---------------------|-------------|-------------------|-------------|

A. Continuation of CDCR 602, Section A only (Explain your issue):

STAFF USE ONLY

Inmate/Parolee Signature: _____ Date Submitted: _____

B. Continuation of CDCR 602, Section B only (Action requested):

Inmate/Parolee Signature: _____ Date Submitted: _____

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL FORM ATTACHMENT
CDCR 602-A (08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 2

D. Continuation of CDCR 602, Section D only (Dissatisfied with First Level response):

Lined area for writing the response to Section D.

Inmate/Parolee Signature: _____

Date Submitted: _____

F. Continuation of CDCR 602, Section F only (Dissatisfied with Second Level response):

Lined area for writing the response to Section F.

Inmate/Parolee Signature: _____

Date Submitted: _____

REPEAL

STATE OF CALIFORNIA
INMATE/PAROLEE GROUP APPEAL
CDCR 602-G (08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Page No. _____ of _____

| | | | |
|---------------------|----------------------------|--------|-----------|
| IAB USE ONLY | Institution/Parole Region: | Log #: | Category: |
| | FOR STAFF USE ONLY | | |

This is a group appeal signature attachment sheet. Attach it to your group CDCR 602. You are to legibly print your name, number, assignment and housing, then sign and date the form. By signing, you are agreeing to the issue and action requested; and you acknowledge that this appeal counts towards the allowable number of appeals in the period in which it is filed.

PRIMARY APPELLANT **WRITE, PRINT, or TYPE CLEARLY in black or blue ink.**

| | | | | | |
|---------------------|-------------|-------------|-------------|-----------|------|
| Name (Last, First): | CDC Number: | Assignment: | Unit/Cell # | Signature | Date |
|---------------------|-------------|-------------|-------------|-----------|------|

A. Summarize the specific issue that you are appealing as identified in the attached CDCR 602: _____

B. Summarize the action requested: _____

NOTE: I, the undersigned, agree that the facts presented in this appeal are true. I agree with the issue presented and I am requesting the action indicated. In the event the Primary Appellant transfers or elects to withdraw from the appeal, I understand that I may become the primary appellant for purposes of processing the group appeal.

| CDC Number | Name | Assignment | Unit/Cell # | Signature | Date |
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STAFF USE ONLY

REPEAL

STATE OF CALIFORNIA
 INMATE/PAROLEE REQUEST FOR INTERVIEW, ITEM OR SERVICE
 CDCR 22 (10/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

SECTION A: INMATE/PAROLEE REQUEST

| | | | | |
|---------------------------|-------------|--------------|---------------------------|---|
| NAME (Print): (LAST NAME) | | (FIRST NAME) | CDC NUMBER: | SIGNATURE: |
| HOUSING/BED NUMBER: | ASSIGNMENT: | | HOURS FROM _____ TO _____ | TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.): |

CLEARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW:

METHOD OF DELIVERY (CHECK APPROPRIATE BOX) ****NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED ****

- SENT THROUGH MAIL: ADDRESSED TO: _____ DATE MAILED: ____/____/____
- DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

| | | | |
|--------------------------------|-------|------------|--|
| RECEIVED BY: PRINT STAFF NAME: | DATE: | SIGNATURE: | FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES NO |
|--------------------------------|-------|------------|--|

| | | |
|-------------------------|------------------------|--|
| IF FORWARDED - TO WHOM: | DATE DELIVERED/MAILED: | METHOD OF DELIVERY: (CIRCLE ONE) IN PERSON BY US MAIL |
|-------------------------|------------------------|--|

SECTION B: STAFF RESPONSE

| | | | |
|------------------------|-------|------------|----------------|
| RESPONDING STAFF NAME: | DATE: | SIGNATURE: | DATE RETURNED: |
|------------------------|-------|------------|----------------|

SECTION C: REQUEST FOR SUPERVISOR REVIEW

PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. KEEP FINAL CANARY COPY.

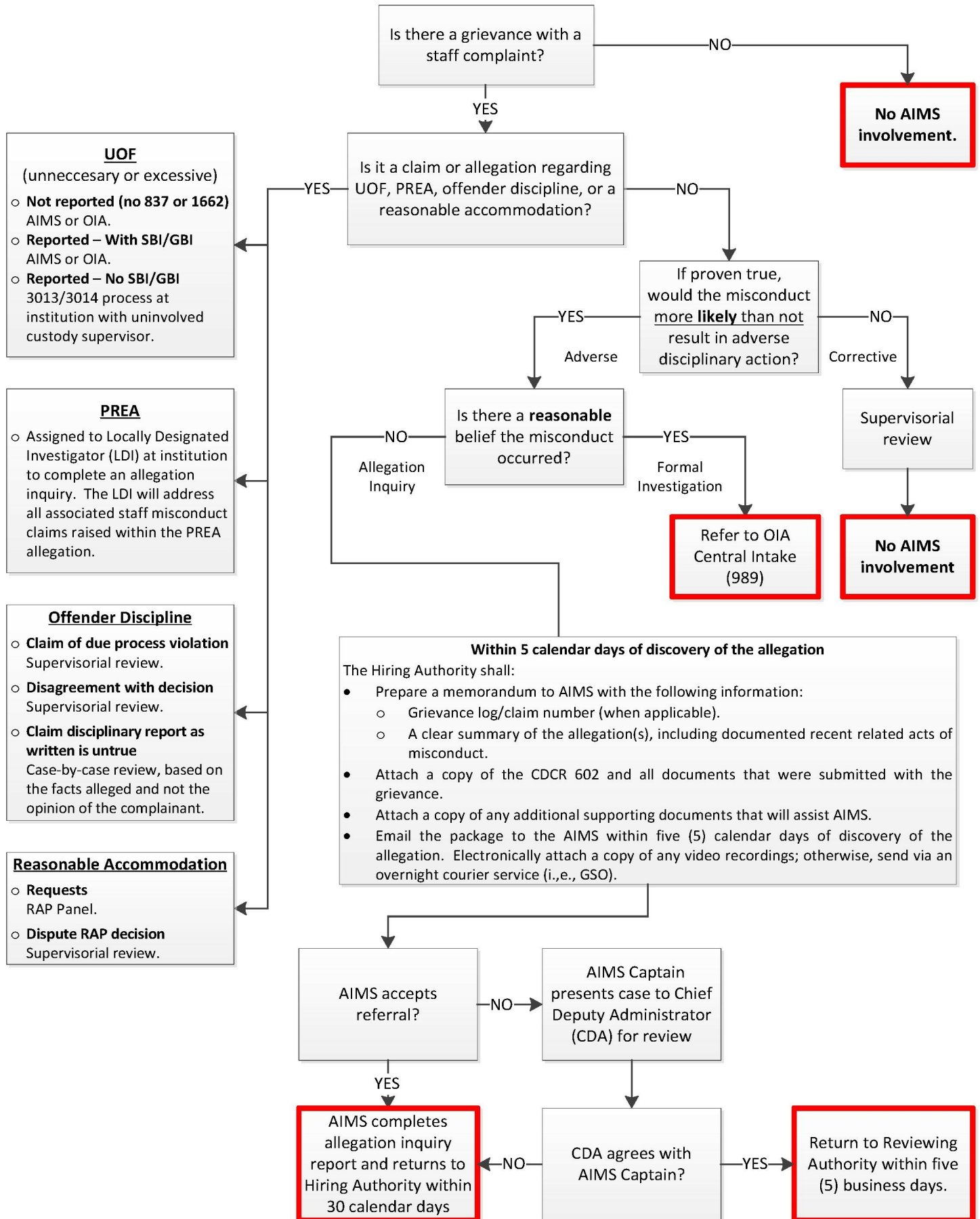
| | |
|------------|-----------------|
| SIGNATURE: | DATE SUBMITTED: |
|------------|-----------------|

SECTION D: SUPERVISOR'S REVIEW

| | | | |
|--------------------------------|-------|------------|----------------|
| RECEIVED BY SUPERVISOR (NAME): | DATE: | SIGNATURE: | DATE RETURNED: |
|--------------------------------|-------|------------|----------------|

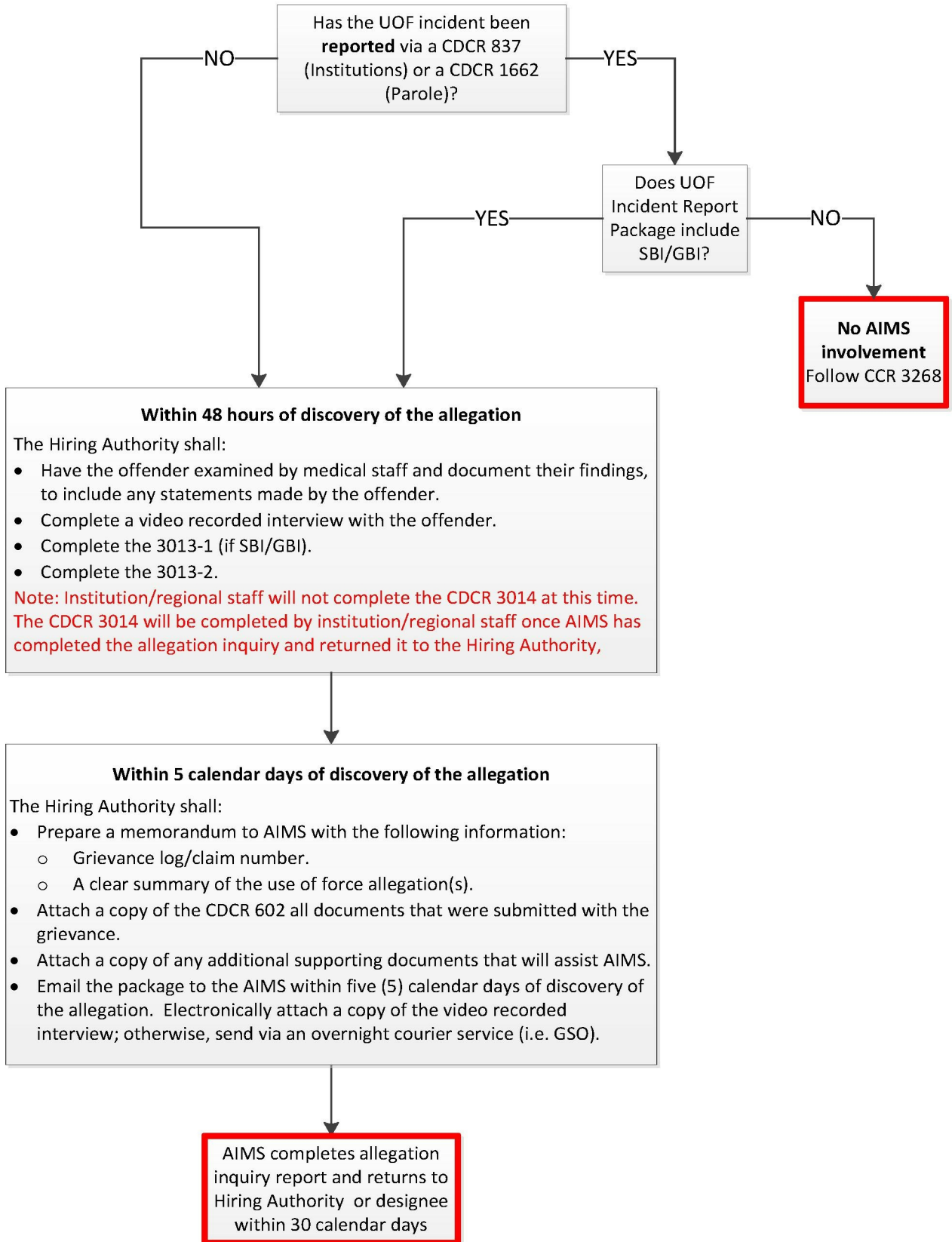
EXHIBIT Q

AIMS ROLE – Staff Complaint



Note: If at any time reasonable belief is established that staff misconduct occurred, the allegation inquiry shall be stopped, the AIMS report will be completed and the matter will be forwarded to the Hiring Authority for consideration of referral to the Office of Internal Affairs for a formal investigation.

AIMS ROLE - Grievance Alleging Unnecessary or Excessive Use of Force (UOF)



Note: If at any time reasonable belief is established that staff misconduct occurred, the allegation inquiry shall be stopped, the AIMS report will be completed and the matter will be forwarded to the Hiring Authority for consideration of referral to the Office of Internal Affairs for a formal investigation.

EXHIBIT R



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Penny Godbold
Email: pgodbold@rbgg.com

May 5, 2020

VIA ELECTRONIC MAIL ONLY

Tamiya Davis
CDCR Office of Legal Affairs
P.O. Box 942883
Sacramento, CA 94283
Tamiya.Davis@cdcr.ca.gov

Joanna B. Hood
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom*: Plaintiffs' Comments on Appeal Inquiry
Management System ("AIMS") Regulations
Our File No. 0581-03

Dear Tamiya and Joanna:

We write regarding Defendants' recently adopted Appeal Inquiry Management System ("AIMS") regulations. The emergency regulations were filed with the Secretary of State on March 25, 2020 and will take effect on June 1, 2020.

For years, Plaintiffs' counsel has raised the problem of staff misconduct in CDCR prisons and the effect this misconduct has on *Armstrong* class members. They and all incarcerated people with disabilities are fearful of abuse and retaliation if they invoke grievance procedures. The California Department of Corrections and Rehabilitation ("CDCR") has now made changes to the process of investigating grievances filed by incarcerated people to improve the staff misconduct complaint process in hopes of reducing this serious and far too widespread issue. As we demonstrated in the Motion to Stop Defendants from Assaulting, Abusing, and Retaliating against People with Disabilities at RJD, filed February 28, 2020 ("Plaintiffs' Motion"), staff misconduct against incarcerated people with disabilities is undermining *Armstrong* remedial orders by creating an atmosphere in which class members are afraid to seek help from correctional officers. Our understanding is that AIMS is an effort to eliminate deficiencies—including bias of investigators and poor quality investigations—that were identified by the Office of the Inspector General ("OIG") during a review of the staff complaint process at Salinas Valley State Prison ("SVSP"). (See Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct attached hereto as **Exhibit A**; see also Fact Sheet regarding Special Review of Salinas

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 2

Valley State Prison’s “SVSP” Processing of Inmate Allegations of Staff Misconduct attached hereto as **Exhibit B.**)

We applaud CDCR’s effort to reform the staff misconduct process. That said, Plaintiffs’ counsel began raising significant concerns about the shortcomings of AIMS over a year ago. (*See* Joint Case Management Statement, Dkt. 2844 at 5-6). The draft AIMS regulations were the subject of a March 2, 2020, Budget Subcommittee hearing on Public Safety, in which legislators specifically directed CDCR to address Plaintiffs’ counsel’s concerns regarding deficiencies in the draft regulations. Despite this admonition, CDCR nonetheless moved the regulations forward on an “emergency” basis without addressing Plaintiffs’ concerns. After years of negotiations, CDCR did not even notify us that it was filing the emergency regulations. Instead, in the midst of the COVID-19 pandemic, the five-day window for public comment on emergency regulations passed before we discovered CDCR had filed the regulations. An excerpted copy of the approved regulations is attached hereto as **Exhibit C.**

Plaintiffs nevertheless offer the following preliminary, big-picture, comments regarding deficits in the AIMS process as described in the emergency regulations. Plaintiffs reserve the right to make additional comments in their reply brief in support of Plaintiffs’ Motion and again later if the regulations are revised.

I. Many Staff Misconduct Cases Will Be Excluded From AIMS

The new AIMS regulations do not cover all allegations of staff misconduct. Shockingly, some of the most serious and prevalent allegations of staff misconduct—those related to reported Use of Force (“UOF”) incidents—are excluded from the new AIMS grievance process. Confusingly, allegations of UOF causing serious bodily injury are included in AIMS, while all other UOF incidents are excluded. (**Exhibit C**, § 3484(d).) Thus, a significant number of the allegations of staff misconduct described in Plaintiffs’ Motion would be excluded from the new AIMS process. Similarly, the UOF allegations included in nearly a quarter of the complaints reviewed in the SVSP report would also be excluded. (*See* **Exhibit B**, page 2, showing 46 allegations of UOF raised.) It is essential to any staff misconduct investigation and disciplinary system that all UOF allegations are properly investigated and staff are held accountable when violations are found. Excluding these allegations from AIMS means they remain in the prison-level inquiry process—a process the OIG has found is subject to biased and inadequately trained investigators who demonstrate poor evidence collection, interviewing and report writing skills. (*See* **Exhibit B.**)

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Page 3

Complaints originating from third parties, such as letters from Plaintiffs' counsel, telephone calls from family members, or even reports from prison staff members, are also excluded from the new AIMS process. AIMS only applies to inmate grievances, defined as a written request from a claimant, inmate or parolee. (**Exhibit C**, § 3481.) This restriction excludes important allegations from the process and deters the filing of misconduct complaints. Many incarcerated people are afraid to initiate grievances due to fear of retaliation. Allowing incarcerated people to report staff misconduct through sources outside of the prison reduces the risk and fear of retaliation and encourages the reporting of staff misconduct. Similarly, reports of misconduct made by other staff members should be considered especially serious and, given the risk of retaliation faced by reporting staff, should be addressed by OIA under AIMS, and not by local prison staff.

II. AIMS Fails to Address Issues Faced by *Armstrong* Class Members

Requiring incarcerated people to submit staff misconduct grievances in writing, and on specific grievance forms, discourages the filing of such complaints by anyone with a disability that affects reading, writing, or comprehension. (*See Exhibit C*, § 3482.) CDCR forms are still not available in all accessible formats, such as electronic, which could allow people who are blind or low vision to complete forms independently with screen reader technology. Electronic formats could also allow class members who have upper hand or arm disabilities, among others, to complete these forms independently. As it stands, having staff or ADA workers assist these class members in completing staff misconduct grievance forms places them at greater risk of retaliation and denies people with disabilities equal access to the staff misconduct grievance process in violation of the Americans with Disabilities Act ("ADA"). (28 CFR § 35.130(b).)

AIMS should apply broadly to other ways of communicating staff misconduct reports, including oral reports of misconduct made by incarcerated people and reports from third parties. Defendants should also take steps to implement disability accommodations so that class members will have equal access to participate in writing. The new AIMS 602 forms do not even advise incarcerated people that they have a right to receive assistance in completing the forms. The regulations themselves are also mostly silent on ADA accommodations.

III. CDCR's Multiple, Different Investigation Systems Create Confusion and Lead to Inconsistent Results

In order to avoid confusing, duplicative, and inconsistent results, **all** allegations of staff misconduct should be subject to a simplified process. Instead, the AIMS regulations create an additional avenue for the investigation of staff misconduct complaints—a

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May 5, 2020
Page 4

system that already contains multiple and sometimes duplicative processes for inquiry, including appeal inquiries. It is confusing and defies logic to have multiple systems all with the same purpose—investigating staff misconduct.

Many incidents that give rise to staff misconduct complaints include multiple allegations of misconduct all derived from the same set of facts. At SVSP, 188 inmate complaints contained 268 different allegations of staff misconduct. Under the AIMS regulations, Defendants parse these incidents, diverting some of allegations to OIA for investigation while leaving others to be addressed at the local prison. For example, a complaint alleging an officer assault and a verbal retaliation threat by the same officer if the person reports the assault—a common scenario reported in Plaintiffs’ Motion—would be split, with the threat allegation going to OIA and the assault allegation remaining at the prison for investigation. This incident, and all potential allegations surrounding this incident, should instead be investigated together, in the same process, by the same independent investigators. Any disciplinary action resulting from the incident in question should consider the totality of the circumstances, which is impossible under AIMS as it is now conceived.

IV. The Hiring Authority Has Too Much Control Over the Staff Misconduct Process

Currently, the Hiring Authority (the Warden) is the ultimate decision maker in the staff misconduct investigation and discipline process. The Warden is responsible for deciding whether misconduct occurred and what type of discipline should result. (DOM § 33030.5.2.) CDCR has made clear that role will not change under AIMS. (*See Case Management Statement, Dkt. 2936 at 8-9.*)

The Hiring Authority retains too much power in the process, without having specialized training or clear guidance. The power to decide whether OIA’s findings amount to misconduct and, if so, what discipline should result, should not hinge on one person, especially one who works at the prison where the alleged misconduct arose. The Hiring Authority has every incentive to look the other way at alleged misconduct and they run the risk of looking bad if too much misconduct is occurring under their watch.

Further, leaving the ultimate decision to the Hiring Authority leaves the most crucial decisions underlying any allegation of staff misconduct in CDCR to be decided any of several different ways depending on the prison and the Warden responsible. This is especially problematic because the guidelines for Hiring Authorities to use in deciding what discipline to impose, the Employee Disciplinary Matrix, are discretionary. (*See DOM § 33030.17.*) It is impossible to envision how CDCR could implement any early

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May 5, 2020
Page 5

warning system relying on the outcome of staff misconduct disciplinary action when the results can vary widely prison to prison, Warden to Warden, and potentially, given bias, case by case with the same Warden. AIMS does not resolve these longstanding problems, despite ongoing negotiations with Plaintiffs' counsel.

In addition, under AIMS, allegations of staff misconduct can be referred to OIA for an *inquiry* when there is no reasonable belief that the misconduct occurred or for an *investigation* when there is a reasonable belief that the misconduct occurred. (Exhibit A § 3484(a)(1)-(2).) CDCR has made clear that it is the Hiring Authority that should retain the discretion to make this decision. (Dkt. 2936 at 9.) The distinction between informal *inquiry* and formal *investigation* are no longer necessary because OIA is conducting the review at both stages under AIMS. Thus, it is inefficient and defies logic to retain the Hiring Authority as a stop-gap decision maker in this process. Allegations of staff misconduct that are referred to OIA should stay with OIA through the entire fact-finding process, regardless of whether or not there is a reasonable belief staff misconduct occurred and regardless of whether that belief changes over the course of the investigation. The inefficiency of this step is especially concerning because the OIG has identified that delays in Hiring Authorities referring cases to OIA is an ongoing problem. (See Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, OIG Report, November 2019, at 4.).

V. Training Requirements for AIMS Investigators Remains Unclear

The OIG found that inadequate training of investigators led to numerous weaknesses in their technical proficiencies, including problems with interviewing skills, evidence collection, and report writing. (See Special Review of SVSP, Exhibit C, at 35-52.) While Plaintiffs' counsel are optimistic that staff at OIA conducting inquiries under the new AIMS process are better trained, we remain unclear as to whether they have received any specific training regarding staff misconduct inquiries and whether they will be receiving certification of investigators, as recommended by the OIG. (Exhibit C at 89.)

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Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 6

We look forward to hearing from you regarding how CDCR will address the deficiencies in the AIMS regulations and process.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/Penny Godbold

By: Penny Godbold
Of Counsel

PG:cg

Encls. Exhibits A-C

cc:

Anthony Carter,

CDCR Regulation and Policy Management Branch, RPMB@cdcr.ca.gov

Jennifer Kim

Assembly Budget Subcommittee on Public Safety, Jennifer.Kim@asm.ca.gov

Roy Wesley, Office of the Inspector General

Ed Swanson

Alexander "Lex" Powell

Nicholas Meyer

Patricia Ferguson

OLA Armstrong

Annakarina De La Torre-Fennell

Sean Lodholz

Trace Maoirino

Anthony Tartaglio

Adam Fouch

Prison Law Office

EXHIBIT B

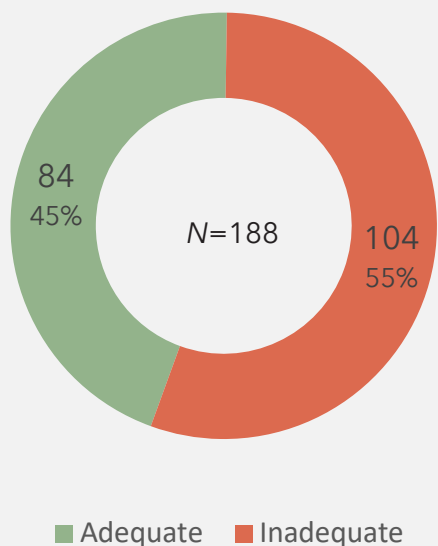


OIG | OFFICE of the INSPECTOR GENERAL

Independent Prison Oversight

Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct

In January 2018, the secretary of CDCR and attorneys from the Prison Law Office requested that the OIG assess the prison's process of handling inmate allegations of staff misconduct, "staff complaints." The department allows local prison supervisors to conduct "staff complaint inquiries," which are a preliminary collection of evidence pertaining to an allegation. Our review included a retrospective paper review of 61 staff complaint inquiries the prison completed between December 1, 2017, and February 28, 2018, and an onsite monitoring review of 127 staff complaint inquiries the prison initiated between March 1, 2018, and May 31, 2018. **This totaled 188 staff complaint inquiries, which included 268 allegations.** Our review also included our assessment of nine additional complaints submitted to the department by the Prison Law Office.



104 of the 188 Inquiry Reviews (55%) Were **Inadequate**

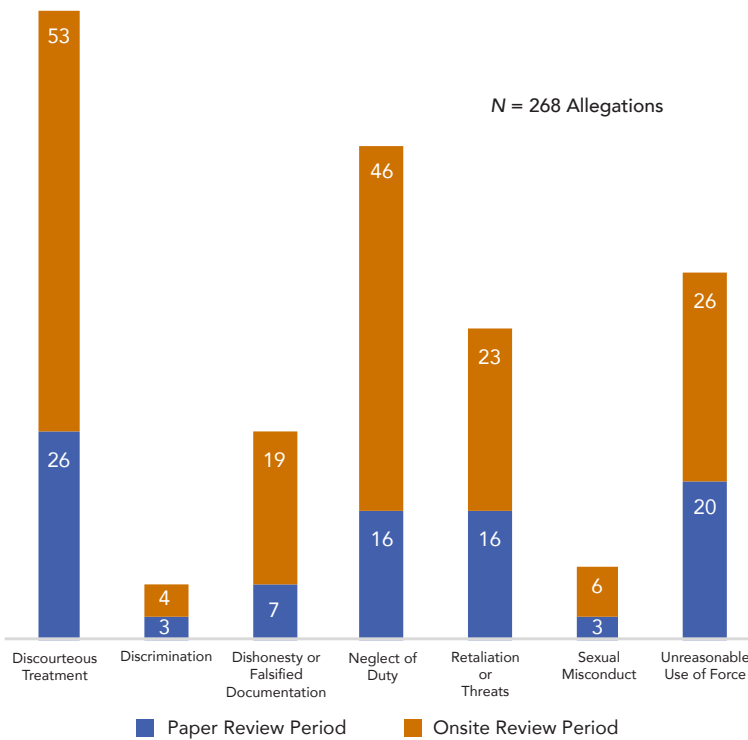
- Poor interviewing techniques
- Poor evidence collection
- Poor report writing
- Lack of training
- Lack of independence
 - * Display of bias
 - * Inappropriate reviewers
 - * Breached confidentiality

Other Notable Results

- » The work across all ranks of reviewers was **lacking in quality**
- » There was **at least one significant deficiency** in 173 of the 188 inquiries (92%)
- » Reviewers frequently **failed to ask relevant questions** in interviews
- » Reviewers **failed to collect relevant evidence** in 60% of relevant inquiries
- » 108 of the 188 inquiry reports were **incomplete, inaccurate, or both** (57%)
- » Of the 61 reviewers, **zero received meaningful training** in inquiry-related techniques of interviewing, collecting evidence, or writing reports
- » In 113 of the 188 inquiries (60%), **the reviewer worked on the same yard and shift** as the subject employee
- » In five instances, the **reviewer was involved in the incident** related to the allegation
- » Reviewers frequently **compromised the confidentiality** of the process

Office of the Inspector General

Number and Type of Allegations Included in the 188 Staff Complaint Inquiries We Reviewed



Sample Allegations

- An officer made several derogatory comments about the appellant’s sexual identity.
- The officer discriminated against black inmates with disciplinary actions.
- An officer planted a weapon in the appellant’s cell during a cell search.
- The investigative services unit improperly housed the appellant in the administrative segregation unit because he would not agree to be an informant.
- An officer told other inmates that the appellant was reporting their actions to authorities in an attempt to have the appellant “assaulted, stabbed up, or killed.”
- A female officer told the appellant to strip naked or else he would not be released from his cell to attend morning yard.
- An officer shut the food port on the appellant’s hand after he attempted to pick up a medication cup he dropped during medication pass. He was left stuck in the food port for 15 to 30 minutes.

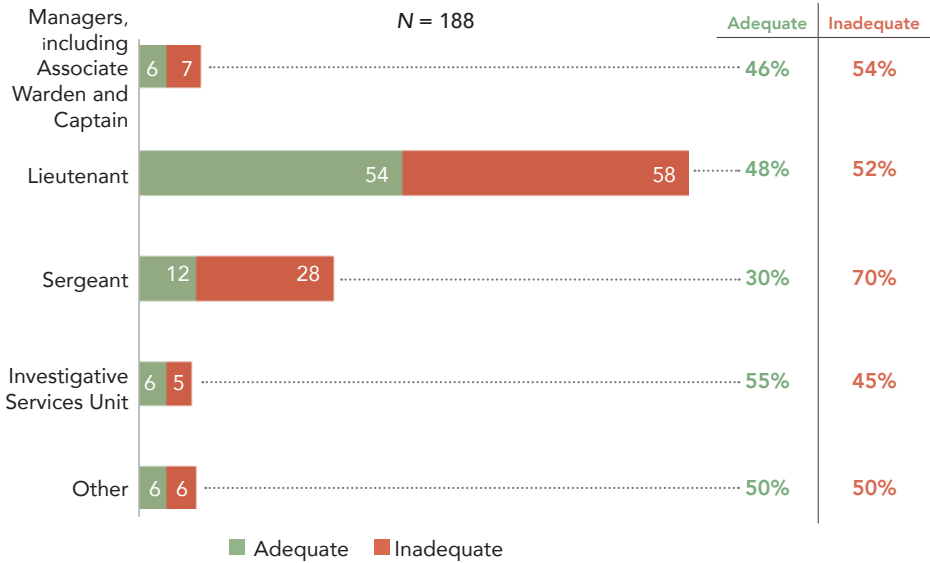
Corrective Actions for the Five Incidents in Which Staff Were Found to Have Violated Policy

| Employee | Allegation Type | Description of Corrective Action | Number of Days It Took to Complete the Corrective Action |
|--------------------------|------------------------|----------------------------------|--|
| Officers 1 and 2 | Unreasonable Force | Training | 411 |
| Officers 3 and 4 | Neglect of Duty | Training | 240 |
| Officer 5 | Unreasonable Force | Training | 239 |
| Unidentified Employee(s) | Neglect of Duty | None | – |
| Officer 6 | Discourteous Treatment | Letter of Instruction | 22 |

Salinas Valley rarely found misconduct from its staff complaint inquiries, and in the few cases where it determined that staff violated policy, it did not always provide corrective action—**until we asked about it.** The hiring authority determined that subject staff **did not** violate policy in 183 of the 188 complaint inquiries we reviewed (97%).

Office of the Inspector General

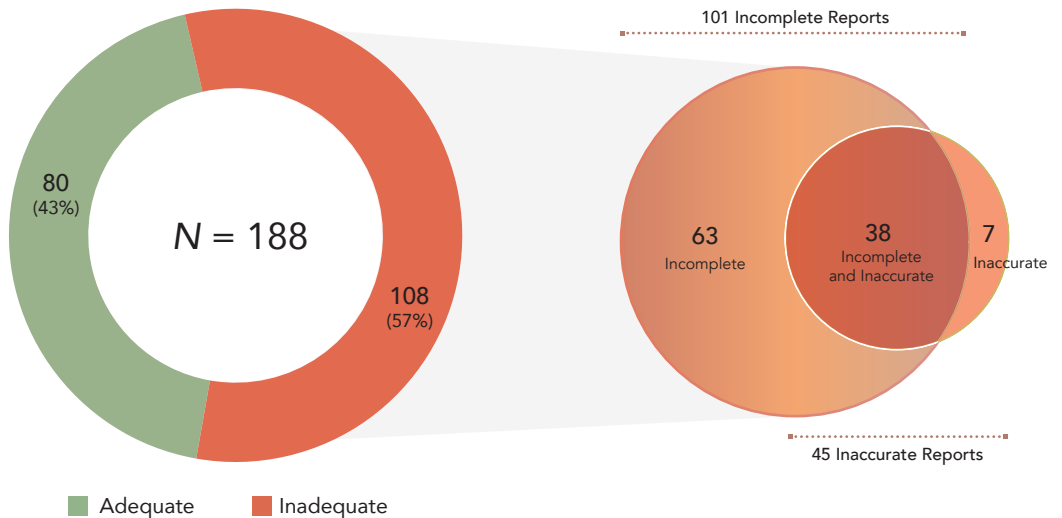
A reviewer's rank of service had little effect on the quality of the staff complaint inquiry; **we found the work across all ranks to be lacking in quality.** Sergeants performed the poorest at 70% inadequate. Lieutenants, the most common reviewers, produced inadequate inquiries 52% of the time.



| Assessment Question | Relevant Period | |
|---|-----------------|--------|
| | Paper | Onsite |
| Question 1 Was the staff complaint inquiry assigned to an appropriate reviewer? | ✓ | ✓ |
| Question 2 Did the reviewer properly conduct an interview of the appellant? | (partial) ✓ | ✓ |
| Question 3 Did the reviewer properly conduct an interview of the witnesses? | ✗ | ✓ |
| Question 4 Did the reviewer properly conduct an interview of the subjects? | ✗ | ✓ |
| Question 5 Did the reviewer collect all relevant documentary evidence? | ✓ | ✓ |
| Question 6 Did the reviewer prepare an adequate inquiry report? | ✓ | ✓ |

For cases we found inadequate, we did not conclude that staff members alleged to have committed misconduct actually violated policy or were found responsible for the alleged misconduct. Rather, we found that the prison's handling of these cases was inadequate because it did not rely on an adequate process to fully support its conclusions.

Staff complaint inquiry **reports** we reviewed were often incomplete, inaccurate, or both



Office of the Inspector General

Deficient Interviewing Skills

According to an appellant, staff at Salinas Valley had subjected him to cruel and unusual punishment as part of a use-of-force incident. The inmate's appeal stated, in its entirety, "I would like to do a video interview for staff misconduct and for cruel and unusual punishment on 3-18-18. I thank you for your time." After contacting the appellant by telephone and advising him that the call concerned his staff complaint at Salinas Valley, the reviewer asked the appellant only one question: "Do you have anything else?" The appellant responded by giving a lengthy statement about the incident, including the comment, "All the officers knew." Instead of inquiring about this statement, the reviewer simply repeated, "Do you have anything else?" The appellant made a few additional comments, after which the reviewer concluded the interview. The appellant had not identified any of the officers by name, and the reviewer failed to ask him obvious questions, such as whether the appellant could identify any of the officers by name. The reviewer also failed to ask follow-up questions, such as whether the inmate could clarify his statement or provide a general description of the officers involved in the incident.

Report, page 40

Discounting Corroborating Evidence

An inmate alleged that an officer made several derogatory remarks about the inmate's sexual identity. The reviewer did not collect the employee sign-in sheet to determine whether any staff witnesses were present. The reviewer interviewed an inmate witness who corroborated the appellant's allegation, but the reviewer concluded there was no additional evidence beyond the statements of these two inmates to support the allegation. The hiring authority assigned the case to the prison's Investigative Services Unit, but specified that the appellant's witness undergo a computerized voice stress analysis test (i.e., a lie detector). The witness, however, declined to participate once he learned of the lie detector test. With this approach to collecting evidence, an inmate's statements held no value as evidence unless it was validated by a machine.

Report, page 59

Compromised Confidentiality

A reviewer told our monitor that the subject of the appellant's complaint was actually working in the control booth in the inmate's housing unit. Nevertheless, the reviewer conducted the interview in an office located immediately beneath the control booth, with the gun port window open (the window in the ceiling), and within visual and hearing range of the subject officer. In fact, the OIG monitor believed that the subject officer in the control booth was actively listening to the conversation. The reviewer apparently thought he appropriately addressed the matter when he told the appellant that the subject officer was working in the control booth immediately over their room and would be able to overhear the interview. The reviewer then asked the appellant if the subject officer's listening to the interview bothered him; the appellant replied, "No." Notwithstanding the appellant's response, the interview should have taken place in a private setting, the subject officer should not have known the conversation was about the appeal, and the appellant should not have been asked to make that decision.

Report, pages 61-63

Display of Bias

An appellant claimed during his interview that a female officer harassed him, calling him a "bitch" and a "coward"; falsely accused him of misbehavior; and issued him an undeserved counseling memorandum. And yet, the male reviewer stated: "She is always professional with me." The appellant replied, in effect, that the subject officer would naturally be professional with the reviewer because the reviewer held a higher rank and was a supervisor. The reviewer then responded: "Are you calling me a liar?" This reviewer's interviewing technique resulted in the inmate disengaging from the interview.

Report, pages 40-41

.....

A reviewer commented on the subject's professionalism, demeanor, and pride while concluding that no policy violation occurred. The reviewer wrote, "Through my observations [the subject] is very professional with staff and inmates. She has a no[-]nonsense demeanor about herself and takes a lot of pride in her job. Staff did not violate any policy." The reviewer's personal opinion in favor of his fellow coworker appeared to have been the primary basis for the conclusion.

Report, page 55

Failure to Interview Appropriate Persons

An inmate alleged that upon returning to his bunk, he found that staff had discarded his dental prosthetics during a search of his living area in the dormitory. The inmate alleged that when he spoke to the sergeant about his dental prosthetics, the sergeant responded, "Tough shit[.] 602 it." We were onsite for the reviewer's interview with this appellant, who commented to the reviewer that his dental prosthetics had been accidentally discarded and that he did not want his appeal to be a staff complaint; he was merely unhappy with the sergeant's response because the inmate wanted to get his missing prosthetics replaced as soon as possible. The inmate said he was "not looking to get anyone in trouble" and that too many officers had been present for him to be able to identify any one individual. The reviewer did not obtain the sign-in sheet for staff or the logbook to identify potential staff witnesses, nor did the reviewer interview any witnesses. The reviewer did obtain the search receipt provided to the inmate, but it included only the inmate's name, number, and assigned bunk, and no staff member had signed the receipt. We were not permitted to observe the reviewer's interview of the named sergeant, but the completed staff complaint inquiry report packet noted that the reviewer asked the sergeant whether he recalled making the statement, "Tough shit[.] 602 it," and that the sergeant replied, "I spoke to several inmates that night and informed them that I was not involved with the searches, [and] that they would have to 602 the Supervisor who oversaw the searches and those conducting the searches." The reviewer concluded that because the subject sergeant was not the sergeant in charge of the searches, the inmate had "misidentified the sergeant." In fact, the reviewer noted the name of the sergeant who was actually in charge of the searches—the one who should have been included as a subject—but did not interview him.

Report, pages 33-34

Office of the Inspector General**Recommendations****The OIG recommends the department do the following:**

1. Reassign the responsibility to conduct staff complaint inquiries **outside the prison's command structure**;
2. Adopt a **regionalized model** for staffing purposes as is done with the Office of Internal Affairs;
3. Provide **comprehensive and ongoing training** for all staff who perform inquiries. Consider certification from the California Commission on Peace Officer Standards and Training for those conducting inquiries. Assign inquiries only to those staff who have been trained;
4. Require **audio recording** of all subjects and witnesses;
5. Consider **redefining an inquiry** so that it is not considered a less-laborious than or an inferior process to an investigation;
6. Require all reviewers to report all evidence they uncover and prohibit them from including in reports their personal opinions or from drawing conclusions or making recommendations in the report. In other words, they should **just report the facts**.
7. Evaluate its notification procedures so that it **promptly notifies appellants** when reviewers need additional time to complete the staff complaint process beyond the regulatory time frame; and
8. Ensure that **staff receive the corrective or adverse actions** that are ordered by the hiring authority when policy violations occur. **Routine audits** should be completed and the results reported publicly.



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EXHIBIT S



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

May 2020

2019 Annual Report

*Summary of Reports and
Status of Recommendations*

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STATE of CALIFORNIA

OIG | OFFICE of the
INSPECTOR GENERAL

Roy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional Offices

Sacramento
Bakersfield
Rancho Cucamonga

May 20, 2020

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

Dear Governor and Legislative Leaders:

This annual report summarizes the work the Office of the Inspector General completed during 2019. In 2019, we issued 12 public reports that detailed our oversight of the California Department of Corrections and Rehabilitation, which comprised the following: five reports on medical inspection results; two reports concerning monitoring the department's internal investigations and its employee disciplinary process; one report on monitoring the department's use of force; one special review; one report concerning the status of the *Blueprint*; one report on the California Rehabilitation Oversight Board; and the OIG's annual report for 2018.

This report also enumerates the recommendations we made to the California Department of Corrections and Rehabilitation in 2019, as well as, when required, the department's responses and its action plans to address our recommendations.

Respectfully submitted,



Roy W. Wesley
Inspector General

Gavin Newsom, Governor

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Foreword

Vision

The California prison system, by its very nature, operates almost entirely behind walls, both literal and figurative. The Office of the Inspector General (the OIG) exists to provide a window through which the citizens of the State can witness that system and be assured of its soundness. By statutory as well as judicial mandate, our agency oversees and reports on several operations of the California Department of Corrections and Rehabilitation (the department). We act as the eyes and ears of the public, measuring the department's adherence to its own policies and, when appropriate, recommending changes to improve its operations.

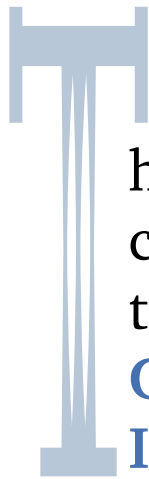
Our objective is to create an oversight agency that provides outstanding service to our stakeholders, our government, and the people of the State of California. We do this through diligent monitoring, honest assessment, and dedication to improving the correctional system of our State. Our overriding concern is providing transparency to the correctional system so that lessons learned may be adopted as best practices.

Mission

Although the OIG's singular vision is to provide transparency, our mission encompasses multiple areas, and our staff serve in numerous roles overseeing distinct aspects of the department's operations, which include discipline monitoring, complaint intake, warden vetting, medical inspections, the California Rehabilitation Oversight Board (C-ROB), and a variety of special assignments.

Therefore, to safeguard the integrity of the State's correctional system, we work to provide oversight and transparency through monitoring, reporting, and recommending improvements on the policies and practices of the department.

— Roy W. Wesley
Inspector General



here is hereby
created
the independent
**Office of the
Inspector General**
which shall not be
a subdivision of
any other
governmental
entity.

— *State of California*
Penal Code section 6125

Organizational Overview and Functions

The Office of the Inspector General (OIG) is an independent agency of the State of California. First established by State statute in 1994 to conduct investigations, review policy, and conduct management review audits within California's correctional system, California Penal Code sections 2641 and 6125–6141 provide our agency's statutory authority in detail, outlining our establishment and operations.

The Governor appoints the Inspector General to a six-year term, subject to California State Senate confirmation. The Governor appointed our current Inspector General, Roy W. Wesley, on September 13, 2017; his term will expire in 2023.

The OIG is organized into a headquarters operation, which encompasses executive and administrative functions and is located in Sacramento, and three regional offices: north, central, and south. The northern regional office is located in Sacramento, co-located with our headquarters; the central regional office is in Bakersfield; and the southern regional office is in Rancho Cucamonga.

Our staff consist of a skilled team of professionals, including attorneys with expertise in investigations, criminal law, and employment law, as well as inspectors knowledgeable in correctional policy, operations, and auditing.

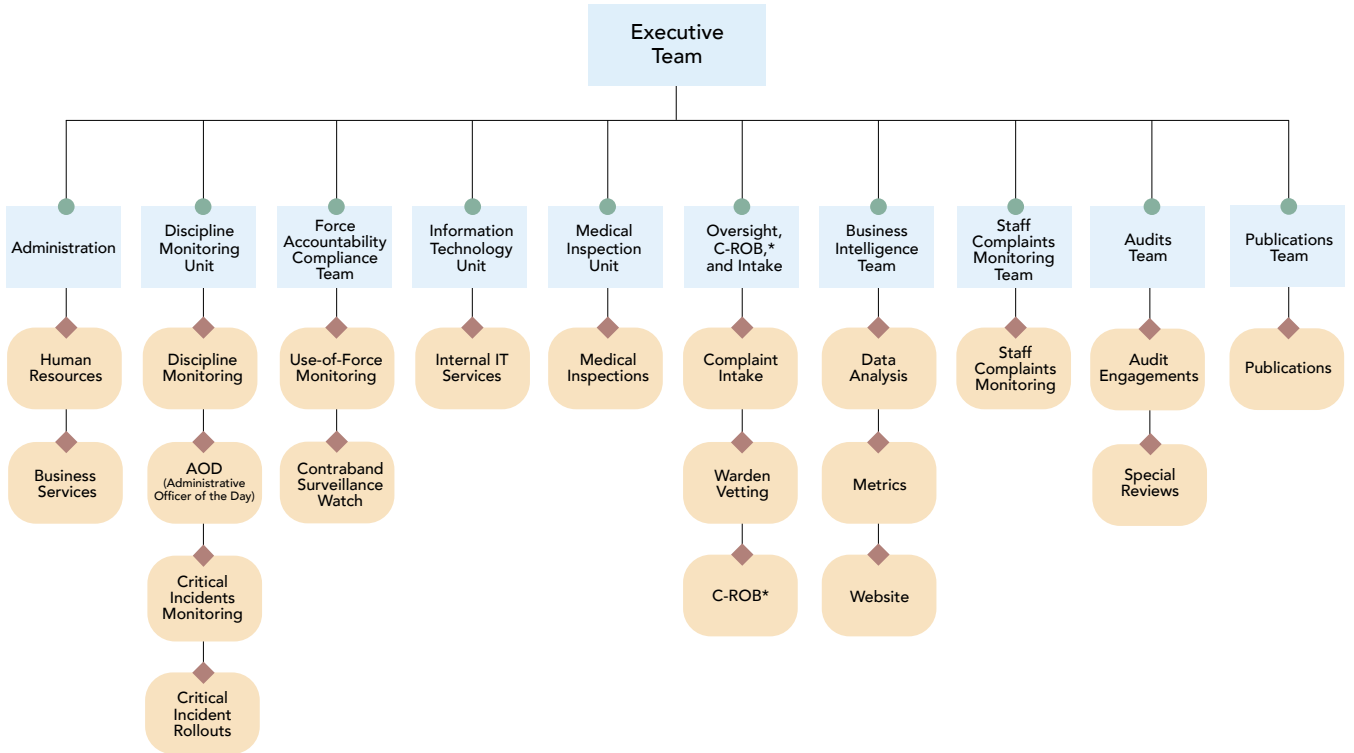
The OIG also employs a cadre of medical professionals, including doctors and nurses, in the Medical Inspection Unit. These practitioners evaluate policy adherence and quality of care within the prison system. Analysts, editors, and administrative staff within the OIG contribute in various capacities, all of which are integral in achieving our mission.

The OIG performs a variety of oversight functions relative to the department, including the areas listed below:

- Medical inspections
- Audits and authorized special reviews
- Complaint hotline and intake
- Reviewing and investigating retaliation complaints

- Handling complaints filed directly with the OIG by inmates, employees, and other stakeholders regarding the department
- Special reviews authorized by the Legislature or the Governor's Office
- Ombudsperson for, and monitor of, Sexual Abuse in Detention Elimination Act (SADEA)/Prison Rape Elimination Act (PREA) cases
- Coordinating and chairing the California Rehabilitation Oversight Board (C-ROB)
- Warden and superintendent vetting
- Monitoring of:
 - Internal investigations and litigation of employee disciplinary actions
 - Critical incidents, including inmate deaths, large-scale riots, hunger strikes, and so forth
 - Staff complaints and inmate grievances
 - Adherence to the *Blueprint* plan for the future of the department
 - Use of force
 - Contraband surveillance watch

Figure 1. Office of the Inspector General Organizational Chart, 2020



* C-ROB is the abbreviation for the California Rehabilitation Oversight Board.

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Reports Published in 2019

In 2019, we issued 12 public reports detailing our oversight of the California Department of Corrections and Rehabilitation: five reports on medical inspection results; two reports on monitoring the department's internal investigations and employee disciplinary process; one report on monitoring the department's use of force; one special review; one report on the status of the *Blueprint*; one report on the California Rehabilitation Oversight Board; and our 2018 annual report. Visit our website, www.oig.ca.gov, to view our public reports.

Internal Investigations and Employee Discipline Monitoring

OIG attorneys are responsible for the contemporaneous oversight of the department's internal investigations and employee disciplinary process. We account for our monitoring of these activities twice annually when we publish our discipline monitoring reports. These reports document our assessment of the quality of the department's internal investigations and its handling of the employee disciplinary process, as well our evaluation of the department's adherence to its own rules and procedures when performing these activities. Our attorneys monitor and assess the work of the Office of Internal Affairs' special agents who conduct the department's internal investigations, the hiring authorities who make decisions concerning employee disciplinary actions, and the performance of department attorneys throughout the disciplinary and appeals processes.

As part of our monitoring process, we monitored the Office of Internal Affairs' weekly central intake meetings pursuant to which the Office of Internal Affairs made decisions concerning employee misconduct referrals it received from the hiring authorities. In 2019, the Office of Internal Affairs addressed and made decisions concerning 2,161 referrals for investigation or for authorization to take direct disciplinary action. Of these, the Office of Internal Affairs approved 2,033 referrals; and the OIG identified 352 of these as cases to monitor. We identified for monitoring the most serious and sensitive internal investigations, including those involving allegations of dishonesty, sexual misconduct, use of deadly force, code of silence, abuse of authority, and criminal conduct.

In addition, we monitored and closed 328 cases in 2019. Of those cases, 269 involved administrative allegations, and 59 cases involved alleged criminal activity by departmental staff members. Furthermore, of the 328 cases, we monitored and closed 23 administrative investigations and 11 criminal investigations, all of which involved the use of deadly force.

In 2019, the OIG implemented a new method for assessing the department's internal investigations and employee disciplinary process in which we categorized our assessments into six separate phases, or indicators. The OIG assessed how well the hiring authorities discovered alleged employee misconduct and referred the allegations to the Office of Internal Affairs; how well the Office of Internal Affairs processed and analyzed the referrals; the performance of the Office of Internal Affairs in investigating the allegations; the performance of the hiring authorities in making findings concerning the investigations and the alleged misconduct and processing the misconduct cases; the performance of the department attorneys in providing legal advice to the Office of Internal Affairs; and how well the department advocates (either department attorneys or employee relations officers) represented the department in employee misconduct litigation.

When assessing a case, the OIG attorney answered a series of compliance- and performance-related questions and, depending on the answers, assigned a rating of *superior*, *satisfactory*, or *poor* to each of the six indicators, in addition to providing an overall rating for each case. To monitor and track this data, we assigned a numerical point value to each of the individual indicator ratings and to the overall rating for each case. The OIG assigned four points for a *superior* rating, three points for a *satisfactory* rating, and two points for a *poor* rating. We then added the assigned points for each indicator and divided the total by the number of points possible to arrive at a weighted average score. We assigned a rating of *superior* to weighted averages that fell between 100 percent and 80 percent, *satisfactory* to weighted averages that fell between 79 percent and 70 percent, and *poor* to weighted averages that fell between 69 percent and 50 percent.

Using the above methodology, we found that, from January through December 2019, overall the department's performance was *satisfactory* in conducting internal investigations and handling the employee disciplinary process. However, hiring authorities' overall performance was *poor* in processing the employee discipline cases, and the department attorneys' performance was *poor* in providing legal representation during litigation.

The OIG also identified and made recommendations regarding specific issues concerning the department's internal investigations and employee disciplinary process. The OIG recommended that the Office of Internal Affairs eliminate the practice of identifying allegations at the beginning of and during investigations, and instead allow the hiring authority to determine the appropriate allegations at the conclusion of investigations. In addition, the OIG noted that, in 2019, the Office of Internal Affairs returned 1,184 cases to hiring authorities without interviewing the employee suspected of misconduct. In many of those cases, the department had no statement from the employee who allegedly committed misconduct and was unaware of the employee's side of the story until after discipline had already been imposed. We recommended that the Office of Internal Affairs conduct interviews of employees suspected of misconduct in all cases.

The Office of Internal Affairs also returned some referrals to hiring authorities and requested that the hiring authorities conduct further inquiry. The OIG noted that the department does not have a system or methodology to track these cases. We recommended that the department develop a method for noting in its case-management system which cases the Office of Internal Affairs rejected because there was no reasonable belief that misconduct had occurred and which cases it rejected and then returned to the hiring authority to conduct further inquiry. The OIG also recommended that the Office of Internal Affairs develop a method for tracking the cases it returns to the hiring authority for inquiry to ensure that those further inquiries are actually conducted and are completed in a timely manner.

Finally, the OIG recommended that the department clarify its policy establishing a specific time frame in which a hiring authority must conduct an investigative and disciplinary findings conference, and by requiring that the conference be held within a specific number of days after a hiring authority receives an investigative report or notice of approval for direct action from the Office of Internal Affairs. Furthermore, to prevent delays in processing disciplinary actions, the OIG recommended that the department implement a policy requiring that department attorneys and employee relations officers compose disciplinary actions within a specific number of days of the investigative and disciplinary findings conference. This step would help ensure that employees receive timely service of disciplinary actions and assist in reducing unnecessary costs the department incurs while, in some cases, it waits for a department attorney or employee relations officer to compose a disciplinary action.

Use-of-Force Monitoring

Another means by which we fulfill our oversight mandate is by monitoring the department's process for reviewing use-of-force incidents at institutional executive review committee meetings, departmental executive review committee meetings, and division force review committee meetings. We use a comprehensive database designed for our staff to effectively examine the various circumstances surrounding uses of force by departmental staff. This tool aggregates information and allows for an in-depth analysis of use-of-force incidents. We meet quarterly with departmental executives to share information related to trends we observe. The OIG also participates as a nonvoting member of the department's Deadly Force Review Board.

In June 2019, we published *Monitoring the Use of Force: The California Department of Corrections and Rehabilitation Continues to Perform Well in Self-Assessing Its Use-of Force Incidents, but Has Shown Little Improvement in Its Overall Compliance With Policies and Procedures*. This report covered use-of-force incidents for which the department completed reviews during the period from January 1, 2018, through December 31, 2018. Carrying out our monitoring process, OIG inspectors visited every adult and juvenile institution and departmental headquarters, and both the northern and southern parole regions to attend 1,294 of the 1,764 executive review committee meetings (73 percent). During this one-year review period, our inspectors reviewed and analyzed 6,426 separate use-of-force incidents. Inmates alleged unreasonable force in 660 of the 6,426 incidents we monitored.

Statistics Regarding the Use of Force From January 1, 2018, Through December 31, 2018

- The OIG monitored 6,426 use-of-force incidents by attending 1,294 of the department's 1,764 executive review committee meetings (73 percent).
- Approximately 93 percent of the use-of-force incidents (5,996 of 6,426) occurred at State prisons and contract facilities housing adult inmates, with the remainder involving juvenile facilities (359), parole regions (57), and the Office of Correctional Safety (14).

- Approximately one-third of the incidents we reviewed occurred at only five State prisons: Salinas Valley State Prison (500); California State Prison, Sacramento (495); Kern Valley State Prison (484); California State Prison, Los Angeles County (421); and California State Prison, Corcoran (420).
- We monitored 6,426 incidents that involved 19,527 *applications* of force. An incident may involve more than one application of force. For example, two baton strikes count as two applications during a single incident. Chemical agents accounted for 9,736 (50 percent) of the total applications, while physical strength and holds accounted for 5,995 (31 percent). The remaining 19 percent of applications comprised force options such as less-lethal projectiles, baton strikes, tasers, and firearms.

Highlights of Our Use-of-Force Monitoring

The department continued to perform well in reviewing incidents; however, staff were fully compliant with departmental policies in only 55 percent of the use-of-force incidents. The department subjects its use-of-force incidents to several levels of review, which culminate with an executive review committee determining compliance with use-of-force policies and procedures. This process has proven effective in self-identifying instances of noncompliance. For example, while the department found that 55 percent of the incidents occurring during this period fully met policy standards, it identified its staff committed policy violations in 45 percent (2,883 of 6,426) of the incidents we monitored during this one-year period. We agreed with the vast majority of the department's compliance determinations, yet we also identified several instances of noncompliance that the department's review committees did not address.

The department's policy for the use of immediate force requires officers to provide justification for using force by articulating their reasoning in reports. For example, an officer may use force in response to a threat against the life of another person or to prevent great bodily injury or escape. Despite this standard and policy requirement, we concluded that officers did not adequately articulate an imminent threat in 95 of the 6,426 incidents (1.5 percent) we monitored during this one-year period, leading us to question whether the use of force was justified in those cases.

The department continues to garner low compliance with its procedures for video-recorded interviews required of inmates in use-of-force cases. Departmental policy requires that staff conduct video-recorded interviews with inmates who allege unnecessary or excessive use of force, or who sustain serious or great bodily injury, possibly from the use of force. The policy requires that staff record these interviews within 48 hours of discovering the injury or inmate allegation and that staff video-record any visible or alleged injuries. We noted the department's compliance rate with its own standards was only 51 percent during 2018. Despite the department's repeated attempts to provide additional training and direction to its staff regarding the requirements, the compliance rate remained low throughout this reporting period.

In controlled use-of-force incidents, the department's noncompliance rate also remained high, with at least one violation in 65 percent of incidents. The department requires institutional staff to follow "controlled force" procedures when an inmate's presence or conduct poses a threat, even if the inmate is located in an area that can be controlled or isolated. These procedures require advance planning and organization by custody, medical, and mental health staff. In addition, institutional staff must video-record the incident. Of the 100 controlled use-of-force incidents we monitored during the one-year review period, the department's executive review committees found that staff violated one or more of the department's controlled-force policies in 65 incidents (65 out of 100). Most of these violations occurred not in the application of the force itself, but rather in complying with the requirements for planning and organization prior to the actual force. While this showed progress compared with the compliance rate noted in our last report (a 75 percent noncompliance rate), there remains room for improvement.

Cycle 5 Medical Inspection Reports

Pursuant to Penal Code Section 6126 (f), the OIG conducts a medical inspection program for the purpose of reviewing the delivery of medical care at each of California's 35 adult institutions. Our clinicians perform objective, clinically appropriate, and metric-oriented medical inspections that offer insight into the quality of the medical care the department provides to its patients.

Table 1. OIG Cycle 5 Medical Inspections: Final Reports Published in 2019

| Institution Inspected | Publication Month | Overall Rating |
|---------------------------------|-------------------|-------------------|
| California Health Care Facility | April | <i>Inadequate</i> |
| Pleasant Valley State Prison | April | <i>Adequate</i> |
| San Quentin State Prison | February | <i>Inadequate</i> |
| California Institution for Men | January | <i>Inadequate</i> |
| Deuel Vocational Institution | January | <i>Inadequate</i> |

Source: The Office of the Inspector General medical inspection results.

In 2019, the OIG completed its fifth cycle of medical inspections and published five reports for the following institutions: Deuel Vocational Institution, California Institution for Men, San Quentin State Prison, Pleasant Valley State Prison, and California Health Care Facility, Stockton. The ratings for these five institutions resulted in one *adequate* and four *inadequate*, as set forth in Table 1 above.

The table lists the institutions for which we completed our Cycle 5 inspections and issued final reports, the month each report was published, and the rating we assigned to each institution. Through those reports, the OIG made 27 recommendations to the department to further improve the delivery of medical care to its patients.

We also commenced our sixth cycle of medical inspections in 2019. To date, the OIG completed inspections of the following five institutions: Valley State Prison; Wasco State Prison; California State Prison, Los Angeles County; California Correctional Center; and California State Prison, Solano. We anticipate publishing these inspection reports in 2020.¹

1. At the time of this report's publication, the world is enduring a novel coronavirus disease pandemic (COVID-19), which has resulted in severe economic and societal disruptions on a global scale. As a result, delays in carrying out our medical inspections in 2020 may occur.

Retaliation Claims

In addition to receiving complaints as described in the preceding paragraphs, our statutory authority directs us to receive and review complaints of retaliation that departmental employees levy against members of their management. Our Legal Services Unit analyzes each complainant's allegations to determine whether the complaint presents the legally required elements of a claim of retaliation. If the complaint meets this legal threshold, our staff investigate the allegations to determine whether retaliation occurred. If the OIG determines that the department's management subjected a departmental employee to unlawful retaliation, our office reports its findings to the department along with a recommendation for appropriate corrective action.

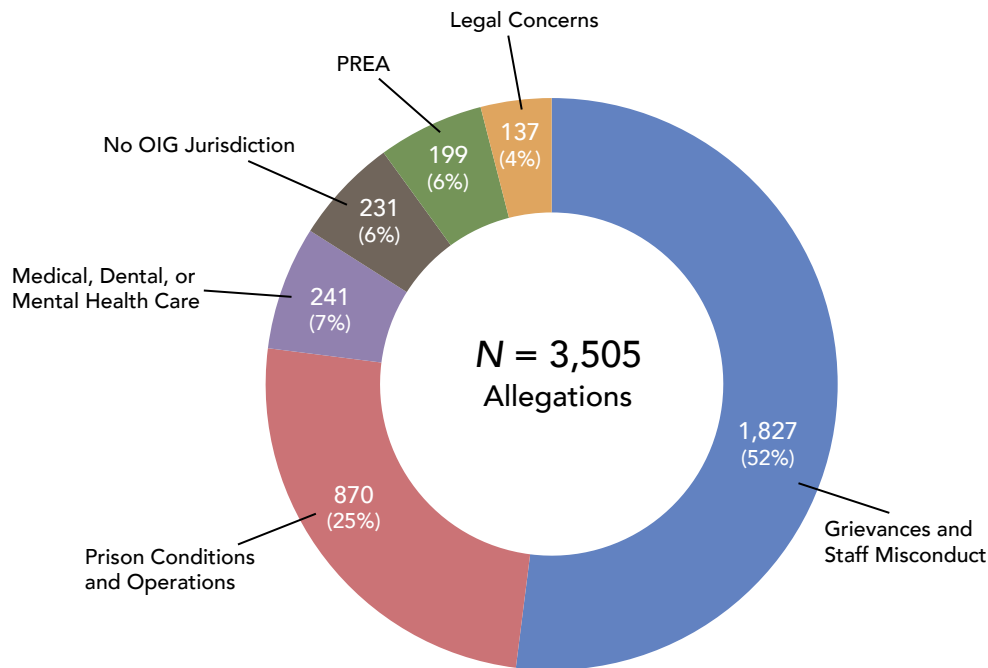
Due to public misperception regarding what constitutes whistleblower retaliation, few complaints present the legally required elements to state an actionable claim of retaliation. To counteract this misunderstanding, we engage with complainants to educate them on the elements of a retaliation claim, invite them to supplement their complaints with necessary information, and ask them questions we may have regarding the information they submitted.

In 2019, the OIG received 14 retaliation complaints, and our Legal Services Unit completed analyses of 11 of them. We also completed analyses of two complaints that had been pending from 2018. We determined that none fulfilled the legally required elements of a claim of retaliation. Three of the 14 complaints received in 2019 remain pending.

Complaint Intake

The OIG maintains a statewide complaint intake process that provides anyone a point of contact for expressing allegations of improper activity within the department. We receive complaints from inmates, parolees, families, departmental employees, and advocacy groups. Individuals submit complaints by sending us letters, calling our toll-free phone line, calling our main telephone number, or emailing us through our website. We screen all complaints within 24 hours of receipt to identify potential safety concerns involving departmental employees or inmates.

Figure 2. Types of Allegations Received in 2019



Source: The Office of the Inspector General.

In 2019, the OIG received 3,505 allegations of improper governmental activities, as shown as Figure 2 above. Based on these allegations, we opened 3,200 cases.² After we reviewed each complaint, we provided a written response to the complainant. Our office does not have the authority to conduct investigations; however, our staff conducted inquiries by reviewing the department's policies and procedures, by requesting relevant documentation from the institution, or by visiting the institution to observe and make recommendations to departmental administrators.

In 231 of the 3,200 cases, we determined that we did not have jurisdiction because the allegations pertained to county jails, federal prisons, or local law enforcement. In these cases, we referred the complainant to the most appropriate entity. Our office conducted either a preliminary inquiry or a field inquiry into the remaining 2,969 cases to assist the complainant or look into the alleged improper activity.

2. The reduction in the number of allegations received versus cases opened resulted from a complainant submitting a subsequent complaint involving the same allegation; these multiple allegations were merged into a single case.

We performed a preliminary inquiry for 2,924 cases wherein our staff analyzed the alleged activity, reviewed departmental policies and procedures, reviewed the inmate's case file, and requested additional documentation from the department, as needed.

In the vast majority of the cases, our inquiry resulted in our providing the complainants with advice on how to address their concerns with the department. Common examples of such advice include instructions on how to request services or navigate the department's appeals process, disciplinary process, and visiting process. On occasion, our advice included instructions on how to contact specific departmental divisions and offices for services or additional help.

In the following paragraphs, we discuss a sampling of the preliminary inquiries that we completed in 2019. These inquiry summaries exemplify the assistance we provided to complainants regarding both the department's appeals process and the process for requesting an investigation. Each of these complainants had been unsuccessful in their initial attempts to remedy these situations with departmental staff.

In one complaint, an inmate alleged that appeals staff were not responding to his appeals. The inmate alleged that a correctional officer transferred him to a new institution and incorrectly housed him in an upper bunk despite his having a medical condition requiring a lower bunk. The inmate stated that while housed at the new institution, he fell out of his upper bunk and sustained injuries.

We reviewed documents the inmate submitted, which included medical documents and responses from the appeals office initially returning his appeal for corrections and subsequently canceling the appeal. The OIG found the inmate had made multiple allegations within a submitted appeal and that the department's response requesting clarification was appropriate. The department requires that appeals issues be derived from a single event and may be rejected if they involve multiple issues that are not directly related to one event. The OIG also found the inmate subsequently requested that the department's appeals staff withdraw the appeal after writing our office. During our review of the department's records, we found conflicting records in its computer systems regarding the inmate's approval and need for lower bunk housing. Subsequent to the initial complaint, the department corrected these errors, updated the inmate's medical records for lower bunk housing, and housed the inmate in a lower bunk.

In another complaint, an inmate alleged that he was involved in a use-of-force incident with two correctional officers, after the inmate did not receive his vegetarian meal. The inmate alleged that, while employing a use of force, one of the officers lost his smartwatch inside the inmate's cell. The watch included the officer's personal information, which the inmate described in the complaint. The inmate alleged that due to his refusal to return the smartwatch to custody staff, his subsequent meals were withheld from him, and one officer stated, "You'll get to eat when you give up [return] the watch." The inmate stated he had not submitted a Form 602 "Inmate/Parolee Appeal" to departmental staff, but instead contacted our office, along with inmate advocacy groups and federal authorities.

Our office met with the inmate and explained that our authority precludes us from investigating his allegation. However, with the inmate's signed approval, we shared his complaint with the department to conduct an inquiry and determine whether an investigation was recommended. The hiring authority subsequently requested that the Office of Internal Affairs conduct an investigation of the involved officers.

Some preliminary inquiries involved safety and security threats or mental health conditions, which resulted in our immediate referral to the department. Our staff contacted institutions on 37 occasions to recommend that departmental staff conduct checks on an inmate's safety or mental health condition.

In one complaint, an inmate alleged that he was in fear for his life from other inmates and staff, due to a book he authored that was published in 2017, which included details about his past involvement with a security threat group.

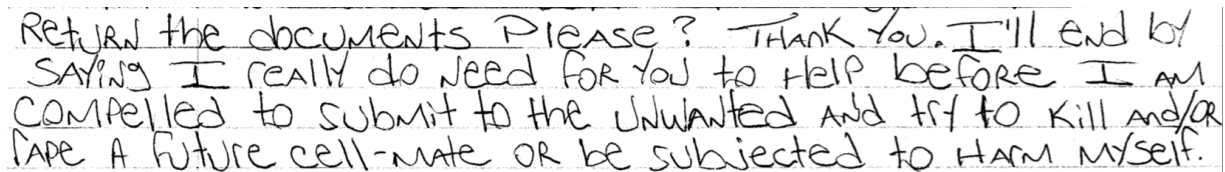
We reviewed documents the inmate submitted, which included an excerpt from his book, appeals forms, and committee documents regarding his pending transfer endorsement to another prison.

Our review of departmental records identified information that supported some of the inmate's allegations, for example, that he was scheduled to transfer to the same institution and housing yard of an inmate whom he had identified in his book. We found the inmate who authored the book did not have a separation alert (used to identify confidential and nonconfidential enemy concerns) with the inmate he cited in the book, which may have precluded a transfer to the same institution and housing location. We notified the hiring authority and members of the committee at the inmate's current prison who were to conduct a transfer review to ensure

that this inmate's safety would not be jeopardized due to his transfer to another institution.

However, we found that the inmate had transferred to the new institution eight days after we contacted the prior institution regarding his potential safety concern. The inmate he cited in the complaint was not initially housed on the same yard, but was later housed on the same yard with him for more than two months. After the inmate who authored the book had been housed at the institution for approximately two months, the department conducted a review of his alleged safety concerns, and the inmate notified departmental staff he had no safety concerns and that some inmates were "looking out for him." The inmate later returned to his initial institution by the end of 2019 due to being charged with an assault of a noninmate and battery on a peace officer.

Some inquiries require further contact and follow-up with hiring authorities or site visits to the institution: we call these *field inquiries*. During 2019, we reviewed 45 field inquiries. In one of the field inquiries, we received a complaint from an inmate claiming he should remain single-celled, as he had not had a cellmate for more than 14 years. The inmate stated the department was forcing him to be double-celled as his appeals to remain single-celled had been denied. His statement is reproduced below:



RETURN the documents Please? THANK YOU. I'll end by SAYING I really do need for you to HELP before I AM COMPELLED to submit to the UNWANTED and try to kill and/or RAPE A future cell-mate OR be subjected to HARM MYSELF.

Source: Inmate complaint submitted to the OIG's intake unit.

Our office notified the prison's Chief of Mental Health about the inmate's concerns and of the potential danger concerning both the inmate and a potential cellmate. Upon review and assessment of the inquiry, mental health staff indicated that departmental staff should use caution before *double celling* (the practice of placing two inmates into a single cell) this inmate, but also cited that it ultimately would not be a decision made by mental health staff. Subsequently, a Unit Classification Committee, which is typically chaired by staff at the level of facility captain or correctional captain, changed the inmate's status from single-cell to double-

cell. The decision to double-cell this inmate was affirmed by the hiring authority at the institution.

The OIG then recommended that the associate director (an individual with responsibility over several prisons within a particular mission, such as high-security institutions) reconsider whether this inmate should be double-celled based on the concerns cited above. The associate director concurred with the hiring authority's decision to double-cell this inmate, and the inmate was subsequently double-celled.

At 3:00 a.m., within 48 hours of being housed with an inmate deemed to be compatible, the inmate attacked his new cellmate while he was asleep. The inmate subsequently wrote to our office describing the attack, stating he first hit his new cellmate in the head with a *hot pot* (an appliance used to heat water) and then struck him with a portable fan. Our office found the victim sustained a three-centimeter laceration on his right temple and a two-centimeter laceration on his left temple, with no loss of consciousness. On the day after the in-cell fight, the inmate who had written to our office was approved for single-cell status for a period of observation and at the time of this report, remains single-celled due to his continuing threats to kill a cellmate if given one.

Another field inquiry complaint concerned a lack of resources for inmate advisory councils. In 2019, our office met with most of the inmate councils statewide to share information about our office and allow representatives to share their concerns in a confidential setting. A third party wrote on behalf of one of the inmates who had met with our representatives at one of these meetings. It was alleged that custody staff were no longer allowing the council sufficient time to meet and had removed supplies from the council's assigned area.

Our office met with the hiring authority to share these concerns, and investigative staff initiated an inquiry into the allegations. The inquiry included interviews of four inmates who were members of the inmate advisory council. Some of the inmates confirmed delays in receiving supplies such as paper, pens, and appeals forms, and confirmed that the inmate advisory council was without a permanent office. The inquiry also revealed that a sergeant assigned to assist in providing office supplies and office space had been on long-term leave. This resulted in a period of time during which the council representatives experienced delays in receiving supplies. Our office recommended that the inquiry include all council members who had met with our office's representative.

However, the hiring authority disagreed and did not conduct any additional interviews. Because the hiring authority declined to interview a percipient witness, our office did not agree that an adequate inquiry was conducted.

Sexual Abuse in Detention Elimination Act Ombudsperson Claims

According to California Penal Code section 2641, the OIG is authorized to serve as the ombudsperson (designated, impartial advocate) for complaints related to the Sexual Abuse in Detention Elimination Act (SADEA).³ Acting in this capacity, we review allegations of mishandled sexual abuse investigations within correctional institutions, maintain the confidentiality of sexual abuse victims, and ensure an impartial resolution of inmate and ward sexual abuse complaints. Our staff supplies informational posters to all adult institutions, Division of Juvenile Justice facilities, and parole offices that explain how to report these allegations through our toll-free phone line or by mail. By acting as an external reporting mechanism, we increase transparency and provide another option to inmates who are concerned with reporting alleged abuse or harassment directly to departmental staff.

In 2019, the department notified the OIG through sexual incident reports or critical incident notifications of sexual harassment or sexual misconduct allegations, commonly referred to as Prison Rape Elimination Act or *PREA* allegations. As seen in Table 2 on the next page, we received 967 sexual incident reports, which is a slight increase from the 943 we received the prior year. The department also notified us of 284 critical incidents related to sexual misconduct or sexual harassment allegations made against a departmental staff member. This is a substantial decrease of 127 critical incidents (or 45 percent), compared with 411 incidents reported in 2018.

According to departmental policy, an inmate may report an allegation of sexual violence, sexual misconduct, or sexual harassment to any staff member, verbally or in writing, through the inmate appeals process, the sexual assault hotline, or a third party. In addition, an inmate may report these allegations

3. The federal Prison Rape Elimination Act (PREA) of 2003 provided national standards to eliminate sexual abuse in detention facilities. In 2005, California enacted Assembly Bill 550, the Sexual Abuse in Detention Elimination Act (SADEA), which provides the Office of the Inspector General with the authority to investigate reports of the mishandling of sexual abuse incidents.

Table 2. Sexual Misconduct Allegations

| Type | Incident | Sexual Incident Report | Critical Incident Notification |
|--|---------------------------|------------------------|--------------------------------|
| Inmate-on-Inmate | Nonconsensual Sexual Acts | 229 | 3* |
| | Abusive Sexual Acts | 164 | 0 |
| | Sexual Harassment | 87 | 0 |
| | Subtotal | 480 | 3 |
| Staff-on-Inmate | Sexual Misconduct | 332 | 216 |
| | Sexual Harassment | 155 | 65 |
| | Subtotal | 487 | 281 |
| Total Sexual Misconduct Allegations | | 967 | 284 |

* The OIG does not require sending critical incident notifications for inmate-on-inmate allegations to our administrative officer, as they are reported separately via sexual incident reports. Furthermore, three inmates could not identify whether the alleged suspect was an inmate or staff member.

Source: The Office of the Inspector General Tracking and Reporting System.

directly to the OIG’s ombudsperson for sexual abuse in detention elimination. Any departmental employee who observes an incident or is provided with a report by a victim must complete the required reports, including a sexual incident report.⁴ Allegations must be investigated by a trained departmental investigator and reviewed by the institution’s hiring authority.

In 2019, our staff also reviewed 199 complaints received directly from inmates, family members, and third parties alleging sexual misconduct or sexual harassment policy violations. In 32 instances, our office referred these allegations to the department for its staff to conduct an initial investigation or inquiry.

One allegation involved an inmate who reported being a victim of a staff-on-inmate sexual misconduct incident, stating that during a clothed body search, he

would lean into her [correctional officer] & she in me so she would snick [sic] in a quick lick & kiss on the back or side of my neck. I feel & she felt we can trust each other & I can keep my mouth shot [sic] & “not kiss & tell” anyone about us . . . so she felt good & comfortable & trusted me & felt safe cause I had her back on the yard & she had mine.

4. The Survey of Sexual Violence (SSV) form is part of the U.S. Department of Justice, Bureau of Justice Statistics National Prison Rape Statistics Program, which gathers mandated data of sexual assault in correctional facilities, under the Prison Rape Elimination Act (PREA) of 2003.

We reported the allegation to the institution's PREA compliance manager, who confirmed this allegation had not been reported to departmental staff.

Our staff reviewed the inquiry and found that the alleged victim was interviewed by a locally designated investigator on the same day our office reported the allegation to the institution's PREA compliance manager. During the interview, the inmate confirmed he made the PREA allegation to our office and stated that he had a relationship with this officer for a period of two years. The inmate alleged that the officer would deliberately conduct clothed body searches of him while he was on the recreational yard, and stated that she would lick and kiss his neck and grab his crotch area during these searches. The inmate initially stated this behavior occurred from 2016 through 2018, but later clarified these incidents actually ended in (November or December) 2017. The locally designated investigator identified discrepancies between the reported allegation dates, and determined there was a lack of corroborating evidence and witnesses to support any of the allegations. As a result, departmental staff concluded that the PREA allegation was unfounded.

In another allegation, an inmate also reported being a victim of a staff-on-inmate sexual misconduct incident, stating that a mental health employee was "paying me cash money to masturbate for her for a few months giving me her address/phone # to keep in contact with her" upon his release from prison. Our office met with the inmate, and we explained that our authority did not include the ability to investigate these allegations. However, with the inmate's signed approval, we shared his complaint with the department to conduct an inquiry and determine whether an investigation is recommended. We also reported the allegation to the institution's PREA compliance manager, who confirmed this allegation had not been reported to departmental staff.

Departmental staff initiated a PREA inquiry into this allegation, along with an inquiry into the safety of the California Correctional Health Care Services mental health employee. On the same day, the inmate received a rules violation report for indecent exposure as witnessed by the same mental health employee. A few weeks after the inmate's allegation, the inmate was found in possession of the mental health employee's confidential personal information. Departmental investigative staff issued a staff separation alert (staff safety concern) to ensure the mental health employee and inmate had no further contact, along with a cease-and-desist notice to the inmate directing all forms of communication to end. Departmental staff conducted an inquiry and referred the

allegation to the Office of Internal Affairs. The Office of Internal Affairs accepted this case for an investigation, which remains pending as of the date of publishing this report.

Special Reviews

The Office of the Inspector General completed one special review in 2019. In January 2018, the secretary of the department and attorneys from the Prison Law Office requested that the OIG assess the effectiveness of Salinas Valley State Prison's (Salinas Valley) process of handling inmate allegations of staff misconduct, commonly referred to as staff complaints.⁵ The prison conducts staff complaint inquiries—a precursor to a formal investigation—to address such allegations. A staff complaint inquiry includes the gathering of evidence, through interviews and document collection, and can evolve into a formal investigation if the prison suspects staff misconduct serious enough to warrant disciplinary action. This special review encompassed two periods: a retrospective review of 61 staff complaint inquiries that the prison completed between December 1, 2017, and February 28, 2018, and an on-site monitoring review of 127 staff complaint inquiries that the prison initiated between March 1, 2018, and May 31, 2018. The special review also included our assessment of nine additional staff complaints that the Prison Law Office submitted to the department. We published our report on January 25, 2019.

When inmates believe they have been the victim of staff mistreatment or abuse, inmates may file a staff complaint, which the prison calls an appeal. The prison may reject the appeal, request an investigation by the Office of Internal Affairs, or conduct a staff complaint inquiry. A supervisor—typically a sergeant or a lieutenant—is assigned to work on the staff complaint inquiry, in addition to all other regular duties. That supervisor, referred to as a *reviewer* for the purposes of this process, collects evidence and conducts interviews of the inmate appellant, of inmate witnesses and staff witnesses, and of the staff member who is the subject of the complaint. The reviewer then provides a written report to the hiring authority based on

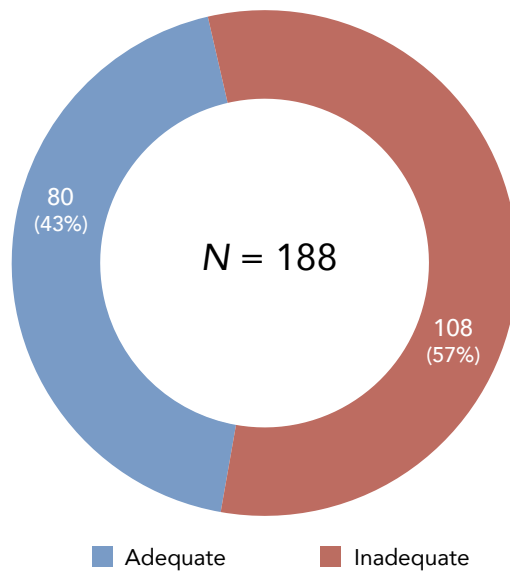
5. This assessment comprised a *review*. We differentiate this term from the term *investigation* in two primary respects. First, a review focuses on the adequacy of a *process*, whereas an investigation focuses on the appropriateness of an individual's *behavior*. Second, a review's intended outcome is fundamentally different from that of an investigation: a review may result in recommendations regarding policies and procedures, whereas an investigation may result in disciplinary or criminal action against individuals due to their behavior, if warranted.

the results of the interviews, along with any reports and analysis completed, and evidence the reviewer received during the inquiry.

Of the 188 staff complaint inquiries we reviewed, the prison determined that its staff did not violate policy in 183 of them (97 percent). However, we found that the dependability of the staff complaint inquiries was significantly marred by reviewers' inadequate investigative skills—notably, their deficiencies in interviewing, collecting evidence, and writing reports. These inadequacies resulted in final reports that were often incomplete or inaccurate, or both incomplete and inaccurate. Based on these overall procedural deficiencies, we determined that prison staff completed more than half of the staff complaint inquiries inadequately, which meant the hiring authority was deprived of adequate investigative results to make determinations. The hiring authority found that staff had violated policy in five cases, took corrective action in four cases, and determined corrective action was not possible in the fifth case. Furthermore, the hiring authority determined that, of the four, only one case warranted a formal investigation.

Our conclusions, however, were not meant to convey whether the hiring authority's decisions were correct or incorrect, or whether accused staff members were responsible for committing the alleged misconduct; rather, we pointed out that the hiring authority made decisions based on inadequate investigative work. We found at least one significant deficiency in 173 of the 188 staff complaint inquiries (92 percent); for example, the work across all ranks of reviewers lacked quality; reviewers failed to ask relevant questions in interviews, failed to collect relevant evidence, compromised the confidentiality of the process, and displayed bias against inmates; and none of the reviewers received meaningful training in the inquiry-related techniques of interviewing, collecting evidence, or writing reports. On the next page, Figure 3 (reproduced from the special review) shows the distribution.

Figure 3. Quality of the Staff Complaint Inquiry Reports



Source: Data and analysis by the Office of the Inspector General.

Although this special review reported only on Salinas Valley, the process we reviewed prevails at prisons statewide. Therefore, the conditions we found may also exist to some degree at other institutions. To that end, we offered the department the following recommendations:

- Reassign the responsibility for conducting staff complaint inquiries to an entity outside the prison's command structure;
- Adopt a regionalized monitoring model for staffing purposes as is done with the Office of Internal Affairs;
- Provide comprehensive, ongoing training for all staff who perform inquiries. Consider requiring staff who perform inquiries to obtain certification from the California Commission on Peace Officer Standards and Training. Assign inquiries only to staff who have completed the required training;
- Require audio recording of all subjects and witnesses;

- Consider redefining an inquiry so that it is not considered less laborious or inferior to an investigation;
- Require reviewers to report all evidence they uncover and prohibit them from stating their personal opinions, drawing conclusions, or making recommendations in reports. In other words, they should just report the facts;
- Evaluate its notification procedures so that it promptly notifies appellants when reviewers need additional time to complete the staff complaint process beyond the regulatory time frame; and
- Ensure that staff receive the corrective or adverse actions that the hiring authority orders when policy violations occur. Complete routine audits in a timely manner, and report the results publicly.

In response to the special review, the department created a new section in the Office of Internal Affairs called the Allegation Inquiry Management Section (AIMS). The department assigned a chief deputy, six captains, and 36 lieutenants to the section. The section will conduct inquiries of some allegations of staff misconduct.

Over the past year, the California Legislature enacted legislation that established new mandates for the OIG. In July 2019, the California Legislature allocated an additional 3.5 million dollars to the OIG's annual budget, and in October 2019, the Legislature enacted legislation requiring the OIG to monitor inmate complaints regarding departmental staff. The new legislation also assigns the OIG authority to conduct audits of departmental programs and operations. To utilize the additional funding and accommodate the new legislative mandates, the OIG began to establish new units within its office.

The OIG is in the process of establishing a new unit dedicated to monitoring staff complaints submitted by inmates. Our staff complaints monitoring team will consist of four inspectors and a supervisor who will monitor select departmental staff complaint inquiries conducted by AIMS. The OIG is developing policies and procedures, and a process for accepting and monitoring staff complaint inquiries from the department. We will publish an annual report of our monitoring results, findings, and recommendations. We anticipate issuing our first report in 2021.

Corrective Action Plan Updates for the Department

The OIG published 12 formal reports that contained recommendations in 2019. The recommendations in these reports promote greater transparency, process improvements, increased accountability, and higher adherence to policies and constitutional standards.

Status of Recommendations Made to the Department in 2019

The following exhibit outlines the nine recommendations we made in June and November 2019 as published in our two monitoring reports relating to investigation and disciplinary processes. The department has fully implemented one recommendation and has not implemented eight recommendations.

Exhibit 1. Status of Recommendations on Monitoring Internal Investigations and the Employee Disciplinary Process, 2019

| OIG Investigation and Disciplinary Process Reports | Description of Recommendation | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|--|---|--|--|
| Jan.–June 2019 (Issued Nov. 2019) | The OIG recommended that the Office of Internal Affairs eliminate the practice of special agents identifying allegations at the beginning of and during investigations, and instead allow the hiring authority to determine the appropriate allegations upon the conclusion of the investigation. | The department is in the process of identifying an expert to review the <i>Madrid</i> reforms and make recommendations regarding the stakeholder's role and processes. | Not implemented |
| | The OIG recommended the Office of Internal Affairs conduct interviews of employees suspected of misconduct in all cases. | The department does not intend to interview employees suspected of misconduct in all cases. | Not implemented |
| | The OIG recommended that the Office of Internal Affairs develop a mechanism in its case management system to differentiate between hiring authority employee misconduct referrals it rejects because there is no reasonable belief of employee misconduct and those it rejects for the hiring authority to conduct further inquiry, and to develop a procedure to track the cases the Office of Internal Affairs returns to hiring authorities for further inquiry. | The Office of Internal Affairs has implemented a plan to hold cases as inquiries during the Central Intake Process when more information is needed to make a decision. The Office of Internal Affairs will reject cases when there is no reasonable belief that misconduct occurred. | Not implemented |
| | The OIG recommended that the department develop a precise policy setting the specific time frame in which a hiring authority must conduct investigative and disciplinary findings conferences and make findings at the conference after receiving the referred case from the Office of Internal Affairs. | The Office of Legal Affairs is in the process of revising Article 22 and drafting a regulation that will set forth the time frame for hiring authorities to conduct investigative and disciplinary findings conferences. | Not implemented |
| | The OIG recommended that the department implement a policy requiring department attorneys and employee relations officers to provide all disciplinary actions to the hiring authority within a specific number of days after the investigative and disciplinary findings conference to ensure timely service of disciplinary actions and reduce unnecessary costs. | The Office of Legal Affairs is drafting a revision to Article 22 and regulations and will consider this recommendation during the revision process. | Not implemented |

Continued on next page.

Exhibit 1. Status of Recommendations on Monitoring Internal Investigations and the Employee Disciplinary Process, 2019 (continued)

| OIG Investigation and Disciplinary Process Reports | Description of Recommendation | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|---|--|---|---|
| July–Dec. 2018 (Issued June 2019) | The OIG recommended that the Office of Internal Affairs submit criminal cases to the prosecuting agency prior to the deadline to file misdemeanor charges unless the prosecuting agency indicates that it will not consider filing misdemeanor charges. | The Office of Internal Affairs will continue to submit both misdemeanor and felony investigations within the applicable statutes and as soon as operationally possible. | Not implemented |
| | The OIG recommended the Office of Internal Affairs consult with prosecuting agencies at the beginning of criminal investigations to determine whether the prosecuting agency objects to the department conducting a concurrent administrative investigation. | The Office of Internal Affairs will continue to submit both misdemeanor and felony investigations within the applicable statutes and as soon as operationally possible. | Not implemented |
| | The OIG recommended the department reassess its internal review process so that it can detect and prevent delays in processing disciplinary actions. | The Employment Advocacy and Prosecution Team (EAPT) will attempt to implement this recommendation in the revisions of Article 22 or the new CMS 4.0 system. | Not implemented |
| | The OIG recommended the department rescind the prior chief counsel's directive regarding service of disciplinary actions. | EAPT rescinded the prior chief counsel's directive and now requires that the department serve disciplinary actions within 30 days of the proposed decision made at the findings and penalty conference. | Implemented |

The following exhibit outlines the four recommendations we made in June 2019 as published in the report on monitoring the use of force. The department has fully implemented one recommendation and has partially implemented three recommendations.

Exhibit 2. Status of Recommendations on Monitoring the Use of Force, 2019

| Description of Recommendation | Departmental Unit | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|--|--|--|---|
| Ensure that the department validates the data collected in the new tracking system for accuracy and evaluates the data for monitoring use-of-force trends. | Division of Adult Institutions (DAI) | DAI will research ways to validate data collected in the new Incident Report Tracking (IRT) component of the Strategic Offender Management System (SOMS) when it comes online. DAI will evaluate the data collected in IRT for trends in use of force (UOF). | Partially Implemented: The department implemented its new Incident Report Tracking (IRT) on January 1, 2020; however, due to the recent implementation, the department has not demonstrated how the data collected will assist in tracking use-of-force trends. We will continue to monitor the department's implementation progress for this recommendation. |
| | Division of Adult Parole Operations (DAPO) | The SOMS IRT is a comprehensive tool that allows the department to track and report incidents and will provide aggregate statistical information statewide. Upon IRT implementation, the Fidelity Assurance and Outcomes Unit (FAOU) will be responsible for maintaining all DAPO UOF data and statistical reports related to UOF incidents for the purposes of monitoring trends, detecting patterns, and reporting data to the DAPO executive staff. | Partially implemented: The department stated that it replaced its previous Incident Report Tracking System (IRTS) with a new IRT to be implemented January 2020. However, the department has not demonstrated that the implementation was completed and currently in use. We will continue to monitor the department's implementation progress for this recommendation. |
| | DJJ Headquarters | The AGPA analyzes, tracks, and monitors the UOF trends and reports it in the Quarterly Report. The Captain reviews the Quarterly Report and provides a report. | Partially implemented: The department stated it is implementing a component in the IRT to track and validate data specific to compliance of policies and procedures. However, the IRT deployment is currently pending approval of related training materials. We will continue to monitor the department's implementation progress for this recommendation. |
| Ensure that managers hold staff accountable for deficiencies in the video-recorded interview process. | Division of Adult Institutions (DAI) | Managers and supervisors will use corrective action to hold their staff accountable for policy violations in the allegation video-recorded interview process. | Partially implemented: The department stated it will use corrective action to hold staff accountable for policy violations specific to the video-recorded interview process. However, the department has not demonstrated how hiring authorities can use this information in real time, when making decisions on compliance issues prior to or during committee meetings. We will continue to monitor the department's implementation progress for this recommendation. |
| | DJJ Headquarters | The UOF Captain will follow up with manager(s) to ensure that corrective actions taken against supervisors are being carried out and documented in their files and that the 844s are being sent to the Stockton Training Center for tracking. If the manager(s) are not doing the above, the following will take place: 1) Providing a copy of the policy for review 2) Training 3) Work Improvement Discussion (WID) 4) Adverse action | Fully implemented |

Continued on next page.

Exhibit 2. Status of Recommendations on Monitoring the Use of Force, 2019 (continued)

| Description of Recommendation | Departmental Unit | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|--|--------------------------------------|--|--|
| Ensure that managers hold staff accountable for violations of policy related to controlled use-of-force incidents. | Division of Adult Institutions (DAI) | Managers and supervisors will use corrective action to hold staff accountable for policy violations related to controlled UOF incidents. | Partially implemented: The department stated it will use corrective action to hold staff accountable for policy violations specific to the video-recorded interview process. However, the department has not demonstrated how hiring authorities can use this information in real time when making decisions on compliance issues prior to or during committee meetings. We will continue to monitor the department's implementation progress for this recommendation. |
| | DJJ Headquarters | <p>The UOF Captain will follow up with manager(s) to ensure that corrective actions taken against supervisors are being carried out and documented in their files and that the 844s are being sent to the Stockton Training Center for tracking.</p> <p>If the manager(s) are not doing the above, the following actions will take place:</p> <ol style="list-style-type: none"> 1) Providing a copy of the policy for review 2) Training 3) Work Improvement Discussion (WID) 4) Adverse action | Fully implemented |
| Require all staff at contract facilities to attend use-of-force training to ensure compliance with the department's use-of-force policy. | Division of Adult Institutions (DAI) | All contract staff are required to attend training in the California Department of Corrections and Rehabilitation UOF policy. Staff are provided initial training during new employee orientation, as well as annual refresher training. | Fully implemented |

We offered 27 recommendations in our medical inspection reports to both California Correctional Health Care Services and the department. Currently, while we do not formally follow up on responses or actions to these recommendations from either California Correctional Health Care Services or the department, we continue to observe and address the concerns expressed in prior recommendations from previous cycles.

Exhibit 3. Medical Inspection Recommendations, 2019

| Institution | Description of Recommendations |
|--|--|
| <p>California Health Care Facility, Stockton (CHCF)</p> | <p>The chief executive officer (CEO) and the chief support executive (CSE) should ensure that all CHCF providers have access to and show proficiency using the radiology information system (RIS) to retrieve and review off-site radiology reports. Alternatively, CHCF can scan off-site radiology reports directly into the patient's electronic health record, which would be a more efficient method of enabling providers to review off-site reports. During this inspection, we found that the majority of CHCF providers did not review off-site radiology reports because they were inaccessible.</p> <p>The CEO and the CSE should identify and fix the processes we identified during this inspection that resulted in delayed or incomplete X-rays and laboratory tests.</p> <p>The CSE and the chief nurse executive (CNE) should rectify the problems we found whereby standby emergency medical services (SEMS) nurses did not consistently collect and process laboratory specimens when they performed tests during weekends.</p> <p>All CHCF executives should analyze why the processing of diagnostic and specialty reports was delayed and attempt to correct the issue. We found delays in both the initial retrieval and the providers' review of those reports.</p> <p>The CNE should train and improve the clinical performance of nurses in multiple areas. The training should focus on making thorough assessments, recording complete documentation, and administering all medications correctly. We found errors in these areas throughout the institution.</p> <p>The CEO, the CNE, and the pharmacist in charge should analyze why problems occurred with pharmacy and nursing processes, and adjust these processes to correct problems we found with medication administration and continuity.</p> <p>The chief medical executive (CME) should improve hiring, training, and monitoring processes to ensure sufficient provider quality. We found serious problems with providers' assessments, misdiagnoses, patient record reviews, and chronic care performance. Most CHCF staff attributed these problems to severe provider understaffing during this review period.</p> <p>The CEO and the CNE should adjust scheduling processes to ensure that patients who require urgent or short-interval specialty follow-ups receive them. During this inspection, we found that delayed specialty follow-ups occurred more frequently with urgent or expedited follow-up orders.</p> |
| <p>Pleasant Valley State Prison (PVSP)</p> | <p>The chief executive officer (CEO) should correct the review process of the Emergency Medical Response Review Committee (EMRRC): the EMRRC failed to identify problems with the institution's emergency response and care provided by providers and nurses in the triage and treatment area (TTA). PVSP needs a properly functioning EMRRC to identify and correct the institution's various lapses in emergency care.</p> <p>The CEO should address the numerous problems related to medications at PVSP by first improving the pharmacy's staffing levels. The pharmacist in charge and the chief nursing executive (CNE) should then implement quality improvement measures to address the numerous problems we found with medication management during this inspection.</p> <p>The CNE and the pharmacist in charge should correct and then monitor the medication transfer process to ensure medication continuity for patients transferring into and out of PVSP or returning from an outside hospital. During our inspection, we found serious problems with medication continuity in all transfer processes.</p> <p>The CNE should provide training to, and monitor, nurses in the receiving and release (R&R) and the TTA, as these nurses are the primary staff responsible for coordinating and ensuring the continuity of care for patients in these areas. During our inspection, nurses in the R&R and the TTA did not fulfill their responsibilities sufficiently.</p> <p>The CEO should revamp the specialty services processes to ensure that PVSP staff coordinate their efforts to deliver appropriate specialty care. During our inspection, we found a lack of coordination, resulting in poor tracking of specialty appointments and sporadic performance retrieving specialty reports at PVSP. The CEO and the CNE should also develop and implement a process to ensure the institution's staff refer those patients who refuse specialty services back to the primary provider for further evaluation.</p> <p>The chief medical executive (CME) should refine the current methods used to evaluate provider performance, as we found problems with providers' performance in the emergency setting and with their superficial reviews of medical records.</p> |

Continued on next page.

Exhibit 3. Medical Inspection Recommendations, 2019 (continued)

| Institution | Description of Recommendations |
|---|---|
| San Quentin State Prison (SQ) | <p>The chief nursing executive (CNE) should implement a comprehensive quality improvement program to improve the institution's delivery of reception center services, as we found problems with nursing performance and provider appointments during this inspection.</p> <p>The CNE and the pharmacist in charge should implement quality improvement measures to ensure proper medication continuity for patients returning from off-site hospitals, arriving from county jails, and receiving chronic care medications. We found room for improvement in these areas during this inspection.</p> |
| California Institution for Men (CIM) | <p>The chief medical executive (CME) should audit the records of patients returning from the hospital, an emergency department, or a specialty consultation to ensure that providers address all their patients' diagnoses, medications, and recommendations. The CME should also consider designating the chief physician and surgeon (CP&S) or another provider to review each of these records to ensure that the institution implements any urgent recommendations. We found serious lapses in care due to poor provider performance in this area.</p> <p>The CME should revamp the methods the institution uses to appraise provider performance. Although we found serious provider quality problems during this inspection, the CME was unaware of any provider performance issues.</p> <p>The chief nursing executive (CNE) should also inspect the records of patients returning from a hospital or emergency department to ensure that the nurses thoroughly review the discharge summaries, perform complete assessments, and implement essential recommendations.</p> <p>The CNE and the pharmacist in charge should launch a quality improvement program to increase medication continuity for patients who return from an outside emergency room or hospital. We found serious problems with medication continuity for these patients during our inspection.</p> <p>The CME should instruct providers to specify the appropriate clinical time frames for specialty services within electronic health record system orders. The CNE should instruct the specialty department to schedule services according to those time frames. These changes should help ensure that the institution schedules specialty appointments within clinically appropriate time frames.</p> <p>California Correctional Health Care Services (CCHCS) should modify the specialty access policy by eliminating both "routine" and "urgent" priority time frames. Instead, CCHCS should monitor specialty access by measuring the ability of each institution to provide specialty services within the time frame specified in each electronic health record system order.</p> |
| Deuel Vocational Institution (DVI) | <p>The chief executive officer (CEO) should ensure that all providers and nurses have access to any images and reports stored in the radiology information system–picture archive and communication system (RIS–PACS). During our inspection, we found that most of DVI's staff members were unable to access this important information.</p> <p>The pharmacist in charge and the chief nursing executive (CNE) should implement quality improvement processes to correct the numerous medication continuity problems we found during this inspection, including issues with chronic care, hospital, reception center, and other transfer medications.</p> <p>The CNE should evaluate and improve DVI's current nursing sick call process due to the prevalence and severity of errors we found during this inspection. The CNE should consider assigning clinic nurses, rather than triage and treatment area (TTA) nurses, responsibility for reviewing their own sick call requests and making their own triage decisions. The CNE should also consider having staff review sick call requests at a time other than the middle of the night, when patients are reluctant to awaken for a medical evaluation. We have found the best sick call practices occur when sick call nurses review requests before the clinic day begins. In this way, sick call nurses can prioritize their own appointments accordingly and have an opportunity to discuss the requests during huddles. Furthermore, patients are more likely to come to an evaluation during normal daytime hours.</p> <p>The CNE should also expand improvement efforts to advance the quality of nursing assessments and interventions in several areas, including sick call requests, transfers-in, transfers-out, and hospital returns. These efforts should include additional nurse training and monitoring.</p> <p>The CNE should implement additional training and monitoring for first medical responders and TTA nurses to ensure they accurately record the time and sequence of their assessments and interventions in accordance with the actual event.</p> |

The following exhibit outlines the four recommendations we made in June 2019 as published in our tenth report on *The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Court Oversight, and Improve the Prison System*. The department has fully implemented three recommendations and is in the process of implementing one other.

Exhibit 4. Status of *Blueprint* Recommendations, 2019

| Description of Recommendation | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|---|--|--|
| <p>The Office of the Inspector General recommended that the department take the following actions to meet its staffing level goals for rehabilitative programming:</p> | | |
| <p>Promptly advertise and recruit for all statewide vacant academic and career technical education teacher positions and utilize the "Substitute Academic Teacher (Correctional Facility)" job classification. We found that the department has 101 courses that are not operational, primarily due to teacher vacancies.</p> | <p>On a monthly basis, the department's Division of Rehabilitative Programs (DRP) personnel team is to compare reported vacancies with job ads posted on California Human Resources' (CalHR) VPOS website and reach out to institution Personnel Officers (IPO) for status of any vacancies not currently posted.</p> <p>DRP will continue to generate interest in educational opportunities through local hiring forums and focused recruitment. Also, DRP is exploring the use of the Substitute Academic Teacher (SAT) classification. DRP has previously attempted to use this classification, but this practice was suspended pending outcome of arbitration with Service Employees International Union (SEIU) and fiscal availability.</p> | Fully implemented |
| <p>Prioritize its recruitment and filling of both the longest-running (over one year, over six months, etc.) and the highest number of teacher vacancies. Determine whether these types of vacant positions at each prison are critical to the department, and if so, determine if the positions should be transferred to another prison with a greater need or ability to fill the position.</p> | <p>DRP tracks academic and career technical vacancies monthly (including the length of the vacancy), and DRP Headquarters Personnel engage in a semimonthly call identifying those institutions with vacancy issues and troubleshooting and engaging in the hiring process to assist. DRP is preparing a comprehensive report of current program space. Once available space, offender needs, and teacher availability have been assessed, DRP will consider moving vacant teacher positions to locations with higher needs while assessing the criminogenic needs of the population.</p> | Fully implemented |
| <p>Establish an experienced worker program to identify a pool of experienced former teachers who would be willing to come back to work as retired annuitants. These teachers could be utilized to fill vacancies at their most recent prisons of employment or at other prisons with vacancies.</p> | <p>DRP is working with the Office of Personnel Services (OPS) to facilitate the hiring of retired annuitants using the CalHR "boomerang" site, on which retired state employees can register and departments can search for qualified applicants. OPS will request a statewide exemption from CalHR to allow teachers at the department's institutions to return as retired annuitants in less than the required 180-day postretirement period.</p> <p>During the Statewide Principal's Call, DRP will instruct principals to discuss the retired annuitant classifications with teachers who are retiring and provide them with information on how to return as a retired annuitant.</p> | Partially implemented |
| <p>Require monthly updates from each supervisor of correctional education programs (principal) for courses that are not operational for which a teacher is assigned, but who is unable to provide instruction. Consider other alternative duties, such as providing support to other teachers by providing educational services to assigned/enrolled students.</p> | <p>Institutional principals are required to update a position control spreadsheet on a weekly basis. This spreadsheet identifies all vacancies, as well as all teachers who have been hired, but are unable to deliver programming.</p> <p>The Office of Correctional Education has outlined expectations or alternate duties for those teachers who are unable to deliver assigned programs.</p> | Fully implemented |

We made one additional recommendation in the September 2019 C-ROB report, as seen in the following exhibit. C-ROB is an independent board and, unlike the OIG, does not have the authority to request specific responses to recommendations; nonetheless, the department is reviewing the recommendation.

Exhibit 5. Status of C-ROB Recommendations, 2019

| Description of Recommendation | The Department's Proposed Action Plan | Implementation Status as Determined by the OIG |
|--|---|--|
| <p>The Board recommends the department create baseline metrics, where possible, for its In-Prison Integrated Substance Use Disorder Treatment (ISUDT) program. This collaboration between CDCR and California Correctional Health Care Services (CCHCS) implements a new program to address the needs of inmates with substance use disorders.</p> <p>The department is developing a short-term goal to identify inmates at highest risk for SUD-related harms and to provide treatment that reduces the number of fatalities. The long-term goals include building a program that can recognize and treat the chronic illness of SUD at all levels of clinical need and optimizing rehabilitative potential for all inmates. Further, full implementation of the ISUDT is expected to result in the following:</p> <ul style="list-style-type: none"> • Reduction in both SUD-related morbidity and mortality; • Creation of a rehabilitative environment which improves safety for inmates and CDCR staff; • Successful reintegration of individuals into their community at time of release; and • Improved public safety by promoting healthy families and communities. <p>The Board emphasizes the importance of measuring program implementation and outcomes and, to the extent possible, the long-term outcomes after offenders have been released to the community. Outcome measures, such as successful integration of individuals into their community upon release (housing, employment, income, and substance use), should be collected for parolees after they parole. The Board requests the department provide future updates on its progress with implementation of the SUDT program.</p> | <p>The ISUDT Program, like all health care operations, has been impacted by the current international health care emergency, and the anticipated schedule for ISUDT Program implementation will be altered as health care staff address the most immediate threat to patient safety posed by the COVID-19 pandemic. Because performance measures are implemented in the same phased approach as program operations (the department cannot measure processes until they are put into place), the same delays to program implementation due to COVID-19 will also impact the availability of performance data.</p> <p>The department has compiled a preliminary catalog of 73 proposed measures to support monitoring and improvement for the new joint California Correctional Health Care Services and department ISUDT program. These measures cover the following program areas: Program Access; Treatment & Monitoring; Release to Community; and Population Outcomes and Other Trends. The department proposes semiannual updates to the Board, with the first to take effect in June 2020.</p> | <p>Partially implemented</p> |

Appendix: Reports Released in 2019

Annual and Semiannual Reports

- *2018 Annual Report: Summary of Reports and Status of Recommendations* (May 1, 2019)
- *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, July–December 2018* (June 6, 2019)
- *Monitoring the Use of Force: The California Department of Corrections and Rehabilitation Continues to Perform Well in Self-Assessing Its Use-of-Force Incidents, but Has Shown Little Improvement in Its Overall Compliance with Policies and Procedures* (June 24, 2019)
- *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, January–June 2019* (November 25, 2019)

Medical Inspection Reports: Cycle 5 Results

- California Institution for Men (January 1, 2019)
- Deuel Vocational Institution (January 1, 2019)
- San Quentin State Prison (February 14, 2019)
- Pleasant Valley State Prison (April 12, 2019)
- California Health Care Facility (April 14, 2019)

Special Reviews

- *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct* (January 6, 2019)

Blueprint Monitoring Report

- *Tenth Report on the OIG's Monitoring of the Delivery of the Reforms Identified by the California Department of Corrections and Rehabilitation in Its Report Titled The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Court Oversight, and Improve the Prison System and Its Update* (June 28, 2019)

California Rehabilitation Oversight Board (C-ROB) Report

- *C-ROB September 15, 2019, Annual Report* (September 14, 2019)

All reports are available on our website:
www.oig.ca.gov/publications.

2019 Annual Report

Summary of Reports and Status of Recommendations

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
May 2020

OIG

EXHIBIT T

MAY 21, 2020

Overview of Major Public Safety Proposals in the 2020-21 May Revision

PRESENTED TO:

Assembly Budget Subcommittee No. 5
On Public Safety
Hon. Shirley N. Weber, Chair



LEGISLATIVE ANALYST'S OFFICE

Major May Proposals for California Department of Corrections and Rehabilitation (CDCR)

(Continued)

- Recommend reducing proposed increase for ISUDTP by \$45 million on a one-time basis as the proposed increase would expand access to health and rehabilitation services that have been substantially curtailed to promote physical distancing. The physical distancing policies will likely prevent the services from expanding for at least a portion of the budget year. (Because these policies will remain in place for an unknown amount of time, the actual savings could be higher or lower.)
- Recommend considering removing some or all of the proposed \$14 million augmentation to CDCR's \$613 million medical guarding budget as COVID-19 has reduced inmate medical appointments.
- Recommend directing CDCR to provide population and fiscal projections by October 1, 2020 that reflect the impact of COVID-19 to allow the Legislature to assess whether there are additional savings.



Other Major May Proposals

Removes Funding for Expanded Authority of Office of the Inspector General (OIG)

- Removes funding associated with expanded authority of the OIG that was approved as part of the 2019-20 budget. This authority included allowing the OIG to initiate investigations, audits, or reviews of policies, practices, and procedures within CDCR.
- By removing this funding, it is unlikely that the OIG will be able to make use of its new authority.

Provides Funding for Post-Release Community Supervision Grants

- Provides \$12.9 million for county costs associated with inmates being released early from prison to the supervision of county probation.
- While the state has typically provided this funding to offset near-term county cost increases, it is not obligated to do so as these costs will be offset by future savings. Given the state's fiscal condition, the Legislature could reconsider providing this funding.

Makes Various Peace Officer Standards and Training Reappropriations and Reversions

- Proposes to (1) reappropriate \$10 million unspent one-time General Fund from 2018-19 to support increased distance learning training opportunities and (2) revert \$16.5 million unspent one-time General Fund resources appropriated in past years. The funds come from funding for implicit bias and procedural justice training (provided in 2016-17), use of force or crisis mental health training (provided in 2018-19), and local assistance (provided in 2019-20).
- Reappropriation could result in expansion of how state provides training effectively and reversion helps address condition of the General Fund.



EXHIBIT U



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April 4, 2018

Scott Kernan, Secretary
California Department of Corrections and Rehabilitation
1515 S Street
Sacramento, California 95811

Dear Scott:

I was surprised to find in the OIG's latest Semi-Annual Report (attached) a recommendation that the CDCR change its central intake policy so that the EAPT or OIG attorney has the authority to require the OIA to initiate an investigation into employee misconduct or conduct an interview of an employee in connection with suspected employee misconduct. See Semi-Annual Report, at 15. I was surprised because we had discussed this issue in January in Orlando and you subsequently told me that the policy had been changed. I relied on that representation in not pursuing this issue.

As you may recall, we were informed in the fall that the special agent in charge of central intake, who is not a lawyer, has the authority to deny a request from the OIG attorney or the EAPT attorney to initiate an investigation or even to interview an employee as part of an investigation. I told you that this process is backwards; it is the lawyer who should be directing the investigation; not the investigator. The reason for this should be obvious. An investigator is not trained in the law, is unlikely to have a full understanding of the facts that will be necessary to support a case before the SPB or the superior court and is not responsible for presenting the CDCR's position in either forum. See also Report at 15 (OIA special agents "are not attorneys and have no litigation experience.") In other words, the current process is undermining the CDCR's ability to impose discipline in cases of serious employee misconduct and to exonerate employees suspected of misconduct.

The OIG's Report demonstrates this fact. From July to December 2017 the OIA rejected 58 recommendations to open an investigation or to interview an employee. The OIG found that in 82% of these cases, this failure affected the outcome. See Report at 13. "The OIG disagreements with decisions by the Office of Internal Affairs included . . . 40 cases with evidence to support adding dishonesty allegations; 12 cases that should have been opened as criminal investigations; 4

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Ltr. Scott Kernan
April 4, 2018
Page 2

cases in which evidence supported investigating a code of silence; and 4 cases in which additional employees were implicated in the misconduct.” *Id.*

Some of the examples provided in the Report at 13-14 show that the failure to accept the OIG’s recommendations are limiting the CDCR’s ability to hold employees accountable for misconduct.

- A captain wrote two inconsistent reports about a single incident involving the use of force and officers failed to report the force that they witnessed. No investigation was initiated.
- Witnesses gave conflicting accounts of events, but no investigation was initiated to resolve the conflicts.
- A captain dismissed a rules violation report without providing adequate justification. The OIA would not authorize an interview with the captain.
- Despite evidence showing that multiple officers engaged in misconduct and that the subject officer falsely documented the institutional count, the OIA refused to open an investigation to resolve the “multiple factual questions”.
- An officer who tested positive for barbituates was placed on ATO and dismissed, but the OIA refused a request to interview the officer who, it was later determined, had a prescription for the medication.

Even when the OIA and the EAPT agree, the OIA sometimes refuses to accept the recommendation for action. Some examples from the Report at 15:

- An informant who had previously provided reliable information gave detailed information about an officer’s gang affiliation and that he was bringing contraband into the prison. The OIA rejected the request for an investigation.
- An officer was accused of threatening an incarcerated individual with retaliation for filing an appeal, but the OIA rejected an investigation.
- A youth reported that an officer was sharing confidential information with other youths, putting him in danger. The OIA refused to investigate.
- Evidence from a civilian suggested that an officer was brandishing a gun, and other evidence corroborated the witness’s statement. The OIA refused to investigate.

Ltr. Scott Kernan

April 4, 2018

Page 3

- A 32-page inmate waiting list was found in a cell and the computer generated listed showed the person whose account the report came from. The OIA would not investigate.

These and other examples contained in the Report are consistent with our experience that the OIA central intake process is not functioning properly. Unfortunately, the problem is not limited to the fact that the investigators determine whether to conduct investigations or interview employees. As the OIG report states, the Office of Internal Affairs analysis can be faulty and incomplete, “special agents’ speculative opinions as to motivation behind potential misconduct still negatively influence decisions . . . [and the OIA] is often satisfied to address the surface misconduct identified by the referring hiring authority, showing unwillingness to look deeper at failure of supervision, other contributing causes, or misconduct of wider scope than initially identified by the hiring authority.” Report at 11.

It has been over twenty years since the internal affairs process was put into place through the *Madrid* litigation. We are grateful that you have authorized the OIG to conduct a review of the ISU process at SVSP and are hopeful that that review ultimately will result in improving the accuracy and reliability of the institutional internal affairs process. It is time now to also improve the central intake process by instituting the OIG’s recommendations and instituting other measures that will ensure that investigations and interviews are initiated when the facts warrant such actions.

Please contact me to discuss how we should proceed to resolve this issue.

Sincerely,

/s/ *Don*

Donald Specter

OIA's Response to PLO's April 4, 2018, Letter to Secretary Kernan

The Prison Law Office (PLO) recommends CDCR change its central intake policy so “the EAPT or OIG attorney has the authority to require the OIA to initiate an investigation into employee misconduct or conduct an interview of an employee in connection with *suspected* employee misconduct” (emphasis added). PLO indicated that lawyers not having the authority to initiate investigations “is undermining the CDCR’s ability to impose discipline in cases of serious employee misconduct and to exonerate employees suspected of misconduct.” The PLO letter relies heavily on the Office of the Inspector General’s (OIG) March 2018 Semi-Annual Review (SAR) and indicates OIA peace officers lack the knowledge or experience necessary to properly scope investigations.

OIA's Response:

CIU is staffed by 10 seasoned special agents, two supervisors, a manager, and is overseen by CDCR executive staff, all who have extensive and varied law enforcement experience. These law enforcement professionals rely on the legal advice and input of the EAPT and OIG. This collaborative effort has been working well since the Madrid Court ordered the process.

The April 4, 2018, PLO letter indicates in part, “The OIG’s Report demonstrates this fact. From July to December 2017 the OIA rejected 58 recommendations to open an investigation or to interview an employee. The OIG found that in 82% of these cases, this failure affected the outcome.” OIG’s Elva Nunez confirmed the 82% quoted by PLO is not connected to the referenced 58 cases; that appears to be an error by the PLO. The ultimate outcome of most of the 58 cases will not be known until discipline is imposed (the 58 cases went through CIP in the SAR period, not necessarily discipline).

The SAR indicates that “From July to December 2017, the Office of Internal Affairs rejected the OIG recommendation to open an investigation or interview the employee(s) in 58 cases.” Since CIP analyzed and approved 979 cases during this SAR review period, these disagreements only amount to about six percent of all cases reviewed at CIP. It should also be noted that the OIG chose not to monitor many of the 58 cases. Further, in only seven of the 58 cases referred to in the PLO letter, did OIG, EAPT, or the hiring authority decide the disagreement was significant enough to appeal or elevate the case for further review. In four of those cases, OIA approved further investigative work after the additional review. Therefore, of the 979 cases CIP decided during this period, there were only three cases (or 0.3%) where either OIG, EAPT, or the hiring authority disagreed strongly enough to elevate CIP’s decision, where CIP still maintained its decision in opposition to OIG.

It should also be noted the SAR indicates that CIU “rejected 19 of the 58 cases outright, depriving the hiring authority of the ability to impose discipline...” However, some of these cases were not “rejected outright” because they were later opened for further investigation after being elevated by EAPT, OIG, or a hiring authority, prior to the SAR being published.

It is important to remember that OIA’s Central Intake Panel (CIP) was established by the Madrid Federal Court-ordered reforms. In 2005 and 2006, PLO, OIG, EAPT, and the California Attorney General’s Office all provided their input to Special Master John Hagar and Federal Judge Thelton Henderson. These stakeholders agreed upon detailed policies and procedures that were incorporated into CDCR Department Operations Manual (DOM) Chapter 3, Article 14, on December 4, 2006. According to Article 14, the Madrid Court ordered that CIP be led by OIA for consistent evaluation; OIG and EAPT were ordered to provide legal advice and recommendations for OIA consideration.

Article 14 contains the following relevant excerpts:

- “OIA has the authority to initiate Internal Affairs investigations and is ultimately responsible for the acceptance and rejection of all cases that come before the CIP.”
- “The OIA is responsible for determining which allegations of staff misconduct warrant an Internal Affairs investigation ...”
- “Pursuant to Government Code Section 11182, the Secretary of the Department delegates the authority to initiate and conduct investigations to the Assistant Secretary, OIA.”
- EAPT provides “legal representation” to OIA and OIG provides “contemporaneous oversight” of the OIA investigative and disciplinary processes.

One of the key Madrid reforms was the establishment of CIU to consistently evaluate and address allegations of employee misconduct. The Madrid Court clearly identified that it is OIA’s authority and responsibility to determine which subjects and allegations should be investigated, and it is EAPT’s responsibility to provide legal advice throughout that process. OIA’s strict compliance with the requirements of the Madrid Court-ordered reforms resulted in the case being dismissed in 2012; CDCR is committed to its continual compliance with those court-ordered reforms.

OIA’s well-established consistent evaluation is that CIP opens investigations when there is a reasonable belief misconduct occurred that would likely result in adverse action. It is not OIA’s philosophy to subject employees to internal affairs investigations to *explore* “potential” or “suspected employee misconduct.” It should be noted that OIA receives and considers legal advice from OIG and EAPT as follows:

- Every Monday at the CIP pre-meeting.
- Every Wednesday during CIP.
- Following CIP, a hiring authority, EAPT, and/or OIG can appeal or elevate the CIP decision to the OIA Headquarters Chief.
- If the disagreement continues, the case can then be elevated to the OIA Deputy Director.
- At the discipline phase, EAPT and the hiring authority may add allegations and subjects as they deem appropriate. OIA takes into consideration the evidence EAPT will need to support a case before the State Personnel Board (SPB) or Superior Court.
- If during the hiring authority’s disciplinary review, EAPT or OIG disagrees with the handling of a case, they can elevate the decision through the hiring authority’s chain of command.

It is the industry standard for law enforcement managers to make investigative decisions, with advice from their legal counsel. Law enforcement officers nationwide decide which cases to investigate and how much investigation is necessary, prior to submitting their completed investigations to hiring authorities or district attorneys for prosecution.

OIA’s philosophy is to positively effect change to the culture of CDCR staff through training, not by opening more internal affairs investigations to investigate “potential” misconduct. OIA believes CDCR cannot discipline itself into a new culture and that CDCR should only investigate our staff when there is a reasonable belief they have committed misconduct. OIA looks forward to continued collaboration with OIG and EAPT.

EXHIBIT V



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

June 2020

Complaint Intake and Field Inquiries

*Addressing Complaints of Improper
Governmental Activities Within the California
Department of Corrections and Rehabilitation*

Initial Report

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INSPECTOR GENERALRoy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional OfficesSacramento
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June 2, 2020

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

Dear Governor and Legislative Leaders:

Enclosed is the Office of the Inspector General's report titled *Complaint Intake and Field Inquiries: Addressing Complaints of Improper Governmental Activities Within the California Department of Corrections and Rehabilitation*. This is our first report dedicated to the work we perform in response to complaints we receive from inmates, family members, interest groups, and other concerned individuals. As part of our statutory responsibilities, we maintain a statewide complaint intake process that provides concerned individuals a point of contact to raise allegations of improper activity within the California Department of Corrections and Rehabilitation (the department). This report summarizes the work we performed in response to 6,009 complaints we received in the two-year period between July 1, 2017, and June 30, 2019.

This report provides an overview of our processes for reviewing and analyzing the complaints we receive and examples of ways in which we have helped individuals resolve their disputes with the department. The report also summarizes the inquiries our field inspectors performed into 49 complaints that warranted additional scrutiny. Our field inspectors identified instances in which the department responded appropriately and commendably to the concerns we raised. But in other instances, our field inspectors found policies and practices that were both costly to the State and harmful to the inmates who were affected by the policies and practices.

Chief among the concerns we identified is the unintended impact of a regulation the department enacted in 2017, which restricted the department's ability to advance an inmate's release date after discovering staff erred in rescinding an inmate's sentence reduction credits. The regulation prohibits the department from releasing an inmate any sooner than 60 days after the error is corrected. After reviewing allegations that the department erroneously rescinded four inmates' sentence credits within 60 days of their estimated release dates, we determined that the department's policy of performing audits of inmates' release date calculations when an inmate is only 60 days from release imposes an undue hardship on inmates. Because the department cannot fully correct any mistakes staff make in the final 60 days of an inmate's incarceration, inmates are forced to forfeit these earned credits, with the only remedy being to initiate litigation against the department seeking damages for holding them beyond their release dates. In these four cases, the department's mistakes and administrative delays caused these inmates to spend a total of 122 additional days in prison, which directly cost the State approximately \$28,360 and exposed the department to additional liability for denying inmates of the liberty interests they earned that entitled them to an earlier release from prison.

We also reviewed the department's response to 36 complaints we forwarded to hiring authorities statewide that involved allegations of staff misconduct. We determined the department's hiring authorities performed inadequate inquiries into 21 of these complaints, finding concerns similar to those we raised in our January 2019 report titled *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*. We discovered that hiring authorities did not perform inquiries into four complaints and did not document the

Gavin Newsom, Governor

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Governor and Legislative Leaders
June 2, 2020
Complaint Intake and Field Inquiries
Page 2

inquiries performed into another three complaints. We also found inquiries that were untimely, incomplete, and lacking independence. On the other hand, we discovered that some hiring authorities performed excellent inquiries into several cases in which they conducted immediate inquiries that were thorough, complete, and well-documented.

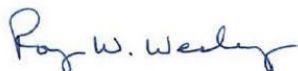
The report also raises concerns over the department's handling of various incidents that occurred at three adult institutions. Although we only examined the individual incidents brought to our attention through our complaint intake process, the issues we found may be indicative of harmful practices statewide. In the first case, the department punished an inmate with a disciplinary action that resulted in a 30-day restriction on the inmate's visiting privileges for violating the department's visiting policies and staff directives. Video footage of the incident, however, clearly showed that the inmate and his visitor complied with all staff directives and that the visiting officer's report describing the violations was inaccurate. Although the department implemented our recommendation to reduce the formal disciplinary action to written counseling and to rescind the 30-day visiting restriction 12 days early, it refused to investigate the visiting officer's dishonest report of the incident.

In another case, institutional staff held an inmate in administrative segregation for 81 days while the institution performed an investigation into allegations that the inmate threatened to harm a lieutenant. The institution completed its investigation in only four days, but staff failed to alert the institution's classification committee of the investigation's closure, which caused the inmate to languish in administrative segregation well beyond the time period necessary to investigate the threat against staff. Also of concern was the lieutenant's involvement in the investigation of the threat against him and in decisions to rehouse the inmate in administrative segregation, despite the clear conflict of interest stemming from the threat against his life. Although the department recently implemented a statewide policy for handling threats made against staff, the policy does not instruct the subjects of threats that they have a conflict of interest when it comes to investigating the threats and making decisions affecting the inmates who allegedly issued the threats. A conflict of interest provision in this policy would protect staff and inmates alike by reducing staff opportunities to retaliate against inmates and preventing inmates from making false claims of retaliation against staff.

In the final case we discuss, the department placed an inmate's safety at risk when it entered inaccurate information in his central file that indicated he was convicted of an offense involving the sexual abuse of a minor. Even though the department corrected the inaccurate entry in the inmate's file, rather than remove the inaccurate information in its entirety, it placed an inconspicuous notation in the file indicating the information had been revised. When we checked the inmate's file again months later, we found the department had again placed new information in his file identifying him as a child sex offender. After we raised this concern with the department, it only partially corrected the mistake; staff deleted some of the inaccurate information, but did not remove other information suggesting he had a prior conviction involving a minor. As long as this inaccurate information remains in the inmate's file, his safety is at risk from individuals who wish harm upon child sex offenders.

We conclude the report by identifying instances in which departmental managers made positive changes after reviewing three of the complaints we forwarded for their review, including closing a gap in one institution's use-of-force reporting policy, remedying another institution's family visiting procedures, and re-issuing a decision of the Board of Parole Hearings that contained inaccurate and incomplete information that reflected poorly on the inmate's suitability for parole.

Respectfully submitted,



Roy W. Wesley
Inspector General

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The Office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe an improper governmental activity, as that term is defined in subdivision (c) of Section 8547.2 of the Government Code. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(California Penal Code section 6128 (a))

In order to properly respond to any allegation of improper governmental activity, **the Inspector General** shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the Department of Corrections and Rehabilitation. This telephone number shall be posted by the department in clear view of all employees and the public. When requested pursuant to Section 6126, **the Inspector General** shall initiate a review of any alleged improper governmental activity.

(California Penal Code section 6128 (b))

— State of California
Excerpted from Penal Code sections

| Terms Used in This Report | |
|---|---|
| Administrative Segregation | A housing unit for inmates who have been removed from general population because they allegedly present an immediate threat to the safety of the inmate or others, endanger institution security, or jeopardize the integrity of an investigation. |
| Appeal | An inmate may appeal (or challenge) any policy, decision, action, condition, or omission by the department that has a material adverse effect upon his or her health, safety, or welfare. Toward that end, an inmate may use the CDCR Form 602 (commonly referred to as a "602") to file his or her appeal. |
| Appeals Coordinator | A prison employee who is responsible for processing appeals (receiving, logging, routing, and monitoring disposition), monitoring the system, preparing the quarterly appeals report, recommending corrective action where indicated, and working with the in-service training officer to ensure that training on the appeals process is carried out. This employee runs the institution's Appeals Office. |
| Credits | Inmates can earn sentence reduction credits by engaging in positive behavior and for completing and progressing in various academic, vocational, and rehabilitative programs. |
| Form 22 | The form inmates can complete to request informal assistance from department staff concerning issues related to their confinement or to request an interview with a staff member. |
| Hiring Authority | An executive, such as a warden, superintendent, or regional parole administrator, authorized by the Secretary of the California Department of Corrections and Rehabilitation to hire, discipline, and dismiss staff members under his or her authority. |
| Inquiry | The initial investigative process the department performs into allegations of staff misconduct. During an inquiry, staff conduct interviews with various individuals, gather and examine relevant documentary evidence, and draft a report. |
| Institution Classification Committee (ICC) | A group of staff at each institution that makes decisions affecting transfer, program participation, supervision, security, housing, and safety of persons. |
| Investigative Services Unit (ISU) | A unit staffed by prison employees who are trained to conduct administrative reviews and investigations. |
| Milestone Credits | A type of sentence reduction credit inmates receive for achieving a distinct objective within approved rehabilitative programs, including academic programs, substance abuse treatment programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, and other similar programs. |
| Office of Internal Affairs | The office within the department authorized to investigate allegations of staff misconduct. This office works independently of the prison chain of command. |
| Prop 57 | In November 2016, California passed Proposition 57, the California Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative, requiring the department to adopt regulations implementing new parole and sentence credit provisions to enhance public safety, and authorizing the department to award sentence credits for rehabilitation, good behavior, or educational achievements. |
| Reviewer | A supervising prison employee who is responsible for conducting the staff complaint inquiry. Typically, the reviewer is a sergeant or a lieutenant, but the reviewer must hold at least one rank above that of the accused staff member. |
| Rules Violation Report (RVR) | Disciplinary action taken against an inmate for violating the law or departmental rules regulating inmate behavior. An RVR can result in various penalties, such as a loss of sentence reduction credits, a temporary loss of privileges, placement in segregated housing, and loss of work assignments. |
| Staff Complaint | An inmate appeal alleging facts that would constitute prison employee misconduct. |

Summary

The Office of the Inspector General (OIG) maintains a statewide complaint intake process that provides concerned individuals a point of contact to report allegations of improper activity within the California Department of Corrections and Rehabilitation (the department). We receive allegations from inmates, parolees, families, departmental employees, and advocacy groups, among others. People submit complaints by sending us letters, calling our toll-free public phone line or our main telephone number, or filling out the complaint form on our website.

Between July 1, 2017, and June 30, 2019, we received 6,009 complaints of improper governmental activities. After we reviewed each complaint, we provided a written response to the complainant. Our office does not have the authority to conduct investigations into the complaints we receive; however, we perform “preliminary inquiries” by reviewing policies and procedures, accessing information stored in the department’s electronic records systems, requesting relevant records from institutional staff, and speaking with institutional staff regarding the merits of the complaints and our recommendations on how to resolve them.

In the vast majority of cases, our work results in our office providing the complainant with advice on how to address his or her concerns with the department. However, when our examination of a complaint identifies potential violations of policy or procedure, we open a more detailed “field inquiry” to bring the matters to the attention of the department. In such cases, we typically visit the institutions to observe operations, meet with departmental administrators, make recommendations to prison administrators, and monitor the department’s response.

In this reporting period, we performed 49 field inquiries. This report summarizes the results of these field inquiries, including the following highlights:

- We reviewed five complaints that inmates were being held beyond their correct release dates and determined the department mishandled four of the five situations.
 - For two inmates, staff improperly rescinded sentence credits that caused the release dates for these inmates to be incorrectly extended by a total of 111 days.
 - In a third inmate’s case, staff appropriately rescinded 56 credits from an inmate because he did not meet the criteria required to earn the credits, but failed to apply a

loss of credits, which caused the department to release him 32 days early.

- In a fourth inmate's case, the department delayed restoring an inmate's credits, which caused the inmate to spend an additional 11 days in prison.
- In three of the release date calculation cases we reviewed, the department failed to appropriately address the inmates' appeals and requests for assistance, which prevented these three inmates from challenging the decision to rescind their credits.
- In the fifth inmate's case, the department reviewed the inmate's complaint, realized the inmate was entitled to credits that he had never received, and awarded the credits in time to facilitate the inmate's timely release from prison.
- In 36 complaints of staff misconduct we referred to the department, we determined 21 of the 36 complaints (58 percent) were handled inadequately.
 - Hiring authorities did not perform inquiries into four of the 36 complaints (11 percent).
 - Of the 32 staff complaint inquiries, we found hiring authorities completed their inquiries within the 30-business-day time limit prescribed by departmental policy in only 19 instances (59 percent).
 - In nine instances (28 percent), we found reviewers failed to conduct sufficient interviews or failed to consider all relevant information, or both.
 - In three complaint inquiries (9 percent), the reviewer either lacked independence or displayed bias in favor of departmental staff.
- An officer canceled an inmate's visit and suspended his visiting privileges for reasons that were not supported by video footage of the incident. When we raised this issue to the department's attention, the department reduced the disciplinary action it instituted against the inmate, but refused to investigate the officer's alleged dishonesty in writing a report that contained statements that contradicted the video footage we reviewed.
- A captain's failure to timely alert the institution's classification committee that an investigation had concluded caused an inmate to spend 81 days in

administrative segregation even though the investigation had concluded just four days after the inmate was placed in administrative segregation.

- We reviewed an inmate's allegation that departmental staff placed inaccurate information in his disciplinary records that indicated that he had been convicted of a sex offense involving a minor. After we brought this error to the department's attention, staff revised the inmate's disciplinary record, but failed to completely remove the incorrect information that labeled the inmate as a convicted child sex offender. This inaccurate information places the inmate at risk of harm by those who wish to harm child sex offenders.
- The department's hiring authorities made several positive changes after reviewing the complaints we referred and listening to our concerns, including:
 - An institution's Chief Executive Officer over health care revised policies and training materials to ensure health care staff are aware of their obligation to inform custody staff when a patient states that custody staff used excessive force.
 - A warden improved the institution's family visiting process by requiring staff to monitor the freshness of food that inmates and their families purchase in advance of the visits, instructing staff how to accommodate visitors who need dietary accommodations, and training involved staff regarding the importance of communicating positively with family members.
 - The Board of Parole Hearings revised an earlier decision it issued by removing incorrect information it received from the inmate's assigned institution, incorporating positive information regarding the inmate's rehabilitative programming, and deleting outdated conviction information it was not permitted to consider. Although the updated decision did not change the Board's ultimate decision to deny the inmate parole, the revisions ensured the inmate received his due process rights.

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Background

Responsibility of the OIG

California Penal Code section 6128 requires the OIG to maintain a complaint intake process to address concerns from any individual regarding allegations of improper governmental activity within the department.

Although we review complaints filed by inmates, employees, and other stakeholders, we are not authorized to conduct investigations into these complaints. Rather, when we receive complaints, we evaluate the allegations and review departmental records to determine if the department complied with its policies. If this preliminary inquiry uncovers information that warrants further examination by the department, we notify departmental administrators of the issues raised by the complaint and recommend they evaluate the complainant's concerns. When our inquiry identifies violations of the department's policies, practices, and procedures, we refer the complaint to our regional field inspectors, who work directly with the hiring authority for resolution at the local level.

Before making a complaint to the OIG, inmates and parolees are encouraged to complete the department's appeal process. All other complainants are similarly requested to first attempt to resolve their concerns informally with the department by using the department contact information provided to them as listed in the text box on the next page.

Any inmate, parolee, or ward who is not satisfied with the department's response to an appeal or who believes an inquiry into staff misconduct was not conducted properly may request that we examine his or her concerns. In addition to utilizing our toll-free public telephone number or our main office number, individuals may also file a complaint by mail or electronically via our website as listed below.

The Office of the Inspector General maintains a toll-free public telephone number for inmates using the inmate phone system at adult institutions (916-555-0001), wards at juvenile facilities (959-958-0001), and members of the public (1-800-700-5952). We also provide a link for complainants to use in submitting complaints on our website: <https://www.oig.ca.gov/connect/report-misconduct/>. In addition, anyone can send correspondence to us using the following address:

The Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Source: California Office of the Inspector General.

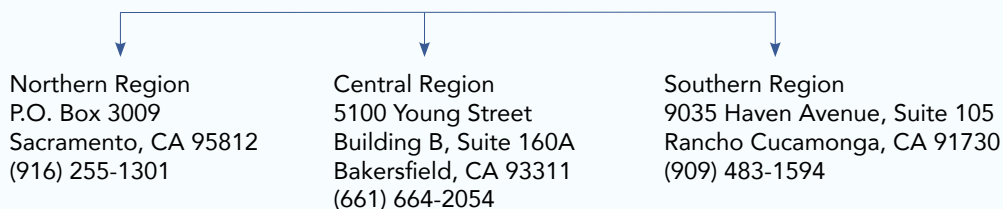
The Office of the Ombudsman can be contacted by calling (916) 445-1773, completing the online Ombudsman Contact Form available at <https://www.cdcr.ca.gov/ombuds/>, or by writing to the following address:

California Department of Corrections and Rehabilitation
Office of the Ombudsman
1515 S Street
Sacramento, CA 95811

Source: <https://www.cdcr.ca.gov/ombuds/>.

A Citizen's Complaint form (CDCR 2142) can be submitted to the California Department of Corrections and Rehabilitation to make a complaint of improper conduct against employees of the department. Complaints may be submitted to any supervisor or manager of the department, or may be addressed to the department's Office of Internal Affairs at any of the following regional offices:

Office of Internal Affairs



Source: <https://www.cdcr.ca.gov/ocr/contact-us/>.

Complaint Intake

Our office primarily receives complaints from inmates, parolees, families, departmental employees, and advocacy groups. OIG contact information is posted in all adult institutions, Division of Juvenile Justice facilities, and parole offices. Our informational posters are placed in each housing unit and provide resource information for both inmates and departmental employees explaining how to file a complaint with the OIG by telephone or through the mail.

Table 1, below, illustrates that between July 1, 2017, and June 30, 2019, our office received 6,009 complaints. Of these, 4,598 complaints (77 percent) were submitted via mail, 783 complaints (13 percent) were received directly from our toll-free public telephone number, and 545 complaints (9.1 percent) were submitted electronically via our website.

Table 1. Number of Complaints Received, by Method of Submission

| Method of Submission | Fiscal Year 2017–18* | Fiscal Year 2018–19* | Total Complaints Received | Percentage of Total Complaints Received |
|----------------------|----------------------|----------------------|---------------------------|---|
| Mail | 2,249 | 2,349 | 4,598 | 76.5% |
| 800 Number | 378 | 405 | 783 | 13.0% |
| Web/Email | 235 | 310 | 545 | 9.1% |
| Phone | 24 | 31 | 55 | 0.9% |
| Fax | 9 | 7 | 16 | 0.3% |
| In-Person | 6 | 6 | 12 | 0.2% |
| Grand Total | 2,901 | 3,108 | 6,009 | 100.0% |

* Fiscal Year 2017–18 refers to the time period beginning July 1, 2017, and ending June 30, 2018. Fiscal Year 2018–19 refers to the time period beginning July 1, 2018, and ending June 30, 2019.

Source: The Office of the Inspector General Tracking and Reporting System, June 2017 through July 2019.

On the next page, Table 2 documents the sources of the complaints we received. Inmates filed the vast majority of them, submitting 4,864 of the total 6,009 complaints (81 percent) our office received, while all other complainant submissions combined resulted in 1,145 complaints (19 percent).

Table 2. Number of Complaints Received, by Complainant

| Complainant | Received Fiscal Year 2017–18 | Received Fiscal Year 2018–19 | Grand Total | Percentage of Total [‡] |
|--------------------|------------------------------|------------------------------|--------------|----------------------------------|
| Inmate | 2,377 | 2,487 | 4,864 | 80.9% |
| Family Member | 236 | 345 | 581 | 9.7% |
| Advocate | 90 | 135 | 225 | 3.7% |
| CDCR Employee* | 74 | 46 | 120 | 2.0% |
| Other [†] | 40 | 22 | 62 | 1.0% |
| Anonymous | 30 | 26 | 56 | 0.9% |
| Parolee/ Ward | 27 | 21 | 48 | 0.8% |
| Governor's Office | 24 | 18 | 42 | 0.7% |
| Inspector General | 3 | 8 | 11 | 0.2% |
| Grand Total | 2,901 | 3,108 | 6,009 | ‡ |

* CDCR Employee includes both current and former departmental employees.

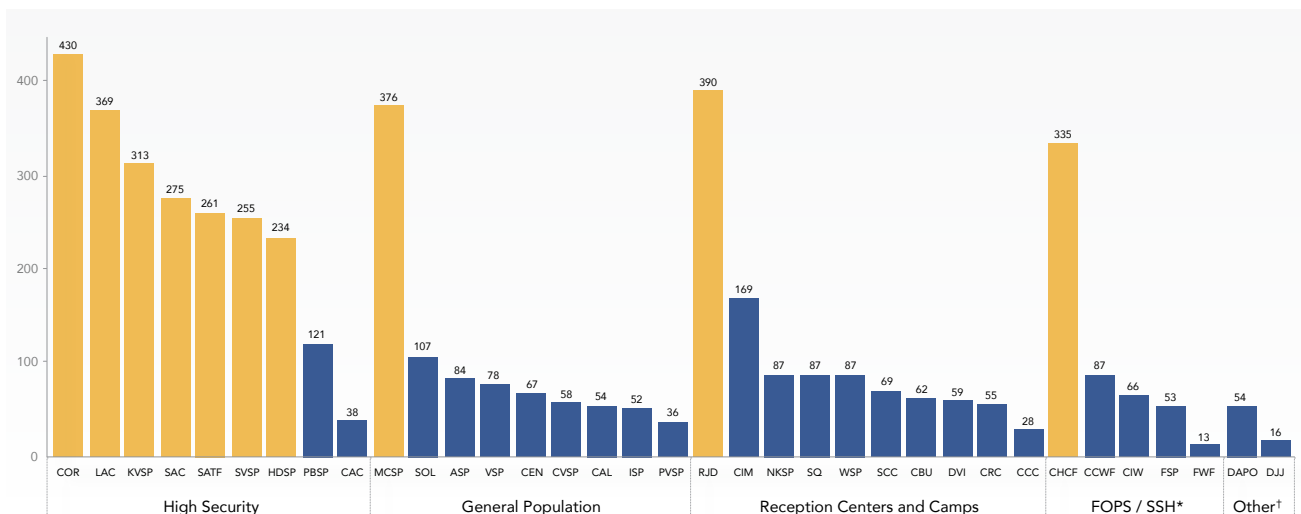
[†] Other includes complaints received from the general public, the district attorneys, the California Rehabilitation Oversight Board, the State Auditor, the Legislature, and other entities.

[‡] Percentages do not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System, June 2017 through July 2019.

On the next page, Figure 1 displays the volume of complaints we received concerning each adult institution, the Division of Adult Parole Operations, and Division of Juvenile Justice facilities during fiscal years 2017–18 and 2018–19. The volume of complaints we received varied from institution to institution. Ten of the state's 35 institutions (29 percent) disproportionately accounted for 3,238 (54 percent) of the complaints we received. Of these 10 institutions with the highest volume of complaints, seven of them (California State Prison, Corcoran; California State Prison, Los Angeles County; Kern Valley State Prison; California State Prison, Sacramento; Substance Abuse Treatment Facility; Salinas Valley State Prison, and High Desert State Prison) are assigned to the department's high security mission classification. This category of institutions houses male offenders whom the department considers to be the most violent and dangerous in the state. Historically, we have received the majority of our complaints concerning issues at institutions from this mission classification.

Figure 1. Number of Complaints Received, by Institution



* Female Offender Programs / Special Services and Housing.

† Other divisional entities.

Note: The 10 institutions about which we received the most complaints are shaded in yellow.

Source: The Office of the Inspector General Tracking and Reporting System.

Staff in our Intake Unit review each complaint to identify the types of issues each complaint addresses. For allegations that fall outside of our jurisdiction, such as complaints regarding county jails, federal prisons, or local law enforcement, we refer the complainants to the most appropriate entity holding jurisdiction over the issues raised in the complaint. For allegations that fall within our jurisdiction, our staff conduct a preliminary inquiry and respond to the complainant.

We immediately act on the most critical allegations, such as life-threatening situations, or safety and security concerns that may affect departmental staff or inmates. For example, we make safety or mental health referrals when a complaint alleges potentially unsafe conditions, such as enemy concerns, threatening behavior, suicidal thoughts, or other indicators noting safety or security risks. All other allegations, such as those regarding due process violations, missing inmate property, dissatisfaction with living conditions, the visiting process, and appeal outcomes, are prioritized by urgency and severity, and assigned to an OIG staff member to perform a preliminary inquiry into the concerns presented.

We do not have the authority to conduct investigations into the complaints we receive. Instead, we perform what we refer to as *preliminary inquiries* by reviewing departmental records to verify the

ACCESS TO INMATES' APPEALS

During the reporting period July 1, 2017, through June 30, 2019, our office made approximately 1,480 requests* to the department's public information officers (PIOs) at the 35 institutions statewide, to request documents and other information, such as the Inmate Appeals Tracking System (IATS)* history report for an inmate. Although the department provides us with remote access to many of its electronic databases, we do not currently have direct access to IATS.

Because we encourage inmates and parolees to complete the department's administrative appeals process before making a complaint to our office, we first verify whether an inmate or parolee has demonstrated an attempt to resolve his or her issues by initiating a departmental appeal.

When the department's records indicate a related appeal exists, we contact the institution's PIO again and request the supporting documentation to assist our inquiry into the complainant's issues. Having direct access to IATS would streamline our inquiries and reduce the amount of time the department's PIOs spend responding to our requests for records.

* The OIG reviewed all intake staff requests made to the department during the third quarter of 2018; 185 requests for IATS and appeals-related information were made. Extrapolating this figure annually results in 740 requests, and over the two-year reporting period, accounts for approximately 1,480 requests.

Source: The Office of the Inspector General Tracking and Reporting System.

complainant's allegations to the extent possible. During a preliminary inquiry, we locate an inmate's or parolee's records by directly accessing various departmental electronic records management systems. For access to records that cannot be retrieved electronically, we typically request relevant documentation directly from departmental staff¹ (text box, left). We also review departmental regulations, policies, and operational procedures to identify the standards applicable to the issues raised in each complaint.

Following our inquiry into the complaint, we provide a written response to the complainant that includes the outcome of our review and a description of our actions taken. In the majority of cases, our preliminary inquiry work results in our office providing complainants with advice on how to address their concerns with the department. For example, inmates frequently raise concerns to our office before either attempting to utilize the administrative appeals process or exhausting the appeals process in its entirety. In such cases, we provide complainants with instructions on how to use the department's grievance processes to resolve any issues before seeking outside assistance.

We notify the appropriate departmental administrators of allegations of serious staff misconduct and recommend they evaluate the complainant's concerns. We also notify the Prison Rape Elimination Act (PREA) compliance manager at the relevant institution and recommend its staff perform an investigation into complaints containing allegations of sexual harassment or sexual misconduct against departmental staff or inmates.

In other less serious matters, when our preliminary inquiry results are inconclusive, or when our office is unsure which departmental policy or procedure governs the issues raised in a complaint, we may refer the complainant's allegations to the department for an evaluation and potential inquiry to resolve the concerns.

1. The department maintains, at the institutional level, an inmate appeals history known as the "Inmate Appeals Tracking System" (IATS) database. Our staff review individual IATS reports obtained from the department to determine whether an inmate has access to the appeals process and whether he or she has exhausted administrative remedies. Inmates' attorneys may also request information from this database to determine if their clients have exhausted their administrative remedies prior to filing a lawsuit against the department.

We treat all personal information contained in a complaint as confidential in order to respect the complainant's privacy and protect him or her from retaliation. Therefore, for the majority of the complaints we refer beyond our agency, such as to a warden or the Office of Internal Affairs, we request that complainants sign and return a waiver consenting to the release of their name and correspondence. A complainant is not required to consent to the release of this information, but due to the nature of some allegations, it would be difficult to conduct an inquiry without the complainant doing so. When a complaint identifies an imminent threat to life, we proceed without obtaining a waiver.

Our intake staff also assist complainants by collaborating with our regional field inspectors who are assigned to monitor other departmental processes at each prison (text box, right). When our intake unit receives complaints regarding departmental matters that are actively being monitored by our office, intake staff alert our regional field inspectors to those issues. Our inspectors can immediately bring these matters to departmental representatives' attention and ensure the department receives the complainant's information and considers it during these processes.

Finally, our office may elevate a complaint to the level we refer to as a *field inquiry* if the complaint involves a potential policy violation by departmental staff that cannot be resolved through our standard monitoring responsibilities. Depending upon the nature of the matter, field inquiries can involve communication with departmental administrators located within various departmental offices and programs; however, most often, they involve a site visit to meet with the warden of the institution to which the complaint pertains. In such instances, our staff make recommendations to remedy identified issues varying from simple, informal fixes, such as the reversal of a previous departmental decision; the need for corrective actions, such as staff training; or the initiation of an inquiry into allegations of staff misconduct to determine whether to request a formal investigation. If the department performs a formal investigation, our field inspectors may monitor the case as part of our discipline monitoring activities.

OIG FIELD DUTIES

Deputy Inspectors General on our *Force Accountability and Compliance Team* monitor the department's review process for use-of-force incidents. Our inspectors review and analyze use-of-force incidents by reviewing written reports, photographs, and other records, and, when applicable, viewing video recordings of the incidents and inmate interviews. We independently determine whether staff actions before, during, and after the use of force were reasonable under the circumstances and within the bounds of departmental policy and training procedures. We then provide real-time feedback and make recommendations to the department's committees that review use-of-force incidents.

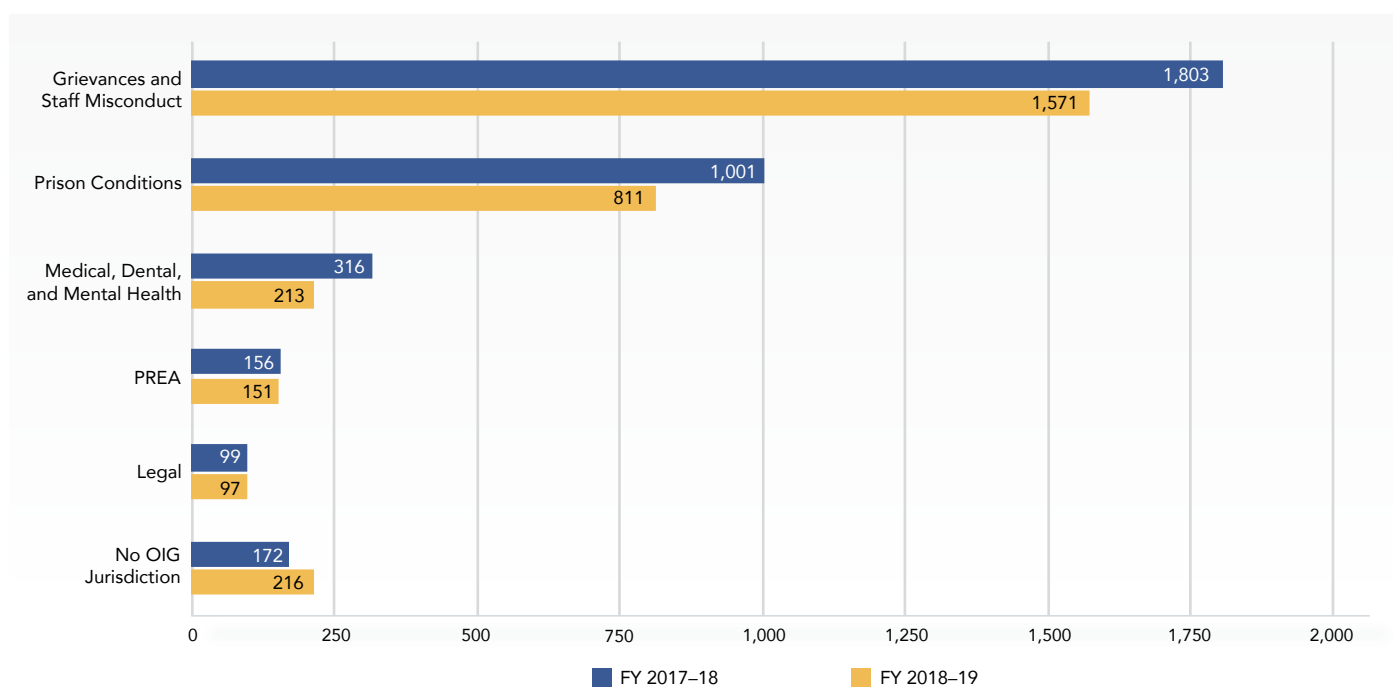
Attorneys in our *Discipline Monitoring Unit* provide contemporaneous oversight of the department's internal investigations and employee disciplinary processes, and oversee the department's response to critical incidents. Our attorneys communicate with investigators, attend interviews, and review investigative reports to assess the adequacy of the investigative work performed. If the department subsequently imposes discipline, we also monitor the performance of the department's hiring authorities and advocates during the disciplinary appeal process, including the department's attorneys and employee relations officers.

Board-certified physicians and registered nurses in our *Medical Inspection Unit* complete comprehensive reviews of, and report on, the ongoing medical care the department provides to inmates. To complete these assessments, we perform clinical case reviews and compliance testing based on both file reviews and on-site medical inspections. After the inspections, we issue a report summarizing our findings and recommendations. We send this report to the department, the Receiver, the *Plata* plaintiffs' counsel, and we also publish it on our website, allowing for public access.

Statistics Regarding Complaints Received From July 1, 2017, Through June 30, 2019

Between July 1, 2017, and June 30, 2019, the OIG received 6,009 complaints of improper governmental activities. In 388 of them, we determined that our office did not have jurisdiction because the allegations involved county jails, federal prisons, local law enforcement, or some other outside entity. In these cases, we referred the complainant to the most appropriate entity. For the remaining 5,635 complaints, we conducted either a preliminary inquiry or a field inquiry into 6,218 allegations² to assist the complainant or to examine the alleged improper activity (Figure 2, below).

Figure 2. Allegations Received in Fiscal Years 2017–18 and 2018–19



Note: Allegation volume was determined by assessing the volume of allegation types within each complaint.

Source: Office of the Inspector General Tracking and Reporting System.

In the vast majority of the 5,635 preliminary inquiries we performed, our inquiry work resulted in our office advising the complainants how to address their concerns with the department. Common examples of such advice involved how to request services or navigate through

2. Complainants often submit multiple, distinct allegations in each complaint. For each allegation we receive, our office assigns a category/subcategory from a standardized list of issues to identify the alleged topic, location, and parties involved. There were 14 complaints that contained one allegation within OIG jurisdiction and one allegation that was not within OIG jurisdiction.

Figure 3. Categories of Allegations We Receive

| | |
|---|---|
| <p><i>Grievances and Staff Misconduct</i></p> <p>Complaints that involve concerns with access to or processing of inmate appeals and allegations of staff misconduct by departmental staff.</p> | <p><i>Prison Rape Elimination Act (PREA)</i></p> <p>Allegations that inmates were subjected to sexual misconduct by inmates or staff, or made complaints of sexual harassment that were not handled appropriately.</p> |
| <p><i>Prison Conditions</i></p> <p>Complaints that involve concerns with prison conditions, such as incorrect release date calculations, missing inmate property, access to rehabilitative programs, or the visiting process.</p> | <p><i>Legal</i></p> <p>Requests for various types of legal assistance, including access to public records, and allegations of retaliation by departmental staff.</p> |
| <p><i>Medical, Dental, and Mental Health</i></p> <p>Complaints that involve concerns with access to medical, dental, or mental health services or objection to a decision that has a material adverse effect on an inmate's physical or mental well-being.</p> | <p><i>No OIG Jurisdiction</i></p> <p>Allegations that fall outside of OIG jurisdiction, such as complaints involving county jails, federal prisons, or local law enforcement.</p> |

the department's various processes for appeals, sentence calculations, disciplinary violations, and visiting, or how to contact specific departmental divisions and offices for services or additional help. On other occasions, after we conducted a preliminary inquiry, we worked with departmental staff to facilitate resolution of the complainant's issues. Below, we provide a sampling of four preliminary inquiries as examples of assistance we provided to complainants who were unsuccessful in their initial attempts to resolve their concerns with departmental staff.

- An inmate's brother alleged staff at the inmate's institution restricted the inmate's ability to receive visits from family members despite the inmate's request to receive visits. We reviewed institutional records and found the inmate's brother was on the list of approved visitors and no other restrictions appeared to be preventing the inmate from receiving visits. After we raised this concern with the institution, its public information officer requested the institution's visiting sergeant contact the inmate's brother to coordinate a visit. The inmate received a visit from his family members three days after we contacted the institution.
- We received an allegation that an inmate mailed an appeal to the third level of review before the applicable deadline,

but the department's Office of Appeals rejected the appeal as untimely. After reviewing the inmate's appeal history and mail logs, we determined the inmate had mailed his appeal three days prior to the due date, but delays in the institution's processing of his mail caused his appeal to reach the Office of Appeals three days late. After we contacted the department with our findings, the Office of Appeals agreed to rescind its prior decision and accept the inmate's appeal as timely filed.

- An inmate alleged the department denied him access to its administrative appeal process by failing to respond to his missing property appeal. The inmate claimed that while at one institution, staff issued him a property receipt that failed to account for all the property that was in his cell before being rehoused in administrative segregation. The inmate refused to sign the property receipt because it was inaccurate, but did not file an appeal until after the department transferred him to another institution.

We reviewed the institution's records, which indicated the inmate's appeal had been forwarded to his prior institution for processing; however, the former institution had no record that it received the appeal. After we contacted the inmate's current institution, its staff agreed to resend the appeal to the inmate's previous institution for processing as an original, thereby allowing the appeal to be accepted as timely filed.

- In a final complaint, a family member alleged that an inmate was not receiving adequate dental treatment despite multiple attempts to request assistance from the department and California Correctional Health Care Services over the past year. The family member alleged the inmate suffered substantial tooth loss and bone deterioration due to the delay in receiving these services.

We reviewed the inmate's extensive dental history from 2017 through 2018, including dental progress notes and health care requests the inmate had submitted, among which was a June 2018 order for the inmate to receive partial dentures. However, the department transferred the inmate to another institution in October 2018 without having received his needed dental services. We contacted the institution in October 2018 with our concerns about the delay. One week later, the inmate received his denture.

Field Inquiries

Between July 1, 2017, and June 30, 2019, we performed 49 field inquiries regarding selected complaints that involved a potential policy violation by departmental staff that could not be resolved through our standard monitoring responsibilities. Our staff brought potential policy violations to the attention of specific hiring authorities, made recommendations, and monitored the department's response at the local level. We then followed up with the hiring authorities to determine what actions they took in response to receiving the complaints and assessed the adequacy of the hiring authorities' responses. Our assessment of the hiring authorities' responses did not consider whether the underlying complaint or allegation was substantiated. Rather, we assessed whether the department took appropriate action to investigate the complaint and address the complainant's concerns.

Throughout the remainder of this report, we discuss a sampling of the 49 field inquiries we completed between July 1, 2017, and June 30, 2019, identifying areas in which the department performed well and areas in which the department can improve its policies, practices, and performance.

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Field Inquiry Review Results

The Department's Proposition 57 Regulations and Related Policies Restrict Inmates' Abilities to Challenge Decisions to Rescind Their Sentence Reduction Credits and Can Cause Inmates to Forfeit Their Earned Credits

We performed field inquiries into five complaints we received alleging the department erroneously rescinded inmates' sentence reduction credits and detained them beyond their true release dates. These complaints provided us an opportunity to examine the department's process for rescinding sentence reduction credits inmates earn by completing various rehabilitative programs and for following the department's behavioral rules and regulations. In two of the five cases, departmental staff made incorrect decisions to rescind sentence credits from inmates who were fewer than two months away from their scheduled release dates. When the department attempted to reverse these decisions and restore the credits, departmental rules coupled with administrative delays prevented the inmates from having their credits fully restored. In a third case, departmental staff delayed restoring an inmate's credits at the earliest possible opportunity, causing him to spend 11 extra days in prison. These errors and administrative delays caused these three inmates to spend a total of 122 additional days in prison, which directly cost the department approximately \$28,360 to incarcerate these inmates.³ Staff errors in a fourth inmate's case caused the department to release him 32 days early. In the final case, the department was able to correct its initial mistake 105 days before the inmate's anticipated release date and released him on time.

Even more concerning than the outcomes of these individual cases was our discovery that the interplay between various departmental regulations, policies, and practices causes institutional staff to rescind inmates' credits within the final 60 to 120 days of their incarceration. This practice often prevents inmates from challenging the department's actions before any incorrect decisions can be undone and causes some inmates to be detained beyond their true release dates.

3. The Department of Finance estimates that it costs approximately \$84,848 per year to incarcerate an adult inmate in California; http://www.ebudget.ca.gov/2019-20/pdf/Enacted/GovernorsBudget/5210/5225_fig1f.pdf (website accessed September 5, 2019).

Background: Sentence Reduction Credits

For more than 100 years, offenders sentenced into the department's custody have had the ability to earn credits that reduce the length of their incarceration. With the implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Prop 57), offenders can now earn more credits for good behavior and for approved rehabilitative or educational achievements than ever before (text box, left). Credits can advance the release date of an inmate sentenced to a determinate term,⁴ or advance the initial parole hearing date of an inmate sentenced to an indeterminate term⁵ with the possibility of parole. Credit earning opportunities are available to all inmates excluding condemned inmates and those serving sentences of life without the possibility of parole.

PROPOSITION 57

On November 8, 2016, California voters approved Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Prop 57). Prop 57 gave the department "authority to award credits earned for good behavior and approved rehabilitative or educational achievements."*

As a result of Prop 57's passage, inmates can now earn additional good conduct credits for complying with the department's policies governing inmate behavior; milestone completion credits for accomplishing objectives in certain rehabilitative programs, including academic, vocational, and therapeutic programs; rehabilitative achievement credits for participating in self-help and volunteer public service activities; and education merit credits for earning high school diplomas, high school equivalencies, or higher education degrees.

* Cal. Const., art. I, sec. 32, subd. (a), par (2).

Source: CDCR—Proposition 57 Revised Regulations, Milestone Completion Credit Schedule, as of July 2018. From <https://www.cdcr.ca.gov/wp-content/uploads/sites/171/2019/06/adopted-regulations-ncr-18-09.pdf> (URL accessed on August 2, 2019).

Following the passage of Prop 57, the department was tasked with enacting regulations to implement the new law; the regulations took effect on April 13, 2017. Among the regulations was a new rule restricting the department from awarding credits or restoring previously rescinded credits for determinately sentenced inmates if doing so would advance these inmates' release dates any sooner than 60 days after the award or restoration occurred.⁶ In other words, once an inmate is within 60 days of his or her department-calculated release date, the department cannot expedite the inmate's release even if it determines he or she is legally entitled to be released on an earlier date. The regulations do not allow for any exceptions to this 60-day restriction.

When the department imposed this new restriction upon itself, it did not immediately adjust its other policies and practices that can cause adjustments to inmates' release dates. The most impactful of these policies sets forth time frames in which institutional staff perform prerelease audits of inmates' central

4. Under the Determinate Sentencing Law, offenders are sentenced to California state prison for a set amount of time. Once the offender serves the specific time, the offender is released either to parole or to probation for supervision. Offenders serving determinate sentences may become eligible for a parole suitability hearing before their release date if they meet certain criteria.

5. Under the Indeterminate Sentencing Law, offenders serve a term of life with possibility of parole. Offenders sentenced to a life term with the possibility of parole cannot be released on parole until the Board of Parole Hearing determines that they are ready to be returned to society.

6. *California Code of Regulations*, Title 15, Article 3.5, Section 3043, subdivision (c).

files (C-file) to determine whether their release dates have been calculated correctly. The audits are primarily intended to confirm that an inmate's credit gains, losses, and restorations have all been accounted for and that the inmate was eligible to receive the credits they were previously awarded. When the Prop 57 regulations went into effect on April 13, 2017, the department's policy required institutional staff to perform these audits at the following times:

- Upon an inmate's initial intake at a receiving facility after being sentenced to prison.
- Sixty days prior to an inmate's scheduled parole/release date.
- Ten days prior to an inmate's scheduled parole/release date.
- Upon receipt of an additional commitment following initial intake.
- Upon transfer to facilitate federal deportation.
- Every 30 days beginning nine months before release regarding notorious or special interest cases.⁷

This means that for many inmates, other than their initial intake audit, the first time a staff member audited their release date calculation was 60 days before their scheduled release. As we discovered during the field inquiries we performed, this 60-day prerelease audit policy, combined with the recently enacted 60-day restriction, imposed an undue hardship on inmates whose release dates were extended as a result of a change made during a prerelease audit. Because the release date restriction prevents the advancement of inmates' release dates during the final 60 days of their incarceration, an inmate's release date could be extended after a prerelease audit, but it could not be expedited if the audit revealed that an inmate should be released sooner.

Staff Failure to Recognize the Urgency of Inmate Appeals Challenging the Department's Decisions to Rescind Credits within the Final 60 Days of an Inmate's Incarceration Prevented Inmates from Contesting Decisions to Rescind their Credits

The department's regulations contain a process by which inmates can appeal departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on them. At the time of our review, departmental staff typically had 30 business days from

7. Department Operations Manual, 73010.4.1, Audit Schedule Revised June 16, 1995.

FILING A FORM 602

To file an appeal, an inmate must complete an Inmate/Parolee Appeal form (known as a Form 602) and describe the specific issue under appeal and the relief requested, stating all facts known regarding the issue being appealed, the names of all staff member(s) involved, and a description of each staff member's involvement in the issue. The inmate must also attach all supporting documents necessary to clarify the issues under appeal.

Appeals can be screened out for many reasons, including failure to attach necessary supporting documents, failure to submit the appeal on the appropriate form, failure to exhaust other informal processes, failure to appeal the action within 30 days, inclusion of multiple unrelated issues in a single appeal, and filing more than one nonemergency appeal in any 14-day period, among others.

If inmates are not satisfied with an initial response to an appeal, they can elevate the appeal for at least one more level of review.

Source: *California Code of Regulations*, Title 15, Article 8, Sections 3084-3085.

receipt of an appeal to issue a response to the inmate who filed the appeal (text box, left).⁸

The department also had a process for prioritizing “emergency appeals” for circumstances in which the regular appeal time limits “would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm.” Staff had only five business days to respond to an emergency appeal. Although the department’s regulation defining emergency appeals did not specifically include release date calculations, the regulation broadly applied to all situations that pose a substantial risk of irreparable harm to the inmate. The regulation provided the following guidance for staff to determine which appeals qualify for the emergency appeals process:

- (1) When circumstances are such that the regular appeal time limits would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm, the appeal shall be processed as an emergency appeal. Emergency circumstances include, but are not limited to:
 - (A) Threat of death or injury due to enemies or other placement concerns.
 - (B) Serious and imminent threat to health or safety.

The regulation did not define the term irreparable harm; however, the term is often used in the legal field, where it is defined as “an injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction.”⁹ The term injury is itself defined as “the violation of another’s legal right, for which the law provides a remedy; a wrong or injustice.” An injury is not limited to physical harm.¹⁰ In our opinion, the forfeiture of credits, to which the inmate has accrued a

8. *California Code of Regulations*, Title 15, Article 8, Section 3084.9. The department is repealing this regulation on June 1, 2020 as part of a package of emergency regulations that overhaul the department’s grievance and appeal process. The revised regulations no longer contain a separate emergency appeal process for circumstances in which regular processing time limits would subject an inmate to a substantial risk of serious and irreparable harm. Instead, the new grievance and appeal procedure only provides an expedited review of grievances that implicate personal safety, institutional security, or sexual misconduct. Notice of Approval of Emergency Regulatory Action, OAL Matter Number 2020-0309-01, https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf.

9. *Black’s Law Dictionary*, ed. B. Garner, 11th ed. (Thomson Reuters, 2019), “Injury.”

10. *Ibid.*

vested legal right, would subject the inmate to irreparable harm and qualify for the emergency appeal process.

In three of the five release date calculation complaints that we internally elevated to field inquiries, the affected inmates filed appeals and other requests for assistance seeking a reversal of the decisions that postponed their release dates. The department did not treat any of the appeals as emergency appeals even though the appeals indicated the inmates were within 60 days of release and were challenging the revocation of their credits. These credits would be forfeited once the 60-day release date restriction became applicable if the appeals were not acted upon immediately. Nor did the department treat any of the appeals with any sort of urgency, in one case rejecting the appeal altogether and, in another case, failing to respond to the inmate's request for assistance.

An inmate lost 97 credits because institutional staff incorrectly reclassified him as a sex offender 61 days before his scheduled release and refused to consider his appeal.

As shown in Figure 4 on the following page, 61 days before an inmate's original release date, institutional staff rescinded 197 days of credits, extending his release date from March 4, 2018, to September 16, 2018. Although the inmate filed an emergency appeal challenging the decision, the department did not release him until June 9, 2018, causing him to lose 97 of the 197 days he earned by complying with the department's credit-earning regulations.

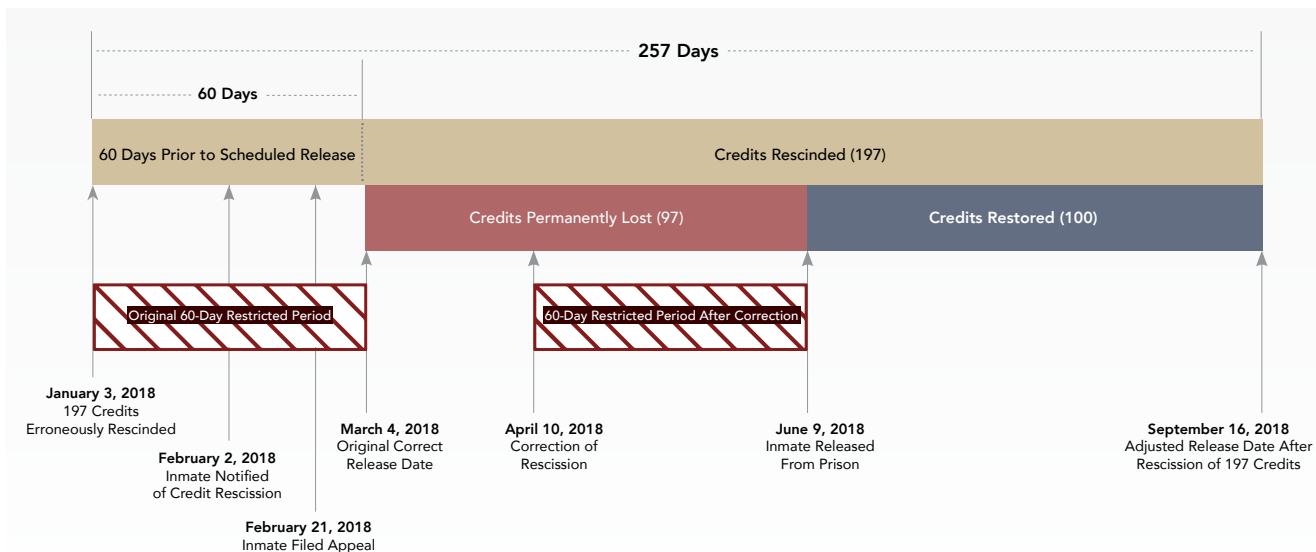
In accordance with the department's policy requiring staff to perform audits of inmates' files when an inmate is 60 days from release, institutional staff audited the inmate's central file and determined a prior conviction from 2003 required him to register as a sex offender under Penal Code section 290. The inmate had completed his sentence for the 2003 conviction in 2006, had been in and out of prison several times since then, and had never previously been required to register as a sex offender. This sudden change in the inmate's classification status caused him to earn credits at a reduced rate of 20 percent (one credit for every four days served) instead of at his previous rate of 33 percent (one credit for every two days served).

DELAYS

In the discussion that follows, we note that there were significant delays between the time the department made the decision to rescind an inmate's credits and the time the department notified the inmate of the rescission. Because the department does not keep records of the dates on which inmates receive notice, we could not independently confirm the dates on which any individual inmate received actual notice of the rescission. However, in their communications with us, each of the inmates included the dates on which they received notice of the rescission.

We were able to independently confirm the dates on which the inmates challenged these rescissions, which often occurred soon after the date they claim to have received actual notice. Considering the great incentive inmates have to immediately challenge decisions that postpone their impending release from prison, we credited the inmates' statements regarding the dates they received actual notice, particularly in the absence of departmental records. Accordingly, we calculated the time between rescission and notice by using the dates the department made the decision to rescind the inmate's credits and the date the inmates stated they received actual notice.

Figure 4. Time Line of the Department's Actions That Impacted an Inmate Whom the Department Incorrectly Classified as a Sex Offender



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

On February 21, 2018, the inmate filed an appeal challenging the institution's decision to reclassify him as a sex offender under Penal Code section 290 and requested that the institution's Appeals Coordinator treat his appeal as an emergency appeal. The inmate alleged that prior to the decision to reclassify him, he was scheduled to be released on March 4, 2018, just 11 days later. As seen in the box below, upon receiving the appeal, the Appeals Coordinator first determined the appeal did not meet the criteria for an emergency appeal and then rejected the appeal outright, informing the inmate:

Your appeal has been rejected pursuant to the California Code of Regulations, Title 15, Section (CCR) 3084.6(b)(8). Your appeal involves multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact. You may resubmit the unrelated issues separately using separate appeals. Be advised that you are still subject to the submission of one non-emergency appeal every 14 calendar days.

Upon review of your appeal, it has been determined that it does not meet the criteria for an emergency appeal. It is also noted that you are attempting to appeal multiple issues. You are appealing your release date and you are appealing your PC290 Registration requirement.

Source: The California Department of Corrections and Rehabilitation.

Because the Appeals Coordinator did not timely or adequately address the inmate's appeal of the decision to reclassify him as a sex offender registrant (text box, right), he contacted us regarding his concerns. On March 1, 2018, we contacted institutional staff and questioned the propriety of their decision to classify the inmate as a sex offender. We explained that the institution was conflating convictions under Penal Code section 647a, which require registration as a sex offender, with convictions under Penal Code section 647, subdivision (a), which do not require registration. On March 2, 2018, and again on March 6, 2018, the institution refused to reverse its decision to classify the inmate as a sex offender and indicated that it had also sought approval from the department's headquarters, which agreed with its decision. The institution provided the inmate with a Computation Review Hearing on March 21, 2018, but did not reverse its decision after the hearing.

On April 4, 2018, after performing additional legal research and drafting a written analysis to provide to the department in support of our position that the inmate should not have been required to register as a sex offender, we elevated our concerns to the department's Office of Legal Affairs. On April 10, 2018, the Office of Legal Affairs concluded its review, agreeing that institutional staff erred in reclassifying him as a sex offender. The department immediately restored the inmate's credits and changed his release date to June 9, 2018, the earliest date possible after accounting for the 60-day restriction. As a result, the inmate spent an additional 97 days in prison.

While the department eventually agreed with our position, it missed earlier opportunities to treat the inmate's appeal with urgency. The inmate filed his appeal on February 20, 2018 with the notation "EMERGENCY APPEAL" at the top of each page of his appeal, clearly alerting the institution's Appeals Coordinator that he believed his appeal qualified for treatment under the emergency appeal process. He then explained his concern that his release date of March 4, 2018, which was only 11 days away, had just been extended to September 16, 2018. From this information alone, the Appeals Coordinator should have recognized that the inmate's appeal posed a situation of serious and irreparable harm. The longer it took the department to address the inmate's appeal, the longer the inmate would be required to spend in prison. Had the Appeals Coordinator treated the inmate's appeal as an emergency appeal and realized the decision to reclassify him as a sex offender was improper within five days of receiving his appeal, the

IMPROPER REASONS FOR REJECTING THE INMATE'S APPEAL

The institution also erred when it rejected the appeal outright based on the assertion that it involved "multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact."

The institution did not assess two unrelated issues when it reclassified the inmate as a sex offender and rescinded his credits. Rather, when the institution reclassified him as a sex offender and noted this change in its computer system that calculates release dates, the system automatically recalculated his release date.

To address the merits of the inmate's appeal, the department needed only review its earlier decision to reclassify the inmate as a sex offender. The rescission of credits was based solely on this reclassification; the credits would have to be restored as a matter of course if the department reversed its classification decision.

institution could have released the inmate on April 27, 2018, 43 days sooner, causing a forfeiture of only 54 credits instead of 97 credits.

Additionally, had institutional staff recognized their error when we first raised our concerns on March 1, 2018, or at least sought an expedited legal opinion from the department's Office of Legal Affairs staff regarding this issue of law, the inmate could have been released as early as April 30, 2018, 40 days sooner.

Staff indifference prevented an inmate from challenging the department's decision to rescind his milestone credits just 46 days before his scheduled release date.

INFORMAL REQUEST FOR ASSISTANCE

The department utilizes an "Inmate/ Parolee Request for Interview, Item, or Service" (Form 22), that does not act as a formal appeal, but rather a request to resolve an issue informally.

This form can be provided to any staff member who is able to address the inmate's request. If dissatisfied with the initial response to the Form 22 request, the inmate may request a supervisor review the response. If still dissatisfied with the response, the inmate may proceed to the next level of the process, which is to submit an "Inmate/Parolee Appeal" (Form 602) to the prison's appeals office.

Exhaustion of the Form 22 process is required before an inmate can appeal various issues, but is not required for staff complaints, disciplinary appeals, classification appeals, or other appeal areas that already document a final departmental decision.

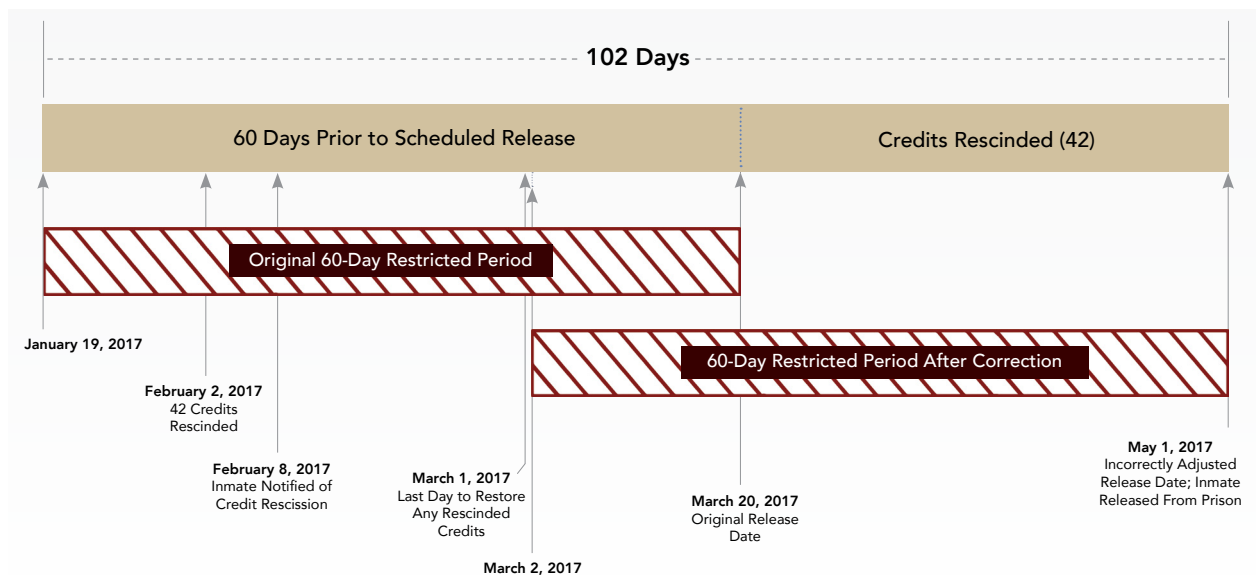
As of June 1, 2020, the department will no longer require inmates to exhaust this informal process. Inmates will be permitted to file grievances directly with the institution's Office of Grievances.

Sources: *California Code of Regulations*, Title 15, Article 8.5, Section 3086; Department Operations Manual, Section 54100.8, California Department of Corrections and Rehabilitation.

As shown in Figure 5 on the next page, an inmate learned that institutional staff rescinded 42 of his previously awarded milestone credits on February 8, 2017, which caused his original release date of March 20, 2017, to be extended to May 1, 2017. The next day, the inmate filed Requests for Assistance, referred to as Form 22s (text box, left) with both the institution's Case Records Office and Education Office seeking assistance in having his credits restored. By the time the inmate exhausted this informal process and filed a formal appeal of the decision to rescind his milestone credits, he was already within the 60-day restricted period, which prevented any adjustment to his release date. As a result, the inmate was unable to effectively challenge the decision to rescind his milestone credits, 14 of which should not have been rescinded.

Because institutional staff did not rescind the inmate's credits until February 2, 2017, 46 days prior to the inmate's original release date, and did not notify him of the rescission until six more days had passed, by the time the inmate became aware that his milestone credits had been rescinded, the inmate had very little time to challenge the institution's decision (see text box, page 21, titled "Delays" for further explanation). Only 40 days remained before his original release date and only 82 days remained before his adjusted release date.

Due to the 60-day restriction, any attempt to challenge the institution's decision could only have resulted in a partial restoration of the inmate's credits. Even if the institution had reversed its decision to rescind the inmate's credits on the day the inmate received the notice, only 22 of the 42 credits could have been restored. If the institution had attempted to restore all 42 credits on February 8, 2017, the soonest it could release him would have been April 9, 2017, 20 days after his original release date. By March 2, 2017,

Figure 5. Time Line of the Department's Actions in Rescinding 42 of an Inmate's Milestone Credits

Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

60 days before his adjusted release date, the institution would not have been able to accelerate the inmate's release at all.

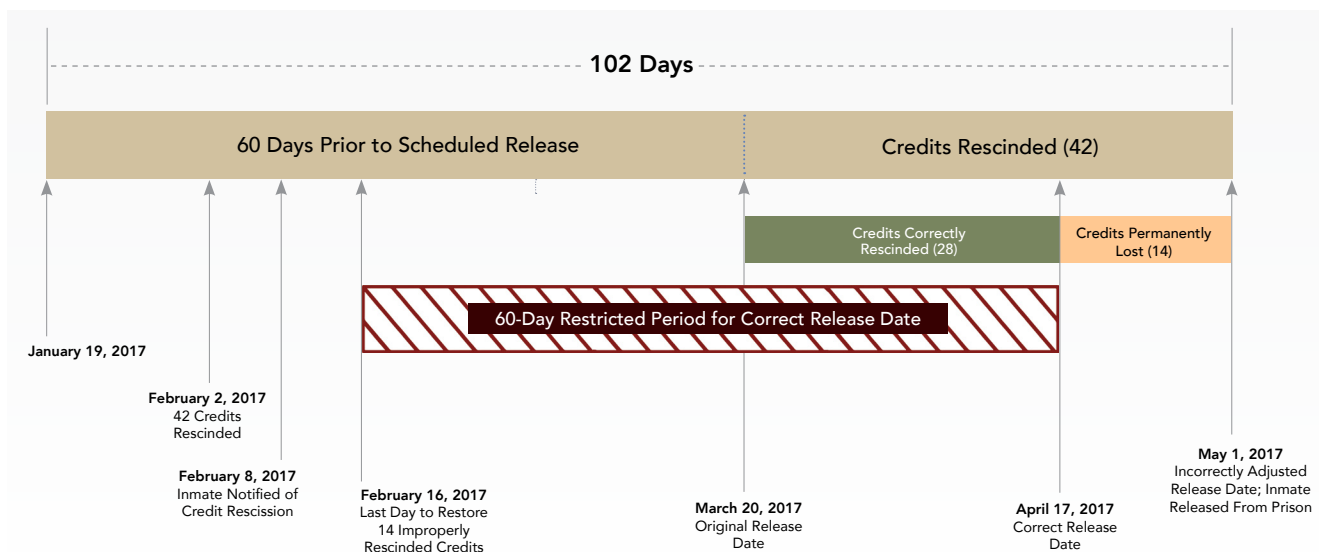
Due to this abbreviated time frame, institutional staff would have had to act expeditiously in order to restore any of the inmate's credits. Although the inmate immediately filed a Form 22 Request for Assistance indicating that he was scheduled to be released in 39 days and was seeking a restoration of 42 days of credits, institutional staff failed to recognize the urgency of his situation. The institution's Education Office failed to address his complaint until February 28, 2017 (19 days later), indicating it had no authority to alter his release date, and the Case Records Office failed to respond to his request at all. By the time he filed his appeal on March 3, 2017, the 60-day restriction precluded him from obtaining any relief whatsoever. Because institutional staff did not address the inmate's requests for assistance in a timely manner, the inmate was denied the opportunity to challenge the loss of the 42 milestone credits the institution previously awarded him.

During our review of this inmate's records, we asked the department to reassess the inmate's entitlement to the 42 credits that had been rescinded. Among the credits rescinded were three separate awards of 14 credits each, which the inmate received after achieving scores on reading and literacy exams that met three separate educational milestones. At the time, the institution rescinded all 42 credits because it believed the inmate possessed a high school diploma (text box, page 27) and was therefore ineligible to earn credits for the progress he

made in his high school course. After the inmate's release from prison, the department confirmed the inmate did not have a high school diploma, and was therefore not prohibited from earning the milestone credits on that basis.

However, upon further review, the inmate was only entitled to earn milestone credits for one of the three test scores, which entitled him to 14 days of credits. A department memorandum governing eligibility to earn milestone credits in January 2017 required that inmates spend a minimum of 40 hours of classroom time between tests in order to be eligible to earn milestone credits. Because he met this requirement for one of the tests, he was entitled to 14 of the 42 credits the department rescinded. Therefore, as shown in Figure 6 below, had institutional staff processed the inmate's Requests for Assistance expeditiously in light of the clear urgency of the matter, the department could have restored these 14 credits and adjusted his release date to April 17, 2017, instead of May 1, 2017.

Figure 6. Time Line of the Restrictions Placed on an Inmate's Ability to Effectively Challenge the Department's Decision to Rescind 42 of His Milestone Credits



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

The institution's justification for denying the inmate's appeal in this case raises an additional concern regarding the department's process for addressing appeals that challenge an inmate's release date. At the top of the following page is the explanation the institution's appeals office provided to the inmate for rejecting his appeal:

Inmate ██████ the Appeals Office is in receipt of your appeal; however, your appeal is rejected because you failed to resolve this issue at the lowest level possible via CDCR Form 22. The full completion of the form, including the Supervisor's Review, must be completed before the appeal can be considered for possible acceptance. You will need to resubmit the CDCR Form 22 to ██████ Classification & Parole Representative, for response in person or via institutional mail. If dissatisfied with the response you receive from the supervisor, you may resubmit this appeal. Make sure to attach the completed CDCR Form 22 so the Appeals Coordinator can note you have attempted to resolve this matter at the lowest level possible. Additionally, you will need to include a copy of CDC 128B, Rescinding of Milestones.

Source: The California Department of Corrections and Rehabilitation.

Although the inmate exhausted the Form 22 process, the institution's appeals office rejected his appeal because he did not submit sufficient supporting documentation with his appeal. Because time was of the essence to this inmate's appeal, he should not have been required to exhaust this informal process before having the right to file an appeal.

Because he attempted to utilize the Form 22 process before filing his appeal, by the time he exhausted this process and filed his appeal on March 3, 2017, his original release date had passed and he was already within 60 days of the adjusted release date.

Even if staff immediately granted his appeal, they would not have been able to advance his release date any sooner. However, if the inmate had been able to immediately appeal the decision to rescind his credits on February 9, 2017, the institution would have had seven days to process the appeal and award the inmate the 14 credits he earned before the 60-day restriction precluded the inmate's timely release.

Staff delays prevented an inmate from challenging the department's decision to rescind his milestone credits 58 days before his anticipated release.

On December 21, 2017, the department notified an inmate that it had rescinded 56 days of milestone credits it previously awarded him and extended his original release date from January 28, 2018,

STAFF DELAYS CREATED UNCERTAINTY AS TO THE INMATE'S ENTITLEMENT TO CREDITS

A lack of diligence in obtaining the inmate's high school records earlier in the inmate's incarceration created uncertainty regarding the inmate's education status, and ultimately caused institutional staff to rescind his milestone credits.

When the inmate entered the department's custody in August 2015 after being sentenced to prison, he told staff that he already possessed a high school degree. Departmental policy requires institutional staff to verify all information inmates provide regarding their educational status by requesting high school transcripts from schools that inmates have attended. The department generally receives transcripts within one to eight weeks after making a request. Despite learning of the need to obtain the inmate's high school transcripts in August 2015, the institution did not request the records until October 2016, and again in April 2017 after the first attempt was unsuccessful.

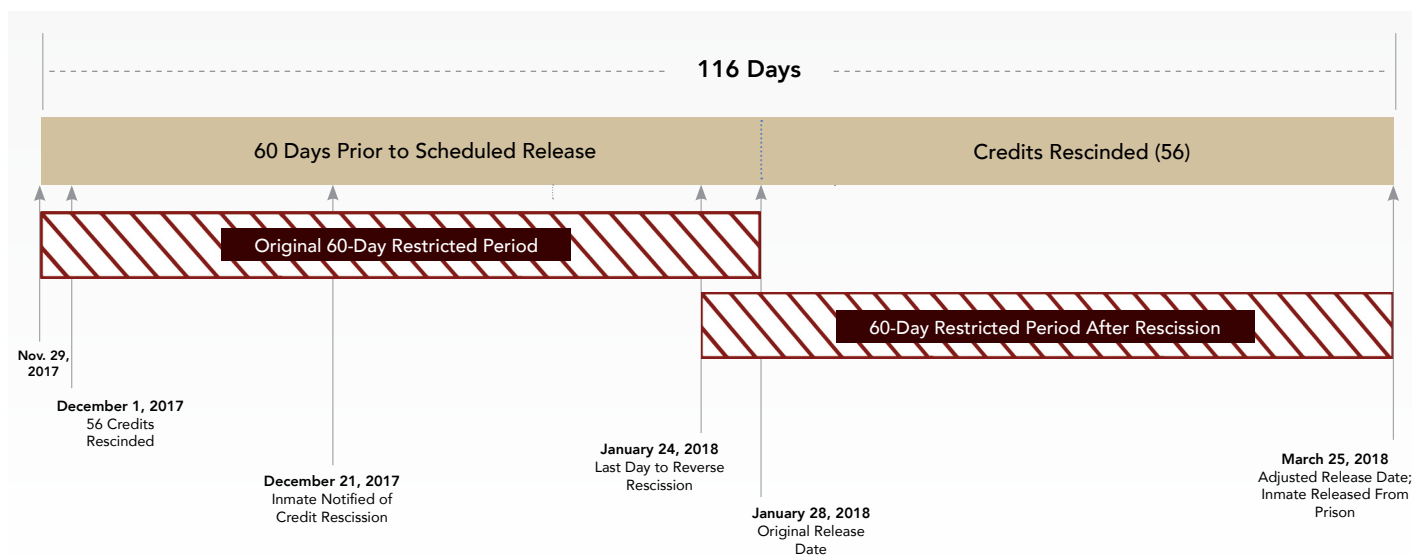
Because the department permits inmates to work toward earning their high school degrees while staff verify their educational status, the institution permitted the inmate to enroll in a high school course in December 2015 and begin earning milestone credits for demonstrating progress in the course. In February 2017, while conducting a 60-day audit of the inmate's central file, institutional staff rescinded all the milestone credits it previously awarded him for his progress in the course because the institution still did not have a copy of the inmate's transcripts.

The department finally received the high school records on May 2, 2017, the day after the department released him from prison.

Source: The Office of the Inspector General's analysis of records provided by the California Department of Corrections and Rehabilitation.

to March 25, 2018 (see text box, page 21, titled “Delays” for further explanation). The inmate submitted an appeal of the decision the next day. Ultimately, we determined the department was correct to rescind the credits. However, the institution’s failure to address this inmate’s appeal until January 24, 2018, 60 days from his adjusted release date, prevented the inmate from challenging the decision to rescind his milestone credits.

Figure 7. Time Line of the Department’s Actions in Rescinding 56 of an Inmate’s Milestone Credits



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

During our review of this inmate’s records, we asked the department’s Office of Research and Office of Correctional Education to reassess the inmate’s entitlement to the 56 credits the institution rescinded in December 2017. After reviewing the department’s responses, we concurred with the warden’s determination; the inmate should not have been awarded the 56 credits in question because he did not meet the minimum classroom hours required to earn the credits. However, we also discovered the department failed to ensure that 32 days of good conduct credits the inmate lost as a result of time spent in administrative segregation in 2016 were added to the inmate’s release date calculation. As a result, the department should not have released this inmate until April 26, 2018, 32 days later.

Although the department correctly determined the inmate was ineligible to receive the 56 credits in question, this inmate’s appeal serves as another example of how the practice of auditing inmates’ release dates with only months left before their anticipated release

dates deprives them of the opportunity to challenge the department's decisions to rescind credits.

On the face of his appeal, the inmate requested that the institution's Appeals Coordinator treat his appeal as an emergency appeal because his original release date of January 28, 2018, was only 37 days away and he was seeking to reverse the decision to rescind 56 of his milestone credits. From this information alone, the Appeals Coordinator should have recognized the serious and irreparable harm the inmate could suffer as a result of further delay and treated the inmate's appeal as an emergency appeal. The Appeals Coordinator, however, did not process the appeal until six days after receiving it, at which point he failed to comply with regulations that require the Appeals Coordinator to decide whether the complaint qualifies as an emergency appeal and notify the inmate of this decision. Instead, the Appeals Coordinator assigned the appeal to a staff member to provide the inmate with a first level response by February 7, 2018 (nine days after the inmate's original release date).

On January 24, 2018, staff in the institution's Education Office interviewed the inmate, determined that the credits should not have been rescinded, and submitted a request to departmental headquarters seeking restoration of all 56 of the inmate's milestone completion credits. On February 2, 2018, institutional staff informed the inmate that his adjusted March 25, 2018 release date would not change after all; he then elevated his appeal to the second level of review. On February 27, 2018, the warden responded to the inmate's second-level appeal, informing him that after further investigation and consultation with the department's Office of Correctional Education, he did not meet the minimum classroom hours required to qualify for the milestone credits. The institution released the inmate from prison on March 25, 2018.

Because the institution did not rescind the inmate's credits until December 1, 2018, 58 days prior to the inmate's original release date, and did not notify him of the rescission until 20 more days had passed, by the time the inmate became aware that his milestone credits had

A FOURTH INMATE COULD HAVE BEEN RELEASED 11 DAYS SOONER

In a fourth case involving a 60-day audit that occurred in February 2018, the department discovered an inmate had been found guilty of a rules violation in March 2016 that was never factored into the inmate's release date calculation. The rules violation carried with it a penalty of a 90-day loss of credits, which, once discovered and applied to his sentence, caused the inmate's release date to be extended from March 21, 2018 to June 19, 2018.

The inmate was also eligible to have 90 days of credits restored by the institutional classification committee (ICC; see page 57 for a description of the ICC's functions) if he remained discipline-free for a 60-day time period, which ended on January 11, 2018. The inmate remained discipline-free for that 60-day period, but he did not receive an ICC hearing until January 31, 2018, 20 days later.

Had the department scheduled the inmate to receive an ICC hearing on January 11, 2018—the first day he became eligible to have his 90 days of credits restored—he could have been released on his original release date of March 21, 2018.

Instead, because the department did not restore the inmate's credits until January 31, 2018, the 60-day restriction precluded the inmate from being released before April 1, 2018, causing him to spend an additional 11 days in prison.

Source: The Office of the Inspector General's analysis of records provided by the California Department of Corrections and Rehabilitation.

been rescinded, he had very little time to contest the institution's decision. Only 38 days remained before his original release date and only 94 days remained before his adjusted release date. If the inmate's claim to the credits had been meritorious, by the time the inmate received notice of the decision and filed an appeal, the institution could only have restored 34 of the 56 credits. By the time institutional staff interviewed the inmate about his appeal on January 24, 2018, only four days remained before his original release date and only 60 days remained before the adjusted release date. By this time, the inmate's release date could no longer be adjusted.

To Avoid Further Due Process Violations, the Department Should Amend its Policies to Provide a Predeprivation Process for Inmates to Challenge Credit Rescissions Before They Become Final

The process we reviewed whereby the department finalizes its decisions to rescind credits within the last 60 days of an inmate's incarceration denies affected inmates a meaningful opportunity to challenge the department's decisions. Because the decisions are rendered nearly unchallengeable, this practice has not afforded inmates adequate due process safeguards to prevent against the wrongful deprivation of the constitutionally protected interests they possess in a timely release from prison. When institutional staff discover errors during a prerelease audit, they must complete a credit rescission request form and submit it for supervisory approval. Once approved by a supervisor, staff enter the rescission into the department's computer system that automatically calculates the inmate's release date; the rescission then becomes final. The affected inmate is not notified of the rescission until after it has been finalized and must file a formal appeal to challenge the decision. However, inmates are not typically notified of the rescission in a timely manner. In three of the five cases we reviewed, inmates were notified of staff decisions to rescind credits after the 60-day restricted time period had already begun, which led to an immediate, irreversible loss of credits in each case (Table 3, next page). Two of the five decisions were incorrect and caused the inmates to spend an additional 111 days in prison.

Changes to departmental processes for conducting prerelease audits and processing inmates' appeals of release date changes.

On May 23, 2018, the department changed its practice of performing prerelease audits 60 days before an inmate's release, and now performs audits when an inmate is between 105 and 120 days from release. This change in practice was formalized in a July 2019 memorandum, which was circulated to all institutions.

Table 3. Summary of the Department's Delays in Notifying Inmates of Decisions to Rescind Their Credits

| | Number of Credits Rescinded at Audit | Number of Days until Original Release Date | Number of Days between Rescission and Notice* | Number of Credits Permanently Lost by the Time the Inmate Received Notice |
|--------|--------------------------------------|--|---|---|
| Case 1 | 197 | 61 | 18 | 17 |
| Case 2 | 42 | 46 | 6 | 20 |
| Case 3 | 56 | 58 | 20 | 22 |

* See text box, page 21, titled "Delays."

Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

The department also softened some of the impact of the 60-day restriction by amending its Prop 57 regulations. The amended rule, which took effect on May 1, 2019, now delineates three tiers of release date restrictions for awarding credits or restoring previously rescinded credits—a 60-day restriction for inmates serving a term for a violent felony conviction,¹¹ a 45-day restriction for inmates convicted of child abuse or a sex offense involving a minor, and a 15-day restriction for all other inmates.¹² This change will reduce the frequency and degree of credit forfeitures inmates suffer if mistakes staff make during prerelease audits are discovered and corrected in a timely manner.

The department is also implementing a new grievance and appeal process, which goes into effect on June 1, 2020. The new process eliminates the special process previously applicable to appeals related to sentence calculations and release date changes. These claims will all proceed through the normal grievance and appeal process. Under this new process, after receiving a grievance, institution staff have 60 days to mail inmates an initial response. Inmates may then appeal the institution's grievance response to the Office of Appeals at departmental headquarters, which has 60 days to mail its response back to the inmate.¹³ Without a method of expediting their appeals, it could take inmates more than 120 days to exhaust the new grievance appeal process.

Therefore, as of June 1, 2020, when an institution performs a prerelease audit of an inmate who is 120 days from his or her anticipated

11. California Penal Code section 667.5 (c) identifies 23 unique offenses that qualify as violent felonies, including, but not limited to, murder, voluntary manslaughter, mayhem, robbery, attempted murder, and kidnapping.

12. *California Code of Regulations*, Title 15, Article 3.5, Section 3043, subdivision (c).

13. Notice of Approval of Emergency Regulatory Action, OAL Matter Number 2020-0309-01, https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf.

release and determines the inmate's release date should be extended, there will not be enough time for the affected inmate to exhaust the department's process for challenging these decisions before they become irreversible. For example, with 120 days left before his anticipated release, John Doe receives a notice that his release date is being extended by 30 days because of errors identified during a prerelease audit. If John Doe files a grievance challenging the decision to extend his release date, institution staff have 60 days to consider his grievance and mail him a response. If dissatisfied with the institution's response, John Doe may then mail a grievance to the Office of Appeals in Sacramento, which has 60 days to consider his appeal and mail him a response. Without factoring in any delays that are inherent in this process (i.e., delays in notifying John Doe of the results of the prerelease audit and the delays in processing incoming and outgoing mail at the institution), by the time John Doe has exhausted the administrative appeal process, his anticipated release date has already passed. He can no longer be released on time and will have to spend as many as 30 additional days in prison.

Due process considerations.

The due process clauses of both the United States Constitution and the California Constitution provide that the government cannot deprive any person of life, liberty, or property, without due process of law. Exactly what safeguards are required and when those safeguards must be provided in any given situation varies based on the nature of the interest involved, the risk that the existing process will result in an erroneous deprivation, the value of additional procedures or safeguards, and the burden additional safeguards would place on the government's interests.

The constitutionally protected liberty interest inmates possess in the sentence reduction credits they earn is well-established. The United States Supreme Court has declared that when a state creates a right to earn credits that shorten an inmate's prison sentence, inmates obtain a constitutionally protected liberty interest in the credits they earn.¹⁴ The department's regulation governing the award of credits expressly states: "The award of these credits . . . shall advance an inmate's release date if sentenced to a determinate term."¹⁵ The regulation guarantees inmates will receive sentence reduction credits once they complete a credit-earning program or milestone, as long as they comply with prison rules and regulations, and are eligible to earn the particular type of credit in question. Once these conditions are fulfilled, the inmate earns the legal right to have his or her release date advanced by

14. *Wolff v. McDonnell* (1974) 418 U.S. 539, 557.

15. *California Code of Regulations*, Title 15, Article 3.5, Section 3043.

the number of credit-days earned and is entitled to “those minimum procedures appropriate under the circumstances and required by the due process clause to insure that the state-created right is not arbitrarily abrogated.”¹⁶

The question then becomes whether due process safeguards must be provided before the state deprives inmates of these liberty interests, or afterward, often referred to as predeprivation due process and postdeprivation due process. As the United States Court of Appeals for the Ninth Circuit explained, “Process which precedes a loss of liberty obviously prevents a constitutional violation. Process which follows the loss of liberty can only provide a substitute remedy, usually money damages.”¹⁷

The department does not currently offer inmates a predeprivation appeal process; inmates do not receive advance notice that their credits are being rescinded or an opportunity to challenge the rescission before it becomes final. The department does provide inmates with a form of postdeprivation due process by permitting inmates to file a grievance challenging their release date calculations and credit rescissions. However, as explained on pages 31 and 32, inmates are not likely to be able to exhaust this process in time for the department to fully correct any incorrect release date changes.

A predeprivation appeal process would provide the state with several benefits that the current postdeprivation process does not. First and foremost, the opportunity to challenge decisions to rescind credits before the credits are rescinded furthers the state’s interest in ensuring its processes are not causing individuals to be deprived of their constitutional rights. By providing inmates with predeprivation safeguards, the state also ensures it is not wasting taxpayer money by incarcerating inmates beyond their lawful release dates. In the small sample of cases we reviewed, we determined the department’s current postdeprivation process caused two inmates to spend a combined total of 111 additional days in prison. By allowing inmates to challenge credit losses before they are finalized, the state would also save the money it would otherwise spend defending against lawsuits inmates file challenging their unlawful incarceration and paying any damages associated with the unsuccessful defense or settlement of those claims.

A predeprivation appeal process would also reinforce the underlying purpose of Prop 57, which was intended to encourage inmates to participate in educational and rehabilitative programs by providing them with credits that shorten their period of incarceration. By ensuring inmates actually receive the benefit of the credits they earn,

16. *Wolff v. McDonnell* (1974) 418 U.S. 539, 557.

17. *Haygood v. Younger* (9th Cir. 1985) 769 F.2d 1350, 1357.

predeprivation safeguards reassure inmates that their completion of qualifying programs will lead to their early release.

To provide a predeprivation process, the department would only need to adjust a pair of its policies and procedures that are causing inmates to suffer irreparable credit losses. First, the department would need to adjust its practice of conducting audits of inmates' release date calculations so that audits occur earlier in an inmate's incarceration, such as 180 days before an inmate's estimated release, rather than 105 to 120 days before release. These 60 to 75 additional days would provide the department adequate time to notify inmates of its intent to extend their release dates and provide the inmates an opportunity to challenge the proposed decision before the applicable 15-, 45-, or 60-day restricted period begins. This change would also provide the department additional time to obtain any records or information it needs to verify an inmate's qualification to earn the credits in question.

Second, the department would need to adjust its appeal process to expedite the processing of appeals that challenge proposed decisions to rescind credits and provide for multiple levels of review before the rescission becomes final. In each of the five field inquiries we performed, department headquarters staff determined institutional staff had made some sort of error in calculating the inmate's release date. This change would guarantee that appeals are processed sufficiently in advance of the release date restriction and ensure that multiple levels of departmental staff have reviewed decisions to rescind the credits before they become final.

Because of the issues we discovered during the field inquiries we performed into five complaints alleging the department erroneously rescinded inmates' credits, we believe the department's current postdeprivation process is insufficient to protect against the arbitrary deprivation of the liberty interests inmates possess in their sentence reduction credits. The department's practice of finalizing credit rescissions without providing inmates with advance notice and an opportunity to respond fails to provide inmates with adequate due process protection. When inmates do not receive timely notice sufficiently in advance of their scheduled release dates, they cannot challenge the decisions to rescind credits, even when the decisions are later determined to be incorrect.

When departmental staff identify mistakes well before an inmate's anticipated release date and evaluate the inmate's claims in a timely manner, the department can prevent the erroneous forfeiture of credits.

The fifth field inquiry we performed highlights that when inmates learn of departmental decisions to deny an inmate's award of credits well in

advance of the inmate's estimated release date, any incorrect decisions can be fixed before the release date restriction causes a forfeiture of credits the inmate rightfully earned.

In this final case, an inmate's mother wrote to us claiming her son was improperly denied milestone credits for completing a college course after the department's Prop 57 regulations went into effect. On March 5, 2018, after reviewing the inmate's records, we contacted the department's Contract Beds Unit regarding the inmate's entitlement to the credits and requested it review its previous decision to not award him milestone credits for completing the course. The same day, the Contract Beds Unit reviewed the inmate's records, determined he was entitled to academic milestone credits for completing the course, and sent a request to the school's principal to have the credits applied. On March 15, 2018, the department corrected its error, awarded the inmate 14 days of milestone credits, and advanced his release date from July 12, 2018, to June 28, 2018. Because the department promptly evaluated the inmate's claim, it was able to discover the error and correct the mistake 45 days before the 60-day rule prevented the department from adjusting his release date.

The Department's Hiring Authorities Took Inconsistent and Often Inadequate Action in Response to Complaints of Staff Misconduct We Referred for Their Review

The vast majority of complaints we receive through our complaint intake process contains allegations of staff misconduct. When we receive an allegation that contains sufficient information to suggest potential misconduct by departmental staff, we refer the complaints to the appropriate hiring authority with our recommendation that the hiring authority perform an inquiry into the complaints. We then follow up with the hiring authority to determine what actions the hiring authority took in response to receiving the allegations and review any records the department generated in the process. From these records, we assess the adequacy of each inquiry.

During our special review of the staff complaint process at Salinas Valley State Prison in 2018, we devised a set of criteria by which we now assess the procedural adequacy of all staff complaint inquiries we review. For an inquiry to be deemed adequate, all of the following conditions must be met: the inquiry must have been completed within 45 business days;¹⁸ the inquiry must be documented and summarized; the inquiry must have included interviews of all reasonably identifiable witnesses and a collection of all documentation that are likely to provide relevant information; and the inquiry must be free from signs of bias.

We reviewed the department's response to each of the 36 complaints involving allegations of staff misconduct that we elevated to a field inquiry. Following our initial review, we referred 35 of the 36 complaints to various hiring authorities.¹⁹ Hiring authorities ordered their staff to inquire into the allegations for 19 of the 35 complaints (54 percent). In 14 of those 36 complaints, we learned the department had already initiated inquiries into the allegations of staff misconduct after receiving the complaints through a separate process. Two complaints contained multiple allegations, some of which the department had already initiated an inquiry into, and

18. Departmental policy generally requires that inquiries into inmate allegations of staff misconduct are completed within 30 business days of receipt. Accordingly, we deemed all inquiries completed within 30 business days to be timely. In our opinion, a slight delay beyond 30 business days should not cause an inquiry that was otherwise thorough and complete to be deemed inadequate overall. Inquiries that were not completed within 45 business days (which is approximately 60 calendar days) resulted in an automatic inadequate overall rating.

19. We did not refer one of the 36 complaints to a hiring authority because our initial research located the pertinent institution's inquiry report that had already been completed. Our review of that report determined the hiring authority thoroughly and appropriately examined the inmate's allegations.

others it had not. Nevertheless, we assessed the response taken by the hiring authorities in each of the 36 complaints. We assessed whether complaint responses were timely, thorough, and complete based on the documentation generated during the inquiry and other information the hiring authorities and their staff conveyed to our field inspectors.

In 32 of the 36 complaints we reviewed, the hiring authorities ordered their staff to perform an inquiry into the allegations. In three of the 32 inquiries ordered by hiring authorities, our ability to review the department's handling of the complaint was limited because the staff who performed the inquiries did not draft an inquiry report or otherwise document their investigative efforts. Table 4, below, summarizes the department's performance in each aspect of the inquiry process that we assessed.

Table 4. Assessment of the Department's Performance in Addressing the 36 Complaints of Staff Misconduct We Referred for Their Review

| | Inquiry Performed | Inquiry Documented | Timely Inquiry | Adequate Interviews* | Adequate Document Review* | Adequate Overall |
|-----|-------------------|--------------------|----------------|----------------------|---------------------------|------------------|
| Yes | 32 | 29 | 20 | 20 | 24 | 15 |
| No | 4 | 3 | 12 | 8 | 6 | 21 |

* The OIG was not able to assess adequacy of the interview and review of evidence in cases with limited documentation or in cases in which the OIG found the category was not applicable.

Source: The Office of the Inspector General.

Although the 36 field inquiries we performed involving allegations of staff misconduct represent a much smaller sample size than the 188 we assessed during our special review of Salinas Valley State Prison's handling of staff misconduct allegations in 2018, we noticed some similarities between the two samples. During that special review, we found 104 of the 188 staff complaint inquiry reviews (55 percent) inadequate, whereas in this period, we determined the department performed inadequate inquiries into 21 of the 36 complaints (58 percent). We also found a number of similar issues in the inquiries the department performed into complaints of staff misconduct, such as incomplete investigative work, outward signs of bias, and a lack of independence. Appendix C presents a summary detailing the various reasons why each inquiry was not adequately conducted.

Four Wardens Failed to Take Any Investigative Steps into Complaints of Staff Misconduct We Brought to Their Attention

An essential component of an adequate inquiry is that an inquiry is actually performed. In four of the 36 complaints we reviewed

(11 percent), the hiring authority did not perform an inquiry into allegations that its staff engaged in misconduct. The primary reason we refer allegations of staff misconduct to the department is because we lack the authority to perform investigations into allegations of staff misconduct ourselves. That authority was removed in July 2011 as part of the 2011–2012 Budget Act.²⁰ As has been our practice since July 2011, when we receive complaints alleging staff misconduct, we can only refer the complaint to the department and request information and documentation reflecting the actions it took in response to receiving the complaint. As a result of the 2011 changes, if the hiring authority does not perform an inquiry, the allegation of staff misconduct goes unaddressed.

In one instance, we provided a warden with a complaint we received from an inmate alleging institutional staff never responded to a complaint he filed. In that complaint, the inmate alleged a correctional officer retaliated against him because he previously filed a complaint against the officer. In the initial complaint, the inmate alleged the officer required him to share a cell with an inmate whom he believed posed a risk to his safety. The inmate warned the officer that his new cellmate was a member of a gang whose members had tried to murder him before he came to prison and that neither he nor his cellmate were safe if they were forced to live together. The inmate alleged that despite being made aware of these safety concerns, the officer still required the inmates to share a cell. Ten days after the inmates were housed together, they were involved in an in-cell altercation in which each inmate claimed to have been the victim of an assault initiated by the other.

CITIZEN'S COMPLAINT PROCESS

Any noninmate may register a complaint against any departmental employee for improper conduct by completing and submitting a CDCR Form 2142, "Citizens' Complaint Against Employees of CDCR."

The department reviews all complaints of misconduct received and may initiate an investigation based upon the nature and seriousness of the allegation(s). If an investigation is initiated, the complainant is notified when the investigation is complete.

Source: *California Code of Regulations*, Title 15, Article 2, Section 3391; the California Department of Corrections and Rehabilitation, Office of Internal Affairs, Frequently Asked Questions, <http://cdcr.ca.gov/oia/faqs/> (URL accessed on February 5, 2020.)

After we discussed the complaint with the warden, the warden sent the inmate a letter explaining that the institution had not responded to his complaint because it was filed on a Citizen's Complaint form (Form 2142) rather than on the required Inmate Appeal form (Form 602) (text box, page 20). When we followed up with the warden two months after providing him a copy of the complaint, we learned that because the inmate never refiled his allegations on the proper form, the institution did not perform an inquiry or investigation into his allegations.

Although a departmental regulation required the inmate to submit this complaint on a Form 602, the department should have recognized the seriousness of the allegations, processed the inmate's complaint as a staff complaint, and assigned a staff member to perform an inquiry into the allegations. Instead, the warden opted to ignore the inmate's allegations

20. Senate Bills 78, 87, and 92 of the 2011–12 legislative session.

that a correctional officer engaged in serious misconduct that resulted in an in-cell assault because the complaint was not written on the correct form. Regardless of the form on which an allegation of staff misconduct is made, the department has an obligation to inquire into such allegations, especially when the allegations involve serious misconduct suggesting staff intentionally placed the safety of two inmates at risk.

Hiring authorities also failed to perform inquiries into the following three complaints of staff misconduct we forwarded to them:

- The former spouse of a correctional officer alleged the officer sent harassing text messages to her and to their two children, threatened to kill her and commit suicide, and made false allegations about her that could jeopardize her employment and harm her reputation. She also alleged the officer verbally abused her and her children and threatened to assault her new boyfriend.²¹
- The mother of an inmate alleged a lieutenant was mistreating her son because his commitment offense involved an assault on a peace officer and because she had previously complained about the lieutenant's treatment of her son. She alleged her son was accused of writing a "kite" (inmate note) that threatened to harm the lieutenant, and was handcuffed and escorted to the lieutenant's office, where the lieutenant questioned him about the threat. The lieutenant then allegedly placed the inmate in a holding cell for five-and-one-half hours, where he allegedly interrogated the inmate and told him, "Where did this get your family writing complaints against me? Tell your family to back off."
- An inmate's wife alleged the correctional officer responsible for coordinating family visits at an institution required her husband to pre-order food up to two months in advance of the visit, causing the food to grow moldy or expire by the time the visit occurred. The wife also alleged the officer refused to accommodate the dietary restrictions her doctor ordered and would not allow her to bring her own food into the institution with her during family visits, even though the institution did not provide her an option to purchase food that met her doctor's orders. The inmate's wife also alleged the officer confronted her after she called the department's

21. The hiring authority opened an inquiry into similar allegations the spouse submitted directly to the institution seven months later, which included additional allegations of misconduct that occurred after she submitted her initial complaint to our office. However, the hiring authority took no action in the seven preceding months despite being made aware of the spouse's initial complaint.

Office of the Ombudsman regarding her complaints and told the inmate, “We’re going to have some problems” if his wife kept filing complaints. The officer also allegedly refused to answer the wife’s calls regarding her visits.

Hiring Authorities Performed Timely Inquiries into Only 63 Percent of the Staff Misconduct Inquiries We Reviewed

Although the department’s regulations establish time frames within which it must conduct inquiries into complaints of staff misconduct it receives from inmates, there are no time frames for the department to inquire into allegations of staff misconduct that the department receives in other manners, such as through the citizen complaint process; informally, such as by email or phone call; or after a referral from our office or another entity. Timely inquiries are an essential component of an effective system of internal review. Complaints must be investigated in a timely manner to ensure that the most reliable information and memories are collected and preserved. Inmates and staff have dozens of interactions with one another on a daily basis. As time passes, it becomes more and more difficult to separate any one of those interactions from the others. Because most of these allegations involve the actions of peace officers, to whom a one-year statute of limitations applies, any delay in investigation shortens the amount of time the hiring authority has to perform an investigation and institute discipline, where appropriate.

Considering the majority of the complaints we refer to the department come from inmates, we assessed the timeliness of the department’s inquiries by the same standards applicable to complaints of staff misconduct raised via the inmate appeal process, which requires the hiring authority to complete its inquiry within 30 business days of receipt, but also provides a process for requesting an extension of time in extenuating circumstances.

During our review period, we determined 20 of the 32 inquiries (63 percent) the department performed were either completed within 30 business days or beyond 30 business days, but with a reasonable justification for the delay. As set forth in the cases below, several hiring authorities deserve recognition for performing immediate inquiries into allegations of staff misconduct:

- On September 21, 2018, we notified an institution’s public information officer that we had received a complaint from an inmate alleging he overheard multiple correctional officers make statements about a captain suggesting they would not come to the captain’s aid if he were being attacked. Immediately upon receipt of our request, the institution deployed a team of investigators to assess the validity of

the allegations. By October 8, 2018, just 17 days later, the department had completed its inquiry, which included interviewing approximately 135 inmates living on the captain's assigned yard, the inmate who made the allegations, an inmate who allegedly overheard the statements, and the officers alleged to have made the statements.

- On February 7, 2018, we referred a complaint that identified 28 allegations of misconduct to the hiring authority and recommended an inquiry into the allegations contained in the complaint. By February 20, 2018, just 13 days later, the institution's investigative services' lieutenant had completed his inquiry after either interviewing or collecting statements from more than 13 staff members, reviewing a voluminous amount of documentation related to the allegations, and summarizing the results of his inquiry into a report. Based on the inquiry report and the warden's request, the department's Office of Internal Affairs opened an investigation into two of the allegations contained in the complaint.
- On July 25, 2018, we notified the department's Office of Internal Affairs that we received a report that a departmental employee had been recently seen riding in a car with a parolee, suggesting the employee was engaged in an overly familiar relationship with the parolee. Within three business days, the Office of Internal Affairs determined the employee had ended her employment with the department 10 months earlier and was able to close its inquiry because former employees are not prohibited from associating with inmates or parolees.

However, in 12 of the 32 inquiries the department performed (38 percent), the department failed to perform the inquiries within 30 business days. In the following examples, the hiring authority performed inquiries into allegations of staff misconduct that were so untimely that we question the reliability of the information gathered during the inquiry:

- In one case, a warden's 161-day delay in interviewing three staff members precluded the warden from referring a case to the department's Office of Internal Affairs for further investigation. In his complaint, the inmate alleged he was attacked by a group of inmates on March 8, 2018, 16 days after voicing safety concerns to institutional staff, who did not take any action to address his concerns.

The inmate initially notified the institution of these allegations when he filed a staff misconduct complaint with

the institution's appeals office on March 23, 2018. During the department's initial inquiry into the complaint, the department interviewed the inmate and three staff members regarding the allegations. This initial inquiry did not include interviews of two officers and two mental health staff to whom the inmate claimed to have raised his safety concerns.

We met with the warden to discuss the complaint on July 31, 2018, who stated he would look into the matter. On August 14, 2018, the warden informed us that his staff had already performed an inquiry into the complaint, which determined the allegations were unsubstantiated. On September 7, 2018, after a change in leadership at the institution, we recommended the new warden review the inmate's complaint. On September 27, 2018, the warden agreed to interview the mental health staff and officers who were not interviewed during the initial inquiry and to re-interview the inmate who filed the complaint. We followed up with the warden again on November 8, 2018, December 27, 2018, and January 8, 2019; during each conversation, the warden told us he had not yet performed these three additional interviews.

On January 11, 2019, 164 days after we first met with the former warden about this complaint, and 126 days after we first raised the complaint to the new warden, the institution sent us the report summarizing the new information it discovered after performing additional interviews. The report noted that one of the mental health workers located notes she compiled during her assessment of the inmate's mental health status on February 21, 2018, just 15 days before he was attacked. During the assessment, she noted the inmate was referred to her due to claims that he was suicidal. When she met with the inmate, he explained that he was not actually suicidal, which led her to believe that he was trying to get placed in a mental health crisis bed because he feared for his safety. She noted that custody staff had refused to send him to administrative segregation the day before, even though he had informed them of his safety concerns. Her notes indicated the inmate was planning to discuss his safety concerns with staff again following the assessment. This information directly supported the inmate's allegation that he reported safety concerns to custody staff 16 days before the attack.

Despite the discovery of this corroborating information, because the department first learned of the inmate's allegations of staff misconduct on March 23, 2018, 10 months

earlier, only two months remained in the one-year limitations period for the department's Office of Internal Affairs to review the case and perform an investigation. Because two months was too little time to refer the case to the Office of Internal Affairs, which often takes 30 days to open an investigation, the hiring authority told us he would handle the matter internally and interview additional staff regarding the allegations. However, when we followed up with the hiring authority a few months later, after the one-year limitations period expired, he told us he had not taken any further steps to address the new information provided by the mental health worker.

- On September 7, 2018, we met with a warden to inform him of a complaint we received from an inmate alleging multiple custody staff and mental health staff failed to take any action during two separate incidents in which an inmate was being attacked by a group of several other inmates. The warden did not have staff initiate an inquiry into these allegations until January 28, 2019, 143 days later. As discussed in greater detail on pages 49–50, when the warden's investigative staff finally interviewed the inmate, he could not remember important details about the incident.
- On November 7, 2017, we sent the department's Office of Internal Affairs a complaint from an employee alleging that officers had filed false rules violation reports against inmates and that a lieutenant was involved in an intimate relationship with a subordinate employee. The employee further alleged that when she spoke to an investigative services unit sergeant about these allegations of staff misconduct, the sergeant threatened her that she would be placed under investigation if she continued reporting these allegations and that the sergeant improperly disclosed her confidential communications with him to the lieutenant and other officers working on her yard. Although the Office of Internal Affairs began its inquiry in a timely manner, it did not complete the inquiry until February 2, 2018 (87 days later) and did not send the inquiry report to the hiring authority until March 6, 2018 (33 days after completing the report).

Hiring Authorities Performed Thorough, Complete, and Independent Inquiries into Only 53 Percent of the Complaints We Reviewed

In 19 of the 36 complaints we examined (53 percent), the department performed inquiries that appeared to be both thorough and complete.

We assessed the adequacy of the inquiries from the contents of the inquiry reports compiled after the completion of the fact-finding process. Below, we describe three cases in which we determined the reviewers performed commendably:

- In one case in particular, the warden and the staff member who performed the inquiry demonstrated a thorough understanding and appreciation for the many different issues any single complaint can raise. In that case, a family member of an inmate alleged officers assaulted the inmate, threw him in a holding cell for more than three hours, ripped off his clothes, and refused his requests to use the restroom, causing him to defecate in his holding cell. We discovered the inmate had already filed a complaint against the officers alleging they used unreasonable force and engaged in sexual misconduct. The institution had already referred the complaint to the institutional executive review committee to review the use of force, assigned a locally designated investigator to perform an immediate review of the sexual misconduct allegations, and assigned a reviewer to perform an inquiry into the allegations of staff misconduct.

USE-OF-FORCE REVIEW

The Institution Executive Review Committee (IERC) is the primary level of review for use-of-force incidents occurring at adult institutions. For each adult institution, an institution's executive review committee examines every use of force, except those involving deadly force, which are reviewed separately by the department's Deadly Force Review Board. Each institution's IERC is chaired by the warden (or his or her designee, such as a chief deputy warden) and includes an institution's associate wardens, captains, and health care representatives. Committees at each institution meet regularly, depending on the volume of use-of-force incidents, to discuss the merits of the force used, and to determine whether staff followed policies and procedures when using force. Departmental policy generally requires the committees to review each incident within 30 days of occurrence.

Source: Department Operations Manual, section 51020.19.5.

After reviewing all the records the institution compiled during these processes, we determined the institution properly handled the inmate's complaints, recognizing that the complaint raised three different concerns that required compliance with three different processes—an immediate interview of the inmate as required by PREA, an inquiry into the allegations of staff misconduct, and a thorough review of the use of force allegations by the institutional executive review committee (IERC) (text box, left). Institutional staff completed all three processes in a timely and thorough manner, and reached reasonable conclusions in light of the evidence collected.

The PREA interview resulted in a determination that the inmate's allegations of sexual misconduct by staff were not substantiated based on the inmate's statements that he was not touched in a sexual manner, and staff did not make sexual comments during the incident. The lieutenant assigned to perform the inquiry into the inmate's allegations of staff misconduct performed an inquiry within 30 days and provided the inquiry report to the IERC for its consideration. The IERC reviewed staff reports regarding the incident and the inquiry report, and determined that additional inmate witnesses should

have been interviewed during the inquiry to provide a complete account of the incident and that one officer's account of the incident needed clarification. As a result, the reviewer conducted interviews of two additional inmates who may have seen the incident, conducted a follow-up interview with the officer, supplemented the inquiry report, and provided the supplemented report to the IERC for further review.

Upon further review, the IERC determined staff complied with policy during the incident; we agreed with that determination. As a result of the three distinct processes, the institution discovered minor policy violations that did not appear to affect the quality of the institution's processes. Nonetheless, the warden appropriately trained and counseled staff regarding their mistakes. We also observed that the institution's staff were extremely cooperative and transparent during the course of our review of this incident, which enabled us to provide effective oversight of the institution's processes in this case.

- We received a complaint alleging an officer was smuggling weapons into an institution, providing inmates with contraband, permitting inmates to possess inmate-manufactured weapons and to store stolen goods in their lockers, threatening inmates, and disclosing confidential information regarding inmates' commitment offenses to other inmates. The assigned investigator examined access logs to determine whether the subject officer accessed confidential inmate information and interviewed 11 inmates, the complainant, and the subject regarding the allegations. The investigator also searched the lockers and bunk areas of two inmates whom the officer allegedly allowed to store weapons and contraband. The inquiry report thoroughly summarized the information the reviewer collected and arrived at reasonable conclusions that factored in all the information summarized in the inquiry report.
- We received a complaint from an inmate alleging that when he arrived at his current institution, he was improperly housed in general population housing, despite being classified as a maximum-security inmate based on his status as a gang drop-out. The inmate alleged he told staff, upon arrival, that his life would be in danger if he were placed with the general population. The inmate further alleged that three days after he was placed in general population housing, the inmate was assaulted by four other inmates and suffered serious injuries, including the loss of an eye.

We reviewed the institution's inquiry report, which indicated the institution promptly and thoroughly investigated the inmate's complaint of staff misconduct. The assigned investigator interviewed the pertinent witnesses and summarized the witnesses' statements. In his report, the investigator considered all the information gathered during the inquiry and arrived at a reasonable conclusion that staff violated policy when assigning the inmate to general population housing. Prior to the inmate's arrival at the institution, he had been placed in administrative segregation by the action of the former institution's institutional classification committee (ICC) (box, page 57, for an explanation of the ICC). Departmental policy states that the inmate could only be removed from administrative segregation by the actions of an ICC; individual staff cannot override the order of the ICC. The involved staff member also admitted to having seen the inmate's designation as a maximum-security inmate, but explained that he was persuaded by the inmate's request to live in the institution's general population housing and his assurances that he would be safe there.

Insufficient Investigative Steps

In nine of the 32 complaints (28 percent) of staff misconduct we reviewed in which an inquiry report was compiled, we determined the inquiries were not thorough and complete because the reviewer failed to interview all relevant witnesses or failed to ask the witnesses critical questions, failed to collect or review departmental records that contained pertinent information, and in some cases failed in both respects. In eight of the 32 complaints (25 percent), the reviewer failed to perform interviews of individuals who were likely to have information that would support or refute the allegations. In six of the 32 complaints (19 percent), the reviewer failed to collect or review departmental records that contained pertinent information. Five of the 32 inquiries (16 percent) suffered from both defects. We describe two of these complaints below:

- In the first of these two cases, an inmate alleged a correctional officer asked him to attack other inmates who filed complaints against the officer and convince them to withdraw their complaints, and showed him confidential information on his work computer that included newly arriving inmates' conviction offenses. The inmate alleged the officer expected the inmate to attack convicted sex offenders in the institution, and rewarded him with canteen items

the officer took from other inmates. The inmate named two staff members who were either involved in the misconduct or witnessed the misconduct, and 75 inmates who either witnessed the misconduct or were victims of his attacks. We provided a copy of the inmate's complaint to the institution's investigative services unit, which conducted an inquiry into the staff complaint.

Although the inmate named 46 inmates who might have relevant information, the reviewer interviewed only three of the named inmates, noting that he attempted to interview several others who refused to speak with him. Of these three inmates, one did not support the complaining inmate's allegations at all. The second inmate interviewed stated that although he did not know the complaining inmate, he did know that the subject officer ordered another inmate to attack others. The final inmate interviewed indicated he had never witnessed any inmates attacking others at the officer's request, but noted the subject officer confiscated canteen items from inmates' cells and provided them to other inmates.

Although the complaining inmate's credibility was appropriately called into question after he was unable to identify the names of any of the 30 to 40 inmates he allegedly attacked, two of the three inmates interviewed provided corroborating information that the officer used inmates to attack others, and improperly confiscated and redistributed inmates' canteen items. The reviewer did not interview either of the two relevant staff members identified by name during the inquiry, nor did he collect any documentation that could have corroborated or refuted the complaining inmate's allegations, such as the number of appeals filed against the subject officer, how many of those appeals were withdrawn, and the number of inmate-on-inmate assaults that occurred in the complaining inmate's housing unit.

- In the second case, discussed earlier (pages 41–43), the inquiry into an inmate's complaint that staff failed to protect him from harm did not include an interview of mental health staff to whom an inmate alleged he reported safety concerns. After we notified the hiring authority of its failure to interview these staff, the hiring authority interviewed the mental health staff. One of the staff members corroborated the inmate's allegations that he notified staff of his safety concerns. The inquiry also did not include an interview of

the inmate's cellmate who was allegedly with him at the time of the attack. It also did not include a review of records that would have identified other staff and inmates to be interviewed, such as time sheet records identifying staff who were on duty when the incidents occurred, medical records from the attack, records generated by the mental health staff member to whom the inmate raised his safety concerns, or a memorandum authored by a captain who interviewed the inmate regarding his safety concerns more than two weeks before the attack.

Departmental hiring authorities also failed to perform essential investigative steps that could have led to evidence corroborating the allegations of staff misconduct. Below are two examples in which the department failed to perform essential investigative steps:

- In response to a complaint of excessive force, a sergeant interviewed the complaining inmate and five officers, and reviewed one medical report that was generated on the date of the incident. The sergeant concluded the inmate's allegations could not be substantiated. Two weeks later, at the request of an inmate advocacy group, a lieutenant reviewed the sergeant's inquiry and performed additional investigative steps, re-interviewing the inmate and reviewing multiple records, including staff sign-in sheets and staff rosters; the use-of-force incident package, which included incident reports from involved staff and witnesses, and medical records for the inmate and staff injured during the incident; the inmate's appeal history; and the rules violation report the inmate received as a result of the incident. During this review, the lieutenant discovered the existence of a medical report generated on the date of the incident indicating the inmate suffered injuries inconsistent with the use of force reported by staff. The lieutenant also obtained additional information from staff that appeared to support the inmate's version of the events. The lieutenant concluded, and the warden agreed, there were sufficient inconsistencies in the records he reviewed to warrant making a request that the department's Office of Internal Affairs open an investigation into the matter.
- An inmate alleged that officers were disclosing to inmates the names of other inmates who were convicted sex offenders and child molesters. Although the hiring authority did not document the steps it took during its inquiry into this

complaint, the investigating officer informed us that he spoke to two inmates in the housing unit who were alleged to have learned other inmates' commitment offenses from officers in the housing unit. They denied learning of the commitment offenses from the officers and claimed the information was common knowledge. They also denied any knowledge of officers asking inmates to harm other inmates. After performing these two interviews, the investigator concluded that the allegations could not be substantiated. We believe a thorough inquiry into this matter would have included interviews of other inmates and staff in the housing unit to determine if anyone else witnessed the alleged conduct and how inmates' commitment offenses became common knowledge.

Lack of Independence

During the field inquiries we performed during this reporting period, we also found that inquiries were sometimes flawed due to bias or a lack of independence by the reviewer. In one complaint, the reviewer showed outward signs of bias in his report. And, in two other complaints, hiring authorities assigned potential subjects of the complaints to perform investigations into the allegations against them.

In one case, the reviewer displayed bias in his inquiry report when he concluded that the inmate who filed the complaint was "misleading" because he could not provide physical descriptions of inmates involved in an assault or the officers who allegedly failed to intervene to stop the attack. During the course of his inquiry, the reviewer received information indicating that on the day of the alleged attack, strong winds were blowing dust and dirt around, which limited visibility on the yard where the attack occurred. The reviewer used this information to justify officers' failure to come to the aid of an inmate who was being attacked, surmising that they probably could not have seen the attack. However, the reviewer ignored the same environmental conditions when assessing the inmate's credibility. As shown in the excerpt on the following page, the reviewer concluded the inmate was "misleading" because he could not provide physical descriptions of the involved individuals even though the limited visibility on the day of the attack provided a reasonable explanation for the inmate's inability to provide this information.

Inmate [REDACTED] provided information that could be proven to be partially factual but was misleading in providing the information. Inmate [REDACTED] alleged that custody staff observed and failed to respond to an inmate on inmate assault. Inmate [REDACTED] was unable to provide this investigator with factual evidence to substantiate his allegation of staff misconduct. Inmate [REDACTED] was unable to identify reasonable identifying traits such as gender, ethnicity, and or facial features of the staff which he reports to have failed to respond. Inmate [REDACTED] was not able to describe any identifying features of the alleged victim and/or suspects of the alleged assault. These inconsistencies leads this investigator to conclude that inmate [REDACTED] may have some knowledge of an incident which occurred on Facility C but lacks credibility in his allegation of staff misconduct.

Source: The California Department of Corrections and Rehabilitation.

The reviewer also failed to consider that the inmate's memory of the incident was not fresh, considering the incident he was investigating had occurred in June 2018. We informed the warden of the allegation in September 2018. But the interview did not occur until January 28, 2019—seven months after the incident occurred and nearly five months after we brought the complaint to the warden's attention. The investigator chose to conclude that the inmate was misleading, even though it was at least equally likely that the inmate's memory was not as clear at the time of the interview as it had been seven months earlier.

In the following two cases, the department assigned the subjects of misconduct allegations to perform the official inquiries into the complaints against them:

- In one case, we received a complaint alleging a chief and a deputy chief at departmental headquarters permitted two of their subordinate employees to operate their personal businesses on state time. The department assigned one of the subjects—the chief who was accused of allowing his subordinate to engage in personal business on state time—to perform the inquiry. We believe that given the chief's alleged involvement in the wrongdoing, he should not have been assigned to perform the inquiry. The department cannot guarantee an independent and unbiased investigation when a subject of alleged misconduct is asked to perform an inquiry into the allegations against himself or herself. This conflict should have been apparent to both the headquarters executive who assigned the inquiry to the chief and to the chief as well, especially since the report begins by acknowledging the clear conflict:

ALLEGATION INQUIRY

In December 2017 you requested that I conduct an allegation inquiry in response to an anonymous complaint (Exhibit 1) filed with the Office of the Inspector General. The complaint listed several allegations of misconduct against [REDACTED] and [REDACTED]. The complaint also alleged that [REDACTED] Deputy Chief [REDACTED] and I were aware of the alleged misconduct.

Based on your analysis of the complaint you deemed it appropriate that I conduct the fact-finding inquiry on your behalf.

Source: The California Department of Corrections and Rehabilitation.

The report also incorporated as evidence personal observations and personal knowledge the reviewer obtained over the previous few years while managing and supervising the subject employee. The report included the following statements:

During casual conversations with [REDACTED] I recall learning that he purchased an engraving machine one to two years ago. I recall him taking at least a week of vacation time after he bought the machine so he could set the machine up at his house and familiarize himself with its operation.

Following that I have, on occasion, witnessed [REDACTED] deliver items he has made to people in the office. Usually this would occur first thing upon his arrival to the office then he would go about his normal CDCR duties.

Based on my personal observations, [REDACTED] has printed/embroidered clothing for CDCR employees, [REDACTED] members, sporting teams, private businesses etc. for several years. Similar to my observations for [REDACTED], I have witnessed [REDACTED] deliver items he has made to people in the office. Usually this occurred first thing upon his arrival to the office then he would go about his normal CDCR duties.

Source: The California Department of Corrections and Rehabilitation.

Given the reviewer's degree of alleged involvement in and personal knowledge of the activity that formed the basis of the allegations of staff misconduct, the reviewer should have been interviewed as part of the inquiry.

- In another case, we received a complaint from an employee at a prison alleging she informed her supervisor that officers had filed false rules violation reports against inmates and that a lieutenant was involved in an intimate relationship with a subordinate employee. The employee further alleged that

when she spoke to a sergeant assigned to the institution's investigative services unit (ISU) about these allegations of staff misconduct, the ISU sergeant threatened her by stating that she would be placed under investigation and that he later improperly disclosed her confidential communications with him to the lieutenant and other officers working in her area, who subjected her to ridicule.

We provided the complaint to the Office of Internal Affairs, which assigned a special agent to perform an inquiry into the allegations. However, during the course of the inquiry, rather than perform all the interviews himself, the special agent only performed the interview of the complaining employee. The warden tasked the ISU sergeant, who was one of the subjects of the alleged misconduct, to perform interviews of one inmate and three correctional officers. The special agent then incorporated the sergeant's interviews into the investigative report. The warden should have recognized the clear conflict of interest posed by having the subject of an allegation of misconduct perform interviews in connection with the investigation and should have assigned a different staff member to perform the interviews.

Departmental Staff Improperly Punished an Inmate and His Spouse for Violating Visiting Rules, Despite the Existence of Video Footage Demonstrating They Complied with Visiting Policies and Staff Directives

We received a complaint that an officer terminated an inmate's visit with his spouse because the inmate allegedly disobeyed the officer's orders to comply with proper departmental seating positions and contact procedures with his visitor (his spouse). The officer also issued the inmate a rules violation report, causing him to lose visitation privileges for 30 days, which the prison rescinded 12 days early after receiving a complaint from the inmate's spouse. We reviewed the complaint and the surveillance video from the date of the visit, and believe the officer's termination of the visit and issuance of a rules violation to the inmate were not warranted. We also had concerns that the officer dishonestly reported the events he witnessed during the inmate's visit.

The visit, which occurred in June 2018, was one of approximately **720 visits** in which the inmate and his spouse engaged between 2006 and 2018. During their previous visits, they had never been punished for violating the department's visitation policies. However, approximately 30 minutes into this June 2018 visit, the officer warned the inmate and his spouse that their seating position violated policy, and that they needed to adjust their seating position (Photo 1, below). The surveillance video confirmed that the inmate's spouse adjusted her chair and seating position in response to the officer's directive (Photo 2, below), and rested her hands on her stomach (Photo 3, below). She maintained this position for the next eight minutes, when the inmate left the table to obtain his medications from a nurse.



Photo 1. Correctional officer issues verbal command for visitor to adjust seating position.



Photo 2. Visitor stands and relocates further away from her spouse.



Photo 3. Visitor primarily has both hands folded over her stomach during visit and is facing the inmate.

Source for photographs: The California Department of Corrections and Rehabilitation.

The officer again notified the inmate at the officer's podium, as the inmate was leaving to pick up his medication, that he would terminate the visit if the inmate and his visitor did not comply with orders to adjust their seating positions. As the inmate returned to the visiting area, the officer repeated his warning to the inmate. Two minutes later, approximately 50 minutes into the visit, the officer notified the inmate and his spouse that he was terminating the visit. After the visit, the officer issued the inmate a rules violation that resulted in a 30-day suspension of visitation privileges.

The inmate's spouse submitted complaints to the institution, the department's Office of the Ombudsman, and the OIG regarding the terminated visit, the rules violation, and the decision to suspend the inmate's visiting privileges for 30 days. According to the inmate's spouse, the officer told her that the visit was being terminated because she was sitting sideways, and the officer could not see her hands because they were positioned between her legs. However, upon review of the surveillance video (Photos 1-3, previous page), the inmate's spouse had clearly adjusted her hands and seating position, as instructed. Furthermore, the video shows the visitor's hands were primarily folded over her stomach.

According to the department's visiting policy, when a verbal warning or a restriction fails to achieve compliance, or fails to correct the conduct by a visitor, the visit shall be terminated for the day.²² The institution's visiting policy states, in part:

Inmates shall sit at the tables facing the correctional officer at the Visiting Podium. All visitors shall sit facing the inmate. Sitting side-by-side shall be prohibited. Inmates and visitors shall not intertwine any portion of their body (legs, arms, or feet).²³

We reviewed the officer's report and the corresponding rules violation report he wrote to understand the reasons the officer articulated for terminating the visit and issuing the inmate a rules violation. The officer's report indicated the inmate and his spouse did not adjust their seating positions, and they only feigned adjusting their seating positions. The officer's report also stated that the spouse's hands were obstructed from view, which contradicts what the surveillance video showed. After receiving the spouse's complaints, the department

22. Department Operations Manual, Section 54020.29.1.

23. The institution's Department Operations Manual Supplement, Section 54020.7.

rescinded the rules violation, reducing it to a counseling chrono,²⁴ and re-instated the inmate's visitation privileges, but not until 23 days after the initial rules violation report was issued. The counseling chrono stated the officer terminated the visit due to excessive contact with the visitor, but did not clearly describe the nature of the excessive contact. Although the department reduced the rules violation to a counseling chrono and withdrew the penalties that remained from the initial imposition of the rules violation, we believe the more appropriate response would have been to rescind all records of the incident from the inmate's file, considering the video footage demonstrated the inmate and his spouse did not violate any policy or directive. Even though the associated rule violation was rescinded, because a counseling chrono documents an inmate's actions the department considers misconduct, it can still reflect poorly on the inmate's suitability for parole during future parole hearings.

Visits from friends, family, and loved ones are an important part of the rehabilitation process for many inmates, and maintaining ties to family and loved ones can have a positive effect on an inmate's time in prison. In the case of this inmate, he lost his visitation privileges even though he and his visitor clearly followed the officer's orders to maintain proper sitting positions. Perhaps even more troubling is the officer's dishonesty in describing the series of events in the reports he wrote after the visit. We believe the video footage of the incident clearly demonstrates the officer's account of the visit is inaccurate.

The Inspector General met with the department's executive staff to discuss his concerns with this inmate losing visiting privileges for a period of time as a result of the officer's inaccurate reporting of events from the visit and requested the department refer this matter to its Office of Internal Affairs. The department declined the Inspector General's recommendation, stating that while it found discrepancies in the officer's report, it would not be referring the matter to the Office of Internal Affairs because it did not believe the officer was "blatantly dishonest" when reporting the facts of the visit. Instead, the department provided the officer remedial training for report writing. We believe the department failed to comply with its policy, which requires it to refer allegations of dishonesty for an internal investigation for the purpose of confirming or clearing the officer of misconduct.

24. A *counseling chrono* refers to a Counseling Only Rules Violation Report, which is a form of discipline the department issues to inmates "when similar minor misconduct reoccurs after verbal counseling or if documentation of minor misconduct is needed." The report is intended to document an event or misconduct for an inmate and contains a description of the misconduct and counseling provided. Source: Title 15, *California Code of Regulations*, Section 3312, subdivision (a)(2).

Staff Inactions and Indifference Caused an Inmate to Languish in Administrative Segregation for Two-and-One-Half Months

“Release from administrative segregation shall occur at the earliest possible time in keeping with the inmate’s case factors and reasons for the inmate’s placement in administrative segregation.”

Source: Title 15, *California Code of Regulations*, Section 3339, subdivision (a).

We received a complaint from the mother of an inmate, alleging a lieutenant was mistreating her son because her son had been convicted of an offense involving an assault on a peace officer and because she had previously complained about the lieutenant’s treatment of her son. She alleged her son was falsely accused of writing a *kite* (an inmate-written note, *below*) that contained a threat of harm to the lieutenant, and was handcuffed and escorted to the lieutenant’s office where the lieutenant questioned him about the kite. The lieutenant then allegedly placed the inmate in a holding cell for five-and-one-half hours, where he interrogated the inmate and told him, “Where did this get your family writing complaints against me? Tell your family to back off.” The inmate’s mother had submitted two other complaints in the two months prior regarding her son’s treatment by the lieutenant, and the treatment she and her son experienced during a recent visit to see him at the institution.

Lt. [redacted]
 Watch your BACK [redacted]
 Dorm #30 put a hit on you
 BECAUSE YOU KEEP Fucker
 with him!

Source: The Office of the Inspector General Tracking and Reporting System.

We reviewed the records that staff generated related to the discovery of the kite, which confirmed that on August 12, 2017, the lieutenant ordered staff to place the inmate in a holding cell, where he remained for four hours—the maximum amount of time permitted without obtaining approval from a manager. The inmate was then placed in administrative segregation due to the suspicion that the inmate wrote the threatening note. On August 14, 2017, the lieutenant wrote a report about his discovery of the kite and the steps he took after reading it, including having the inmate placed in a holding cell and rehoused in administrative segregation. At the conclusion of the memo, the lieutenant wrote:

Due to the allegations made by Inmate [REDACTED] and the note containing the possible threats, It is recommended Inmate [REDACTED] be rehoused in an alternate institution that meets his programming and custody needs.

Attached is a copy of the note along with written sample of Inmate [REDACTED]'s hand writing. Cross-referencing the handwriting revealed multiple similarities with various letters, indicating the he may have been the author of the note.

Source: The California Department of Corrections and Rehabilitation.

The lieutenant's captain reviewed the memo and approved its placement in the inmate's central file. On August 15, 2017, the institution's investigative services unit (ISU) completed its investigation into the threat. The ISU investigator issued a written report on August 16, 2017, determining the handwriting samples "revealed multiple similarities, indicating that [the inmate] may have been the author of the note" and then concluding, without further analysis or evidence that he "discovered circumstantial evidence to believe [the inmate] is the author of the inmate note threatening [the Lieutenant]. Therefore, the [Investigative Services Unit] no longer has any interest in [the inmate] and recommends [he] be referred to the Institutional Classification Committee where his case factors can be reviewed by the committee members for appropriate housing and program needs" (text box, right).

On August 16, 2017, not knowing the ISU had already completed its investigation into the threat against staff, the ICC reviewed the inmate's placement into administrative segregation, electing to retain the inmate in administrative segregation pending closure of the investigation into the threat against staff. The committee decided to hold the inmate in administrative segregation for 45 days to

INSTITUTIONAL CLASSIFICATION COMMITTEE (ICC)

The Institutional Classification Committee at each institution makes decisions affecting transfer, program participation, supervision, security, housing, and safety of persons. Among the members of the committee are the institution's warden or chief deputy warden, an associate warden, a psychiatrist or physician, a captain, a correctional counselor, a lieutenant, and a representative of educational or vocational programs.

Source: Department Operations Manual, Sections 62010.8., 62020.8.2.

allow staff to complete the investigation, setting his next committee hearing for September 30, 2017. On August 22, 2017, six days after the ICC hearing, the institution approved the inmate's transfer to another institution. On August 23, 2017, the inmate arrived at the new institution, where he was placed in administrative segregation housing pursuant to the former institution's decision and the new institution's lack of appropriate housing for the inmate, who was designated as requiring housing for a sensitive needs yard.

On September 11, 2017, a staff member in the new institution's administrative segregation housing unit contacted the lieutenant and captain at the former institution asking whether the investigation into the inmate's threat against staff had been completed and informing them that there was no information in the inmate's central file indicating whether he had received a rule violation for the threat or whether a staff separation notice²⁵ had been issued. On September 18, 2017, after getting an incomplete response from the captain and lieutenant, the staff member sent a request to his counterpart at the former institution, requesting formal documentation setting forth the results of the investigation and whether a staff separation alert would be issued.

On October 2, 2017, we received a phone call from the inmate's mother informing us that the inmate was still in administrative segregation, had not received a decision regarding the results of the investigation, had not been issued a rules violation report, and had not had an ICC hearing. He appeared to be languishing in administrative segregation with no end in sight. We contacted the new institution the same day, at which point the lieutenant's captain immediately issued a closure memorandum indicating the inmate would not receive a rules violation report and that a staff separation order would not be placed in the inmate's file. On October 5, 2017, the new institution held an ICC hearing, during which it approved the inmate's transfer to another prison that had appropriate housing for sensitive needs inmates. On November 1, 2017, the inmate was finally released from administrative segregation and housed on a sensitive needs yard at another institution.

As a result of the discovery of the kite containing the threat against staff, the inmate spent 81 days in administrative segregation, despite the investigation into the threat lasting less than five days. In line with the department's policy regarding placement in administrative segregation, which notes that "release from segregation status shall occur at the

25. A separation alert is a record placed in an inmate's central file that identifies an inmate's enemy concerns. These alerts typically restrict an inmate from being housed at the same institution as any of the individuals identified in the record. In this inmate's case, the staff separation alert would have precluded the inmate from being housed at the institution where the lieutenant worked.

earliest possible time in keeping with the circumstances and reasons for the inmate's initial placement in administrative segregation,"²⁶ we believe the duration of the inmate's stay was unnecessarily prolonged by staff inaction at the original institution.

Although we could not determine from our limited review of the records generated what time of day on August 16, 2017, that ISU staff completed its investigative report and delivered it to the captain, it is reasonable to presume that the captain had not yet received the report before the ICC hearing at 10:19 a.m. that day. At that hearing, the committee decided to extend the inmate's assignment to administrative segregation housing for 45 days pending the completion of the ISU investigation. However, the lieutenant's captain was identified as a recipient of the ISU investigative memorandum and presumably received it within a few days of the hearing. The same captain was identified as having been present at the ICC hearing during which the inmate was assigned to an additional 45 days in administrative segregation. When the captain received the ISU report after the hearing, he should have acted on it promptly and requested that the inmate's housing status be reconsidered, since the investigation had been completed. Instead, the captain did nothing with the results for 47 days, after being asked four times²⁷ to create an official record that would permit the new institution to consider releasing the inmate from administrative segregation.

At the time of this incident, the department did not have a formal policy regarding the investigation of threats against staff. However, the department's Secretary previously disseminated a memorandum setting forth its initial policy in this area as required by legislation enacted in 2015, requiring the department to create such a policy. The memorandum required, among other things, that upon becoming aware of a threat made against staff by an inmate:

- The subject of the threat immediately report the threat to his or her supervisor;
- The supervisor report the threat to the hiring authority;
- The hiring authority assign a staff member to investigate the threat;
- The hiring authority create a threat assessment response team (TART);

26. Title 15, *California Code of Regulations*, Section 3339, subdivision (a).

27. The captain received email messages on September 11, 2017, September 18, 2017, September 22, 2017, and October 2, 2017, requesting creation of an investigative closure notice.

- The TART assess the validity of the threat, determine whether any further investigative steps are warranted, and make recommendations to ensure the threat is adequately addressed; and
- The hiring authority ensure all appropriate documentation is placed in the inmate's central file.

PRIVILEGE RESTRICTIONS IN SEGREGATED HOUSING

While in administrative segregation, inmates also have restrictions placed on their ability to participate in the general contact visiting process, purchase items from the canteen, possess reading materials and appliances, make telephone calls, communicate with other inmates, participate in programs, classes, and services, and receive packages.

Inmates in administrative segregation are also required to spend their one hour of daily exercise time in a cage measuring approximately 10 feet by 15 feet rather than in the general exercise yard. Inmates who have a cellmate exercise together, whereas inmates in single cells exercise alone.

Had staff complied with the Secretary's directives, there would have been numerous opportunities for institutional staff to realize that the investigation into the threat had been completed and that the inmate remained in administrative segregation at another prison because no one placed a record in the inmate's file indicating the investigation had been closed.

The prolonged stay in administrative segregation had several negative impacts on this inmate (text box, left), who has been a consistent participant in the department's family visiting process (text box, page 68), and had been engaging in family visits every three months before the August 2017 incident. The inmate's prolonged stay in administrative segregation appeared to have prevented him from participating in the family visiting program between August 2017 and February 2018. Since March 2018, he has had family visits every other month.

Our review of the institution's handling of the threat against staff also revealed another area of concern regarding the involvement of staff who have threats made against them. In this case, the lieutenant who was the subject of the threat—the same lieutenant about whom the inmate's mother complained—was heavily involved in the processing of the threat and the inmate's housing decisions. This lieutenant authorized the inmate's four-hour placement in the temporary holding cell, personally interrogated the inmate about the note, authorized the inmate's placement in administrative segregation, performed a handwriting analysis of the note using the inmate's prior appeals as writing samples, and authored a memorandum that was placed in the inmate's central file that concluded the inmate "may have been the author of the note" and recommended the inmate's transfer to another institution.

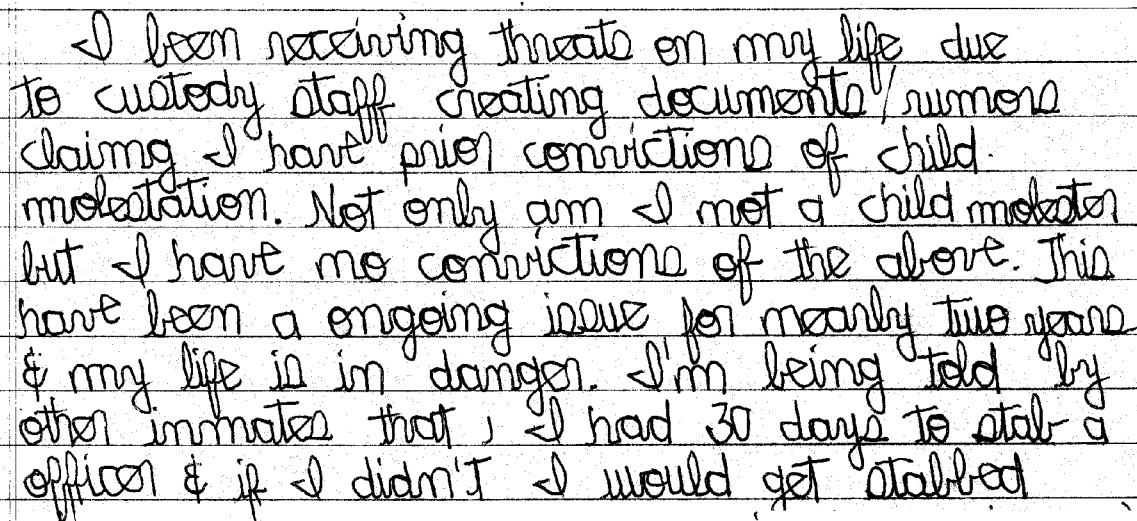
We believe the involvement of the lieutenant, who had a personal conflict in making decisions with regard to an inmate who was suspected of making a threat against him, unnecessarily subjected staff and inmates to harm. This situation provided the inmate with an

opportunity to carry out the threatened violence against the lieutenant. It also gave the lieutenant the opportunity to retaliate against the inmate for making the threat, and at the very least, provided the inmate with an opportunity to allege retaliation, even if staff acted in complete accordance with policy.

Although the department formalized its policy governing the assessment of threats against staff in its January 2018 *Department Operations Manual*, the policy does not include an instruction that staff members who are the targets of threats by inmates remove themselves from the investigation process and refrain from making or influencing decisions that impact the inmate suspected of issuing the threat. We believe the lack of a conflict-of-interest provision constitutes a critical gap in the department's policy governing threats against staff. As long as staff who are the targets of threats continue to involve themselves in investigating the threats and in decisions regarding the inmate's housing assignments and privileges, the department unnecessarily exposes inmates to retaliation by the targeted staff and subjects staff to claims of retaliation.

The Department Placed an Inmate's Safety at Risk by Entering Inaccurate Information in His Disciplinary Records Indicating He Was Convicted of a Sex Offense Involving a Minor

We received complaints from an inmate, as well as from the inmate's mother and grandfather, alleging staff placed inaccurate information in the inmate's records indicating he had been convicted of a sex offense involving a minor under Penal Code section 288. The inmate had not been convicted of such an offense, but had been convicted of an offense under Penal Code section 314, for indecent exposure. Earlier in the inmate's incarceration, inmates at another institution stole a box of confidential documents, which contained inaccurate information stating the inmate had been convicted of an offense under Penal Code section 288. Because other inmates had learned of this false information, the inmate believed his safety was in danger due to a belief held by some inmates that they have an obligation to attack other inmates who have been convicted of sex offenses, particularly when those offenses involve minors. The inmate told staff, "other inmates are putting out hits on me because they think I'm a child molester due to false documents that inmates got a hold of." After the department discovered which inmates stole the records, staff placed a separation alert in the inmate's central file identifying them as enemies and precluding them from being housed at the same institution.



I been receiving threats on my life due to custody staff creating documents/ rumors claiming I have prior convictions of child molestation. Not only am I not a child molester but I have no convictions of the above. This have been a ongoing issue for nearly two years & my life is in danger. I'm being told by other inmates that I had 30 days to stab a officer & if I didn't I would get stabbed.

Source: The California Department of Corrections and Rehabilitation.

The inmate alleged in his complaint that his records still contained inaccurate information indicating he had been convicted of a sex offense involving a minor under Penal Code section 288. When we reviewed the inmate's disciplinary history, we discovered his records contained the following information (Table 5, below):

Table 5. Entries in an Inmate's Rules Violation Report History When We First Reviewed the Inmate's Records on February 9, 2018

| Date | Log Number | Rules Violation Description | Finding |
|------------|---------------------|--|-------------------|
| 02/06/2018 | 00000000533626 (R2) | Indecent Exposure Without Prior Convictions for PC 314 | — |
| 10/03/2017 | 000000003490626 | Indecent Exposure With Prior Convictions for PC 314 | — |
| 05/11/2017 | 000000002751324 | Indecent Exposure Without Prior Convictions for PC 314 | Guilty as Charged |
| 04/11/2017 | 00000000533626 (R1) | Indecent Exposure With Prior Convictions for PC 288 | Guilty as Charged |
| 01/22/2017 | 000000002068326 | Indecent Exposure Without Prior Convictions for PC 314 | Guilty as Charged |
| 12/22/2016 | 000000001778628 | Indecent Exposure With Prior Convictions for PC 314 | Guilty as Charged |
| 11/13/2016 | 000000001450424 | Indecent Exposure Without Prior Convictions for PC 314 | Guilty as Charged |
| 07/22/2016 | 00000000533626 | Indecent Exposure Without Prior Convictions for PC 288 | Guilty as Charged |
| 07/01/2016 | 000000000437135 | Indecent Exposure Without Prior Convictions for PC 288 | Guilty as Charged |

Source: The California Department of Corrections and Rehabilitation's Strategic Offender Management System.

Although the inmate's conviction history is clear—he had a prior conviction under Penal Code section 314 and did not have a prior conviction under Penal Code section 288—institutional staff identified the same type of rule violation in four different manners in his disciplinary history, as color-coded in Tables 5, 6, and 7 (pages 62, 63, and 64, respectively):

1. as an indecent exposure with a prior conviction under Penal Code section 288,
2. as an indecent exposure without a prior conviction under Penal Code section 288,
3. as an indecent exposure with a prior conviction under Penal Code section 314, and
4. as an indecent exposure without a prior conviction under Penal Code section 314.

With regard to one rule violation in particular (Log Number 000000000533626, Table 6, below), institutional staff changed the identification of that violation on two different occasions. However, each time the department attempted to correct its description of the rule violation, it left the inaccurate records in the inmate's disciplinary history, albeit with a suffix of "(R1)" (Revision 1) after the first correction and a suffix of "(R2)" (Revision 2) after the second correction.

Table 6. Three Different Descriptions the Department Entered in an Inmate's Rules Violation Report History Attempting to Classify a Single Disciplinary Action for Indecent Exposure

| Date | Log Number | Rules Violation Description | Finding |
|------------|----------------------|--|-------------------|
| 02/06/2018 | 000000000533626 (R2) | Indecent Exposure Without Prior Convictions for PC 314 | — |
| 04/11/2017 | 000000000533626 (R1) | Indecent Exposure With Prior Convictions for PC 288 | Guilty as Charged |
| 07/22/2016 | 000000000533626 | Indecent Exposure Without Prior Convictions for PC 288 | Guilty as Charged |

Source: The California Department of Corrections and Rehabilitation's Strategic Offender Management System.

We found these measures to be ineffective considering the (R1) and (R2) notations do not stand out when reviewing all of the information contained in the disciplinary history records, which are reproduced in the exhibit on page 66. The entries are made even more confusing by the fact that the incorrect charge issued on April 11, 2017, with a notation of (R1) still indicates the inmate was found to be guilty as charged. Anyone reading this record would be given the impression that the inmate had been found guilty of an indecent exposure and had a prior conviction under Penal Code 288. This practice of leaving the prior incorrect rules violation information in the inmate's disciplinary history is particularly troublesome if the information falls into the wrong hands or is improperly disclosed to other inmates. Sex offenders are a particularly vulnerable subset of the inmate population and are frequently targeted by other inmates. Months after we first sent this information to the warden, we reviewed the inmate's disciplinary history to determine whether the department had made any changes to the inaccurate records. During this follow-up review, we discovered the department had not corrected any of the prior records and that the inmate had the following new rules violations added to his record (Table 7, next page):

Table 7. Additional Rules Violations the Department Entered Into the Inmate's Rules Violation Report History Between March 2018 and October 2018 for Additional Indecent Exposures

| Date | Log Number | Rules Violation Description |
|------------|-----------------|--|
| 10/16/2018 | 000000005890546 | Indecent Exposure With Prior Convictions for PC 288 |
| 08/13/2018 | 000000005475652 | Indecent Exposure Without Prior Convictions for PC 288 |
| 08/13/2018 | 000000005474760 | Indecent Exposure Without Prior Convictions for PC 288 |
| 07/14/2018 | 000000005288144 | Indecent Exposure With Prior Convictions for PC 314 |
| 04/21/2018 | 000000004906762 | Indecent Exposure With Prior Convictions for PC 314 |
| 04/16/2018 | 000000004887930 | Indecent Exposure With Prior Convictions for PC 314 |
| 03/31/2018 | 000000004792531 | Indecent Exposure Without Prior Convictions for PC 314 |

Source: The California Department of Corrections and Rehabilitation.

After discovering that the department had again placed an incorrect entry in his disciplinary history on October 16, 2018, which stated the inmate had a prior conviction under Penal Code section 288 (Log Number 000000005890546, Table 7, above), we contacted the inmate's assigned institution and requested it correct the information to protect the inmate from further harm, which the false information could cause. This time, the new institution created a new entry and deleted the prior entry, leaving only one entry related to this rule violation. The entry now states: "Indecent Exposure without Prior Convictions for PC 314."

Although the information is still incorrect, as the inmate does have a prior conviction under Penal Code 314, this particular entry no longer places the inmate at risk of harm. However, the inmate's complete disciplinary record still contains one reference to a conviction under Penal Code section 288 from April 11, 2017 (Log Number 000000000533626 (R1), seen in the exhibit on the next page) that indicates the inmate was found guilty of "Indecent Exposure With Prior Conviction for PC 288." As long as this entry remains in the inmate's disciplinary records, the inmate remains at risk of harm.

Exhibit. Summary Reproduction of the Inmate's Rules Violation Report History Related to Indecent Exposure Incidents

ISSS003A - Rules Violation Reports

(1 - 17 of 34)

| <u>Date</u> | <u>Time</u> | <u>Facility</u> | <u>Log #</u> | <u>Rules Violation #</u> | <u>Classification Number</u> | <u>Inmate Found</u> | <u>Status</u> |
|--------------------------|-------------|---------------------|---------------------|--|------------------------------|---------------------------|---------------------------------|
| 08/24/19 | 18:04:00 | SAC-Facility B | 00000006894964 | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | | Awaiting Additional Information |
| 05/10/19 | 15:05:00 | LAC-Facility D | 00000006844105 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 01/25/19 | 13:55:00 | LAC-Facility D | 00000006393954 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | | Postponed Hearing |
| 08/13/18 | 12:55:00 | CHCF-Facility A | 00000005475652 | 3007-[04]-Indecent Exposure Without Prior Convictions for PC 288 | Serious | Guilty as Charged | Final/Concluded |
| 07/14/18 | 13:00:00 | CHCF-Facility E | 00000005288144 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 04/21/18 | 07:23:00 | CHCF-Facility A | 00000004906762 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 04/16/18 | 06:30:00 | CHCF-Facility A | 00000004887930 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 03/31/18 | 07:24:00 | LAC-Facility D | 00000004792531 | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 02/06/18 | 10:00:00 | LAC-Central Service | 00000000533626(R 2) | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 10/03/17 | 18:45:00 | LAC-Facility D | 00000003490626 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 05/11/17 | 17:15:00 | CHCF-Facility B | 00000002751324 | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 04/11/17 | 08:25:00 | LAC-Central Service | 00000000533626(R 1) | 3007-[02]-Indecent Exposure With Prior Convictions for PC 288 | Serious | Guilty as Charged | Final/Concluded |
| 01/22/17 | 17:05:00 | CHCF-Facility B | 00000002068326 | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 12/22/16 | 22:30:00 | LAC-Facility D | 00000001778628 | 3007-[03]-Indecent Exposure With Prior Convictions for PC 314 | Serious | Guilty of Included Charge | Final/Concluded |
| 11/13/16 | 18:20:00 | LAC-Facility D | 00000001450424 | 3007-[05]-Indecent Exposure Without Prior Convictions for PC 314 | Serious | Guilty as Charged | Final/Concluded |
| 07/22/16 | 15:55:00 | LAC-Central Service | 00000000533626 | 3007-[04]-Indecent Exposure Without Prior Convictions for PC 288 | Serious | Guilty as Charged | Final/Concluded |
| 07/01/16 | 11:15:00 | SVSP-Facility I | 00000000437135 | 3007-[04]-Indecent Exposure Without Prior Convictions for PC 288 | Serious | Guilty as Charged | Final/Concluded |

Source: The California Department of Corrections and Rehabilitation's Strategic Offender Management System.

The Department's Hiring Authorities Made Policy Changes, Rescinded Earlier Actions, and Provided Training to Staff as a Result of Complaints We Forwarded for Their Review

During this reporting period, the department made several changes after reviewing three of the complaints we forwarded to its hiring authorities during this reporting period. In two cases, hiring authorities amended local policies and procedures, and in another case, the Board of Parole Hearings reconsidered a prior decision and issued an amended decision. We believe the department should be commended for identifying problem areas and implementing sound measures to prevent future recurrences.

An Institution's Chief Executive Officer Revised the Institution's Policies and Training Modules to Ensure Medical Staff Inform Custody Staff When Inmates Allege That Excessive Force Caused Their Injuries

In a case described earlier in this report, on page 48, although we criticized the hiring authority for performing an inadequate inquiry into the complaint we referred, the institution's review of the complaint ultimately led to positive changes at the institution. The inmate's complaint in this case alerted the institution's warden and chief executive officer (CEO) in charge of health care to a gap in the institution's policies and practices when inmates inform medical staff that custody staff used excessive force.

After being escorted to the institution's medical facility, an inmate notified medical staff that he sustained the injuries they were evaluating after being assaulted by custody staff. However, medical staff never informed custody staff of these allegations. Because custody staff were not made aware of the inmate's allegations, they did not perform an immediate inquiry into the allegations. The institution did not perform its inquiry until we alerted the hiring authority of the inmate's allegations four months after the incident. Medical staff also failed to inform custody staff that physicians at the outside hospital diagnosed the inmate with a concussion. Had this notification been made, custody staff would have been under an obligation to notify us of this significant bodily injury, and we would have monitored the department's investigation into how the inmate suffered a concussion. Furthermore, because custody staff were unaware of the inmate's concussion and his allegations of excessive force, the institution's executive review committee, which reviews every use-of-force incident that occurs at the institution, did not have this information available to

it when it reviewed the officers' use of force to determine compliance with departmental policy.

After the institution considered the inmate's allegations and completed these internal review processes, the warden ordered custody staff to receive additional training regarding incidents that require notification to the OIG. The institution's CEO also developed new training materials that instructed medical staff that they must inform custody staff when an inmate reports excessive force. The CEO subsequently trained health care staff regarding these revised use-of-force reporting policies. This new training should lead to timely inquiries into allegations of excessive force inmates raise during their interactions with medical staff, who are often the first ones to ask inmates how they received their injuries after they are involved in an altercation.

A Warden Revised the Institution's Family Visiting Process to Ensure Appropriate Food Options Were Available to Inmates and Their Families

FAMILY VISITING

Some inmates are eligible for family visits with immediate family members. These visits occur in private quarters on institution grounds, usually in a small trailer, and last approximately 30 to 40 hours. At most institutions, inmates can apply for a family visit every three to five months. The inmate and the visitors are responsible for purchasing food they would like to eat during family visits by ordering from a list of items the institution provides for purchase from a vendor.

Source: <https://www.cdcr.ca.gov/visitors/visitors/inmate-visiting-guidelines/> (URL accessed September 6, 2019).

We received a complaint from the wife of an inmate alleging she was having difficulties communicating with the correctional officer responsible for coordinating the family visiting process at one of the department's adult institutions. She also alleged the officer required her husband to pre-order food up to two months in advance of the visit, causing some food to grow moldy or expire by the time of the visit. The wife also alleged the staff member refused to accommodate the dietary restrictions her doctor ordered and would not allow her to bring her own food with her into the institution during her family visits, even though the institution did not provide her the option to purchase food that met her doctor's orders. The inmate's wife also alleged the officer confronted her after she called the department's Office of the Ombudsman regarding her complaints and told the inmate, "We're going to have some problems" if his wife kept complaining about her. The correctional officer also allegedly refused to answer the wife's calls regarding her visits.

In response to the complaint, the warden amended the institution's family visiting policy to allow inmates to schedule visits before food is ordered, as long as the food is received at the institution two weeks prior to the visit. The warden also tasked the family visiting officer with the responsibility to monitor the food for signs of spoilage after it is delivered to the institution. To bring the institution

into compliance with departmental policy,²⁸ the warden added a new section to the institution's family visiting policy instructing staff to allow visitors to bring in special food items if they provide medical certification of a dietary restriction, as long as the food is purchased from a vendor and is sealed in its original packaging. To remedy the communication problems the inmate's wife was experiencing, the officer received training related to communicating with inmates' families, which stressed the importance of returning families' phone calls.

The Board of Parole Hearings Revised a Previously Issued Decision Based on Inaccurate Information the Institution Had Provided to the Board

In the third case, we received a complaint from the wife of an inmate alleging the Board of Parole Hearings had recently denied her husband's parole during his recent Prop 57 Nonviolent Parole Review hearing, based on inaccurate information provided by his assigned institution. She alleged departmental staff provided the Board with inaccurate information regarding her husband's in-prison behavior, including rules violations that were not sustained and omitting rehabilitative programs he had completed, both of which could have caused the Board to look more favorably at her husband's suitability for parole if the information had been accurately represented.

We reviewed the inmate's records and determined both departmental staff and the Board made several errors that affected the inmate's suitability for parole. Among those errors, the Board improperly considered the inmate's 1986 conviction for robbery, which should not have been considered as an aggravating factor under state regulations prohibiting consideration of a violent felony conviction as an aggravating factor if it occurred more than fifteen years earlier. The Board also improperly considered as an aggravating factor (based on inaccurate information the institution provided) two rules violations that were not sustained and a third rules violation that was reduced to an administrative charge; and failed to consider as mitigating factors the inmate's completion of a substance use disorder treatment program and a transition program the inmate completed before his parole review (because the institution did not provide this information to the Board).

We notified the Board's Executive Director of the concerns we identified during our inquiry. Within seven weeks, the Board issued an updated

28. Department Operations Manual, Section 54020.33.16.

decision that factored in the corrected information, removed the inmate's 1986 conviction from its analysis, and considered the inmate's in-prison behavior as a mitigating factor, rather than an aggravating factor. Although the Board did not alter its ultimate decision to deny the inmate parole, it ensured the inmate received his due process rights by considering information pertinent to the inmate's suitability for parole that was both complete and accurate.

Recommendations

Between July 1, 2017, and June 30, 2019, we processed 6,009 complaints, 5,612 of which raised allegations of improper activity within the department. While in many instances we assisted complainants by providing advice on how to address their concerns with the department, in other cases, we resolved the complainants' issues informally. Additionally, we elevated 49 complaints to field inquiries in which our regional inspectors contacted departmental administrators, such as a warden, to bring the matters to their attention. In many cases, the department was receptive and took appropriate action. However, our inquiries highlighted several areas in which the department can improve its processes. Below, we offer the following recommendations for consideration at the departmental level:

To address the issues that cause inmates to forfeit sentence reduction credits and ensure inmates are released appropriately, the department should:

- Amend its policies to require that case records staff perform prerelease audits of inmates' files at least 180 days prior to an inmate's estimated release.
- Amend its policies to ensure inmates receive immediate notice of any changes to their release dates and to provide a system for documenting the date on which inmates receive notice.
- Treat all decisions to rescind credits as proposed decisions rather than as final decisions. Specifically, we recommend the department provide inmates with notice of all proposed decisions to rescind credits and adequate time to challenge the rescission of credits before the rescission becomes final.
- Amend its regulations to create a separate process that allows inmates to challenge release date calculations and credit rescissions according to expedited time frames.
- Consider setting classification committee hearings to occur on the first date inmates become eligible to have credits restored by an institution classification committee, at least with respect to inmates who are within 180 days of their earliest possible release date.

To ensure the department takes consistent and adequate action in response to allegations of staff misconduct, the department should:

- Amend its regulations to require that all allegations of staff misconduct, regardless of their source, be subjected to the

same process the department provides for inmate allegations of staff misconduct. The process should set forth deadlines for inquiries to be performed, require the inquiries involve a thorough review of all relevant records and interviews of all staff likely to have information related to the allegations, and ensure that the steps the reviewer took during the inquiry are documented in a report.

To address the conflicts of interest we identified, the department should:

- Amend its policy to prohibit staff who are the subject of inmate threats from participating in any processes or decisions taken in response to discovering an inmate threat against staff.
- Review its policies to determine whether there are adequate policies in place that instruct staff how to recognize and handle conflicts of interest.
- Review its training curriculum to determine whether it provides sufficient ongoing training regarding conflicts of interest.

To ensure that inmates' disciplinary records contain only accurate information, the department should:

- Consider amending its regulations and policies regarding records of disciplinary matters to include a requirement that any inaccurate entries that are later corrected be removed from the inmate's record.
- Perform an audit of its rules violation records to locate rules violations that have been revised and determine whether there is an operational need to maintain those records in the inmate's disciplinary history.

To streamline our access to inmate appeals information and reduce the amount of time the department's public information officers spend responding to our requests for records, the department should:

- Provide our office with direct, electronic access to its Inmate Appeals Tracking System.

Appendices

Appendix A. Number of Complaints Received, by Institution

| Institution | Fiscal Year 2017–18 | Fiscal Year 2018–19 | Total Complaints Received |
|--------------------|---------------------|---------------------|---------------------------|
| High Security | 1,195 | 1,302 | 2,497 |
| CAC | 21 | 17 | 38 |
| CCI | 97 | 104 | 201 |
| COR | 175 | 255 | 430 |
| HDSP | 99 | 135 | 234 |
| KVSP | 143 | 170 | 313 |
| LAC | 191 | 178 | 369 |
| PBSP | 69 | 52 | 121 |
| SAC | 119 | 156 | 275 |
| SATF | 143 | 118 | 261 |
| SVSP | 138 | 117 | 255 |
| General Population | 559 | 557 | 1,116 |
| ASP | 47 | 37 | 84 |
| CAL | 27 | 27 | 54 |
| CEN | 30 | 37 | 67 |
| CTF | 81 | 123 | 204 |
| CVSP | 23 | 35 | 58 |
| ISP | 36 | 16 | 52 |
| MCSP | 171 | 205 | 376 |
| PVSP | 17 | 19 | 36 |
| SOL | 68 | 39 | 107 |
| VSP | 59 | 19 | 78 |

Continued next column.

| Institution | Fiscal Year 2017–18 | Fiscal Year 2018–19 | Total Complaints Received |
|---|---------------------|---------------------|---------------------------|
| Reception Center | 646 | 608 | 1,254 |
| CBU | 41 | 21 | 62 |
| CCC | 8 | 20 | 28 |
| CIM | 76 | 93 | 169 |
| CMC | 84 | 77 | 161 |
| CRC | 31 | 24 | 55 |
| DVI | 40 | 19 | 59 |
| NKSP | 54 | 33 | 87 |
| RJD | 195 | 195 | 390 |
| SCC | 24 | 45 | 69 |
| SQ | 46 | 41 | 87 |
| WSP | 47 | 40 | 87 |
| Female Offender Programs and Services and Special Housing | 302 | 415 | 717 |
| CCWF | 35 | 52 | 87 |
| CHCF | 137 | 198 | 335 |
| CIW | 37 | 29 | 66 |
| CMF | 70 | 93 | 163 |
| FSP | 19 | 34 | 53 |
| FWF | 4 | 9 | 13 |
| Other Entities | 199 | 226 | 425 |
| DAPO | 25 | 29 | 54 |
| DJJ | 4 | 12 | 16 |
| Other | 170 | 185 | 355 |
| Total | 2,901 | 3,108 | 6,009 |

Appendix B. Summary of Field Inquiry Outcomes for Cases Containing Allegations of Staff Misconduct, as Determined by the OIG

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG

| Case | Overall Rating | Investigation Ordered by HA | Adequate Report | Sufficient Interviews | Sufficient/ Relevant Evidence | Timely | Free from Bias |
|------|----------------|-----------------------------|-----------------|-----------------------|-------------------------------|--------|----------------|
| 1 | Inadequate | Yes | Yes | No | No | Yes | Yes |
| 2 | Inadequate | Yes | Yes | Yes | No | No | Yes |
| 3 | Inadequate | No | N/A | N/A | N/A | N/A | N/A |
| 4 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 5 | Adequate | Yes | Yes | Yes | Yes | No | Yes |
| 6 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 7 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 8 | Inadequate | Yes | No | No | No | No | Yes |
| 9 | Adequate | Yes | Yes | Yes | Yes | No | Yes |
| 10 | Inadequate | No | N/A | N/A | N/A | N/A | N/A |
| 11 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 12 | Inadequate | Yes | No | Unknown | Unknown | Yes | Unknown |
| 13 | Inadequate | Yes | Yes | Yes | Yes | No | No |
| 14 | Inadequate | Yes | Yes | No | Yes | Yes | Yes |
| 15 | Inadequate | Yes | Yes | Yes | Yes | No | No |
| 16 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 17 | Inadequate | No | N/A | N/A | N/A | N/A | N/A |
| 18 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 19 | Inadequate | Yes | No | Unknown | Unknown | Yes | Unknown |
| 20 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 21 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 22 | Inadequate | Yes | Yes | Yes | Yes | No | Yes |
| 23 | Inadequate | Yes | Yes | Yes | Yes | No | Yes |
| 24 | Adequate | Yes | Yes | N/A | Yes | Yes | Yes |
| 25 | Inadequate | Yes | Yes | No | No | No | Yes |
| 26 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 27 | Inadequate | Yes | Yes | Yes | Yes | No | No |
| 28 | Inadequate | Yes | Yes | No | Yes | No | Yes |
| 29 | Inadequate | Yes | Yes | Yes | Yes | No | Yes |
| 30 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 31 | Inadequate | Yes | Yes | No | No | Yes | Yes |
| 32 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |
| 33 | Inadequate | Yes | Yes | No | No | Yes | Yes |
| 34 | Inadequate | No | N/A | N/A | N/A | N/A | N/A |
| 35 | Inadequate | Yes | Yes | No | Yes | No | Yes |
| 36 | Adequate | Yes | Yes | Yes | Yes | Yes | Yes |

Note: This appendix only identifies complaints that involved allegations of staff misconduct that could be assessed based on a standard set of objective criteria. The remaining 13 complaints, which are summarized in Appendix D, pertained to various issues that could not be assessed using these same criteria.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | | Incident Summary | Overall Rating |
|---|--|-----|--|--------------------------------|
| | | | | Adequate = ✓ Inadequate = ✗ |
| Case 1 | Investigation Ordered by HA Documented | Yes | On September 12, 2016, an inmate submitted a complaint to the OIG alleging two officers forced inmates to pay them to access the exercise yard and telephones, sold mobile phones to inmates, and threatened to have gang members remove the inmate from the exercise yard if he complained. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | No | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 2 | Investigation Ordered by HA Documented | Yes | On March 24, 2017, an inmate submitted a complaint to the OIG alleging officers used unreasonable physical force on him after he requested medical attention. | ✗ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | No | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 3 | Investigation Ordered by HA Documented | No | On April 10, 2017, an inmate submitted a complaint to the OIG alleging the department did not investigate his complaint that an officer retaliated against him for filing a prior complaint against the officer. | ✗ |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | N/A | | |
| | Timely | N/A | | |
| | Free from Bias | N/A | | |
| | | | | |
| Case 4 | Investigation Ordered by HA Documented | Yes | On May 9, 2017, an anonymous departmental employee submitted a complaint to the OIG alleging another officer engaged in sexual acts with inmates in the kitchen. On June 20, 2017, the anonymous departmental employee submitted a second complaint to the OIG alleging continued misconduct by the other officer. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 5 | Investigation Ordered by HA Documented | Yes | On May 15, 2017, a disability rights advocate submitted a complaint to the OIG on behalf of an inmate alleging that an officer choked the inmate, and a lieutenant threatened to punish the inmate during a video-recorded interview if he pursued a complaint against the officer. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 6 | Investigation Ordered by HA Documented | Yes | On May 17, 2017, a former departmental employee submitted a complaint to the OIG alleging officers were sleeping on duty while assigned to shifts guarding inmates who were receiving treatment at an outside hospital. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |

Continued on next page.

Note: For complaints received by mail, we consider the date we received the complaint as the date the complaint was submitted.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | | Incident Summary | Overall Rating |
|---|--|---------|--|--------------------------------|
| | | | | Adequate = ✓ Inadequate = ✗ |
| Case 7 | Investigation Ordered by HA Documented | Yes | On June 2, 2017, an inmate submitted a complaint to the OIG alleging he was the victim of sexual harassment when a departmental contract employee allowed another inmate to draw sexually offensive pictures, make sexually offensive comments, engage in inappropriate physical contacts, and expose himself during group counseling sessions. The inmate also alleged the departmental contract employee and a director for the third-party vendor failed to take appropriate corrective action. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 8 | Investigation Ordered by HA Documented | Yes | On June 28, 2017, an inmate submitted a complaint to the OIG alleging two officers revealed that an inmate was a convicted child molester and asked other inmates to attack the inmate. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | No | | |
| | Timely | Unknown | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 9 | Investigation Ordered by HA Documented | Yes | On July 21, 2017, an inmate submitted a complaint to the OIG alleging an officer provided other inmates with preferential treatment, confidential inmate information, and materials that inmates could use as weapons. | ✗ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 10 | Investigation Ordered by HA Documented | No | On June 16, 2017, an inmate's mother submitted a complaint to the OIG alleging departmental staff unjustly accused her son of threatening a lieutenant and harassed him when they aggressively questioned him about the threat. | ✗ |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | N/A | | |
| | Timely | N/A | | |
| | Free from Bias | N/A | | |
| | | | | |
| Case 11 | Investigation Ordered by HA Documented | Yes | On August 21, 2017, an inmate submitted a complaint to the OIG alleging his cellmate sexually assaulted and beat him, and three officers were aware of the attacks, but failed to stop them. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 12 | Investigation Ordered by HA Documented | Yes | On September 20, 2017, an inmate submitted a complaint to the OIG alleging a counselor had an overly familiar relationship with an inmate and was providing contraband to that inmate. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | Unknown | | |
| | Timely | Unknown | | |
| | Free from Bias | Yes | | |
| | | Unknown | | |

Continued on next page.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | | Incident Summary | Overall Rating Adequate = ✓ Inadequate = ✗ |
|---|------------------------------|-----|---|--|
| Case 13 | Investigation Ordered by HA | Yes | On October 31, 2017, a departmental employee submitted a complaint to the OIG alleging that, based on information from inmates, two officers falsified rules violation reports against inmates regarding alcohol possession, that a lieutenant was involved in an inappropriate relationship with a subordinate officer and they were caught engaging in sexual activity on institutional grounds, and that an investigative services unit sergeant threatened her with being placed under investigation after reporting the lieutenant's and the officers' alleged misconduct. | ✗ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | No | | |
| Case 14 | Investigation Ordered by HA | Yes | On November 7, 2017, an inmate's fiancée submitted a complaint to the OIG alleging that during a visit with her fiancée, officers detained her against her will, forced her to submit to an unclothed body search, and repeatedly denied her requests for a complaint form. | ✗ |
| | Documented | Yes | | |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| Case 15 | Investigation Ordered by HA | Yes | On September 22, 2017, the OIG received an anonymous complaint alleging a chief and a deputy chief allowed a special agent-in-charge and a senior information systems analyst to conduct personal business on state time. | ✗ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | No | | |
| Case 16 | Investigation Ordered by HA | Yes | On January 3, 2018, an attorney submitted a complaint to the OIG on behalf of three inmates regarding a July 17, 2017, incident alleging that officers used unreasonable force on the three inmates, which a fourth inmate video-recorded on a mobile phone. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| Case 17 | Investigation Ordered by HA | No | On January 29, 2018, a private citizen submitted a complaint to the OIG alleging her ex-husband, an officer, sent harassing text messages to her and to their two children, threatened to kill her and commit suicide, and made false allegations about her. She also alleged the officer verbally abused her and her children and threatened to assault her boyfriend. | ✗ |
| | Documented | N/A | | |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | N/A | | |
| | Timely | N/A | | |
| | Free from Bias | N/A | | |
| Case 18 | Investigation Ordered by HA | Yes | On February 2, 2018, and May 10, 2018, an anonymous departmental employee submitted a complaint to the OIG alleging a principal committed misconduct, including discrimination, preferential treatment, misuse of state funds, and falsification of documents. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |

Continued on next page.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | | Incident Summary | Overall Rating |
|---|------------------------------|---------|---|--------------------------------|
| | | | | Adequate = ✓ Inadequate = ✗ |
| Case 19 | Investigation Ordered by HA | Yes | On May 11, 2018, a departmental employee submitted a complaint to the OIG alleging an officer used his position to influence the transfer of the officer's son, an inmate, from one institution to another and that unidentified managers potentially circumvented policy to influence the inmate's transfer. | ✗ |
| | Documented | No | | |
| | Sufficient Interviews | Unknown | | |
| | Sufficient/Relevant Evidence | Unknown | | |
| | Timely | Yes | | |
| | Free from Bias | Unknown | | |
| Case 20 | Investigation Ordered by HA | Yes | On May 29, 2018, an inmate submitted a complaint to the OIG alleging that on January 5, 2018, when he arrived at the institution, the department refused to place him in the administrative segregation unit and, instead, placed him in nonmaximum-security housing, although the department classified him as a maximum-custody inmate. On January 8, 2018, three other inmates attacked the inmate, causing the inmate to lose an eye. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| Case 21 | Investigation Ordered by HA | Yes | On June 6, 2018, an inmate's fiancée submitted a complaint to the OIG alleging that on May 24, 2018, three officers attacked the inmate while he was in handcuffs, injured his back while they tore off his clothing, placed him in a holding cell for more than three hours, and refused his requests to use the restroom during that period. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| Case 22 | Investigation Ordered by HA | Yes | On June 16, 2018, a third party submitted a complaint to the OIG alleging the department improperly hired an employee who did not meet the minimum qualifications for the position. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| Case 23 | Investigation Ordered by HA | Yes | On July 16, 2018, an inmate submitted a complaint to the OIG alleging that three parole agents intentionally falsified his parole revocation report and manipulated information in the parole violation decision tool in order to ensure that his parole was revoked. | ✗ |
| | Documented | Yes | | |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| Case 24 | Investigation Ordered by HA | Yes | On July 24, 2018, a departmental employee submitted a complaint to the OIG alleging a former inmate who was on probation was involved in an overly familiar relationship with a departmental psychologist. | ✓ |
| | Documented | Yes | | |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |

Continued on next page.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | Incident Summary | Overall Rating |
|---|------------------------------|------------------|---|
| | | | Adequate = ✓ Inadequate = ✗ |
| Case 25 | Investigation Ordered by HA | Yes | On July 30, 2018, an inmate advocacy group submitted a complaint to the OIG on behalf of an inmate alleging custody staff failed to prevent the inmate from being attacked by other inmates. |
| | Documented | Yes | |
| | Sufficient Interviews | No | |
| | Sufficient/Relevant Evidence | No | |
| | Timely | No | |
| | Free from Bias | Yes | |
| Case 26 | Investigation Ordered by HA | Yes | On August 27, 2018, an inmate submitted a complaint to the OIG alleging he heard officers tell inmates they would not do anything if inmates attacked a captain. |
| | Documented | Yes | |
| | Sufficient Interviews | Yes | |
| | Sufficient/Relevant Evidence | Yes | |
| | Timely | Yes | |
| | Free from Bias | Yes | |
| Case 27 | Investigation Ordered by HA | Yes | On September 5, 2018, an inmate advocacy group submitted a complaint to the OIG on behalf of an inmate alleging that officers and mental health staff took no action to stop an assault on an inmate on two occasions. |
| | Documented | Yes | |
| | Sufficient Interviews | Yes | |
| | Sufficient/Relevant Evidence | Yes | |
| | Timely | No | |
| | Free from Bias | No | |
| Case 28 | Investigation Ordered by HA | Yes | On September 21, 2018, a departmental employee submitted a complaint to the OIG alleging a youth counselor directed a ward to attack another youth counselor. The youth counselor allegedly failed to remove the disruptive ward from the classroom and living unit, thereby creating an unsafe work environment. |
| | Documented | Yes | |
| | Sufficient Interviews | No | |
| | Sufficient/Relevant Evidence | Yes | |
| | Timely | No | |
| | Free from Bias | Yes | |
| Case 29 | Investigation Ordered by HA | Yes | On September 24, 2018, the department's Office of Audits and Court Compliance provided the OIG with the names of seven inmates who made allegations of unreasonable use of force by officers at the institution. |
| | Documented | Yes | |
| | Sufficient Interviews | Yes | |
| | Sufficient/Relevant Evidence | Yes | |
| | Timely | No | |
| | Free from Bias | Yes | |
| Case 30 | Investigation Ordered by HA | Yes | On October 1, 2018, the OIG received an anonymous complaint alleging a warden intentionally removed the price tag from an item at a thrift store in order to purchase the item at a significantly reduced price with the intent of subsequently reselling the item for a profit. |
| | Documented | Yes | |
| | Sufficient Interviews | Yes | |
| | Sufficient/Relevant Evidence | Yes | |
| | Timely | Yes | |
| | Free from Bias | Yes | |

Continued on next page.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG | | | Incident Summary | Overall Rating Adequate = ✓ Inadequate = ✗ |
|---|--|------------|---|--|
| Case 31 | Investigation Ordered by HA Documented | Yes Yes | On October 25, 2018, an inmate submitted a complaint to the OIG alleging an officer directed him to assault other inmates. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | No | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 32 | Investigation Ordered by HA Documented | Yes Yes | On November 2, 2018, an inmate's wife submitted a complaint to the OIG alleging the department denied the inmate access to a mental health crisis bed and failed to address the inmate's safety concerns. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 33 | Investigation Ordered by HA Documented | Yes Yes | On December 31, 2018, an inmate submitted a complaint to the OIG alleging that two officers used unreasonable force on an inmate when they took him to the ground and banged his head on the floor, even after he had been subdued. The inmate alleged the same two officers observed two inmates fighting, but failed to intervene to stop the fight. When one of the inmates began to walk away from the fight, the officers allegedly ordered the inmate to continue fighting. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | No | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 34 | Investigation Ordered by HA Documented | No N/A | On January 29, 2019, an inmate's spouse submitted a complaint to the OIG alleging the department provided expired and moldy food during a family visit and the department did not accept a doctor's note to allow her to bring in outside food. Additionally, the complainant alleged that a family visiting officer did not answer telephone calls and threatened the inmate after the complainant contacted the department's ombudsman. | ✗ |
| | Sufficient Interviews | N/A | | |
| | Sufficient/Relevant Evidence | N/A | | |
| | Timely | N/A | | |
| | Free from Bias | N/A | | |
| | | | | |
| Case 35 | Investigation Ordered by HA Documented | Yes Yes | On February 13, 2019, a departmental employee submitted a complaint to the OIG alleging that an officer made a vulgar statement to other employees and posted an employee counseling record on a union bulletin board, which appeared to be stained with fecal matter. | ✗ |
| | Sufficient Interviews | No | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | No | | |
| | Free from Bias | Yes | | |
| | | | | |
| Case 36 | Investigation Ordered by HA Documented | Yes Yes | On March 6, 2019, a third party submitted a complaint to the OIG alleging two officers were engaged in a sexual relationship with an inmate. | ✓ |
| | Sufficient Interviews | Yes | | |
| | Sufficient/Relevant Evidence | Yes | | |
| | Timely | Yes | | |
| | Free from Bias | Yes | | |
| | | | | |

Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff

| | |
|-------------------|---|
| Complaint | On April 7, 2017, an inmate submitted a complaint to the OIG alleging that the institution wrongly rescinded 42 of his educational milestone credits and that he received no response to his efforts to correct the mistake. He also alleged that the OIG poster in his housing unit did not display accurate contact information for the OIG. |
| Response | The warden determined there was a misunderstanding about which staff were responsible for verifying educational credits and that staff in the institution's education office will be assigned such responsibility to prevent this issue from reoccurring. The institution replaced the outdated posters with new posters containing accurate contact information for inmates to correspond with our office. |
| Assessment | Within a week of contacting the warden regarding the inmate's complaint, he met with us to discuss the merits of this inmate's complaint. The warden was well prepared to discuss the issues, and demonstrated that he had examined the inmate's concerns and spoken with the involved staff. However, when we reviewed this inmate's records and discussed the inmate's case with the department's Office of Education, we confirmed that the institution should not have rescinded 14 of the inmate's 42 credits. Our review also determined that the timing of the institution's decision to rescind the inmate's credits and staff members' failure to respond to his requests for assistance deprived him of a meaningful opportunity to challenge the decision. |

| | |
|-------------------|---|
| Complaint | On February 7, 2018, an inmate submitted a complaint to the OIG alleging that the institution wrongly rescinded 56 of his educational milestone credits and failed to expedite the processing of his appeal even though he alleged in his appeal that he was due to be released from prison in only 37 days. |
| Response | We raised the inmate's complaint with the department's executive staff on February 8, 2018. Within two weeks, the department explained that it could not advance the inmate's release date because of a regulation that prohibits the department from advancing an inmate's release from prison if doing so would cause the inmate to be released within 60 days of the change. |
| Assessment | Although the department's original response was accurate, when we later conferred with the department's Office of Education, we determined that the inmate had not completed the required steps to earn the credits and the institution was correct to rescind his credits. However, we also learned that the department failed to apply additional credit losses that would have caused the inmate to spend additional time in prison. We determined the department released the inmate from prison 32 days early. Our review also determined that the timing of the institution's decision to rescind the inmate's credits and staff failure to respond to his requests for assistance deprived him of a meaningful opportunity to challenge the decision to rescind his credits. |

| | |
|-------------------|--|
| Complaint | On February 7, 2018, an inmate's family member submitted a complaint to the OIG, alleging the department was improperly calculating the inmate's release date, and was holding him in prison beyond his correct release date. |
| Response | The department identified an error in its calculation of the inmate's release date and adjusted the inmate's release date so that he would be released six days sooner. |
| Assessment | The department responded to our inquiries related to this complaint in a timely manner and thoroughly researched the inmate's allegations and the questions we posed. Ultimately, the department accelerated the inmate's release date by six days, which was the earliest date permitted by department regulation. However, had institution staff immediately restored credits the inmate earned after being discipline-free for a 60-day period, the department's regulation would not have restricted the inmate from being released even sooner. |

Continued on next page.

Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| | |
|-------------------|--|
| Complaint | On February 22, 2018, an inmate's family member submitted a complaint to the OIG, alleging the institution mistakenly re-classified the inmate as a sex offender, which caused his release date to be extended. The inmate wrote to us a few days later explaining that the reclassification would extend his release date by 97 days. |
| Response | The department determined the sex offender registration requirements did not apply and reversed the institution's decision to classify the inmate as a sex offender. The institution's error caused the inmate to be released from prison 97 days late. |
| Assessment | Although the department's analysis was incorrect, at every step of our inquiry, the department timely responded to our questions and requests for information. Ultimately, once we elevated to the department's headquarters, the Office of Legal Affairs agreed that the institution's interpretation of the law was incorrect and reversed the institution's decision. |
| Complaint | On February 27, 2018, an inmate's mother submitted a complaint to the OIG alleging the department failed to award her son the educational achievement credits he earned after completing two college courses in August 2017. The credits, if applied, would advance the inmate's release date by 14 days. |
| Response | The hiring authority determined the inmate completed the approved educational program, credited the inmate with 14 days of milestone completion credits, and revised his earliest possible release date. |
| Assessment | The department thoroughly reviewed our concerns and took immediate action to review the inmate's claim. Because the department acted on the inmate's claim immediately, it was able to advance the inmate's release date before the department's regulations precluded it from awarding him the credits he earned. |
| Complaint | On June 25, 2018, an inmate submitted a complaint to the OIG alleging he had information about an alleged homicide that occurred at an institution, and alleged staff involvement in the homicide. The inmate, who was a suspect in the criminal investigation into the homicide, also claimed that the institution's investigative services unit refused to interview him despite his requests to be interviewed. |
| Response | After we contacted the institution, the investigative services unit immediately interviewed the inmate to determine what he knew about the homicide. |
| Assessment | We recommended that the investigate services unit confer with the district attorney before interviewing the inmate considering the inmate was a suspect in the ongoing homicide investigation. The investigative services unit did not contact the district attorney's office before interviewing the inmate, but adequately informed the inmate of his Miranda rights before interviewing him. |
| Complaint | On June 7, 2017, an inmate's wife submitted a complaint to the OIG alleging that, after we visited the institution and met with members of the facility's inmate advisory council, officers in the housing unit we visited removed and threw away posters that contained information instructing inmates how to contact our office to report misconduct. |
| Response | Two days later, we conducted an unannounced visit to the housing unit and confirmed that our posters had been removed. We ensured that the posters were returned to the original location and informed the hiring authority and a sergeant working in the housing unit that the posters should remain in that location so that inmates know how to contact our office. |
| Assessment | We conducted a subsequent unannounced site visit five months later and found that the posters remained in the specified location. |

Continued on next page.

Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| | |
|-------------------|---|
| Complaint | On July 5, 2017, an inmate submitted a complaint to the OIG alleging the department did not timely deliver his mail, and in some instances did not deliver his mail at all. He also alleged mail room staff did not respond to his requests for assistance (Form 22s), in which he complained that he was not receiving his mail. The lack of a response to his Form 22s prevented the inmate from utilizing the department's appeal process. |
| Response | The mail room supervisor could not locate any documentation indicating that mail room staff ever received or responded to the inmate's Form 22s. Within two weeks of our first contact, the hiring authority provided training to mail room employees regarding procedures for receiving and responding to inmates' Form 22 requests for assistance. |
| Assessment | The hiring authority responded to our questions and requests for documentation in a timely manner and addressed the inmate's concerns appropriately. |

| | |
|-------------------|--|
| Complaint | On February 9, 2018, we received a complaint from an inmate's wife alleging the analysis the Board of Parole Hearings performed during her husband's Nonviolent Parole Review was inaccurate and that the Board considered information it was not permitted to consider. |
| Response | Less than two months after we raised our concerns with the Board, the Board corrected its decision so that it reflected accurate information and considered only information the Board was permitted to consider, and informed the inmate of the changes. |
| Assessment | The Board timely and thoroughly reviewed our concerns and appropriately revised its decision to correct the inaccuracies. |

| | |
|-------------------|--|
| Complaint | On March 29, 2018, we received a complaint from an inmate alleging that the department's Office of Appeals unjustly denied the inmate's appeals as untimely even though he mailed the appeal within the prescribed time limits, but staff members allegedly failed to timely process his mail. |
| Response | The day after we raised our concerns to the department's Office of Appeals, it reversed its earlier determination and accepted the inmate's appeal as timely filed. |
| Assessment | The department timely responded to our concerns and processed the inmate's third level appeal. |

| | |
|-------------------|---|
| Complaint | On February 5, 2018 and on February 16, 2018, we received complaints alleging an inmate had concerns for his safety after confidential information from his records had been disclosed to other inmates. The confidential information the department placed in the inmate's file indicated he had been convicted of a sex offense involving a minor. The inmate alleged the information was false and placed his safety at risk. The complaints also alleged that the institution informed the inmate that he was going to be transferred to another institution where the inmates who accessed his confidential information were currently housed. |
| Response | The department examined our concerns that the inmate might be transferred to another institution where he could be harmed by other inmates who posed a risk to his safety and determined the inmate would not be transferred to the other institution because his records indicated he had enemy concerns at that institution. The institution attempted to correct the inaccurate information in the inmate's records, but failed to remove the incorrect information from the file. When we re-examined the inmate's records three months later, we noticed that the inmate had another new entry in his file that incorrectly indicated the inmate had been convicted of a sex offense involving a minor. When we contacted the institution about the incorrect entry, it removed the new entry in its entirety. |
| Assessment | The department thoroughly reviewed the inmate's concerns that he would be transferred to another prison where other inmates resided who posed a threat to his safety. However, the department did not take adequate steps to remove the inaccurate information from the inmate's records indicating that he had been convicted of a sex offense involving a minor. |

Continued on next page.

Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

| | |
|-------------------|---|
| Complaint | On September 23, 2018, we received a complaint from an inmate's mother alleging that she had sent her son a package on September 8, 2018 containing appropriate clothing for his upcoming release from prison on September 25, 2018, but her son had not yet received the package. |
| Response | The warden received the same complaint we did, and immediately tasked his staff with examining the concerns identified in the complaint. Two hours later, the warden informed the complainant that her son's clothing was at the institution and would be provided to her son upon his release from prison. The day after her son's release from prison, the mother contacted the warden and alleged that the institution charged her son \$38 for not having clothes to wear upon his release even though the inmate wore his own clothes at the time of his release. The warden responded the next morning, informing the complainant that the charge was an error and that her son would be reimbursed within five business days. |
| Assessment | The warden was very responsive to the inmate's mother, immediately tasking his staff with gathering answers to her questions and providing complete responses within hours of receiving the messages. On the other hand, our efforts to monitor the institution's response to the complaints were hampered because the staff member assigned to update us about the institution's efforts to assist the complainant did not respond to any of our three inquiries until 14 days after the inmate had been released from prison. We then had to make three requests for the institution's records related to the complaint before the staff member sent the records we needed to review the actions the warden took in response to the complaints. |
| Complaint | On June 16, 2018, an inmate's wife submitted a complaint to the OIG alleging an officer in the visiting area ended her visit with her husband, issued her a 30-day suspension of visiting privileges, and issued her husband a rules violation even though they were complying with all visiting policies and staff directives. |
| Response | The warden ordered his staff to perform an inquiry into the complaint, finding insufficient evidence of misconduct to warrant a referral to the Office of Internal Affairs. The warden, instead, ordered the officer to receive training in the area of report writing. |
| Assessment | We disagreed with the warden's decision not to refer the case to the Office of Internal Affairs because the video footage of the inmate's visit demonstrated that the inmate and his wife complied with the officer's directions and that the incident report the officer ordered did not accurately reflect what happened. The warden agreed that the inmate's and wife's actions did not warrant the issuance of a rules violation report, ordered the violation reduced to a counseling chrono, and restored the wife's visiting privileges. We elevated this concern all the way up to the Secretary of the department, who did not believe there was sufficient evidence to warrant an investigation. |

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Complaint Intake and Field Inquiries

Addressing Complaints of Improper Governmental Activities Within the California Department of Corrections and Rehabilitation

Initial Report

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
June 2020

OIG

EXHIBIT W

EXHIBIT W-1



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thelatererelief I can't tell if some of these inmates are actually "hearing impaired" or just have selective hearing when it's only convenient for them. 🙄

#iknowyoucanhear me #listenup #hearingaids #myass #selectivehearing #lyingass #ada #vest #vestedinterest #inmatesbelike #icanthearyou #correctionalnurse #correctionalofficer #majorpayne #cdcr

13w



ramon21r @patrickf_301 @amarvaz



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MARCH 1

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thelaterrelief I'm still convinced that most DD1 and DD2 inmates are literally and figuratively full of shit. 💩
 #developmentallydisabledinmate #dd1 #dd2 #dd3 #californiaprison #prisonshit #heyco #iwipemyownass

33w



yep_it_is_i 🤔🤔🤔



33w 1 like Reply



bosox2424 🤔🤔🤔🤔



33w 1 like Reply

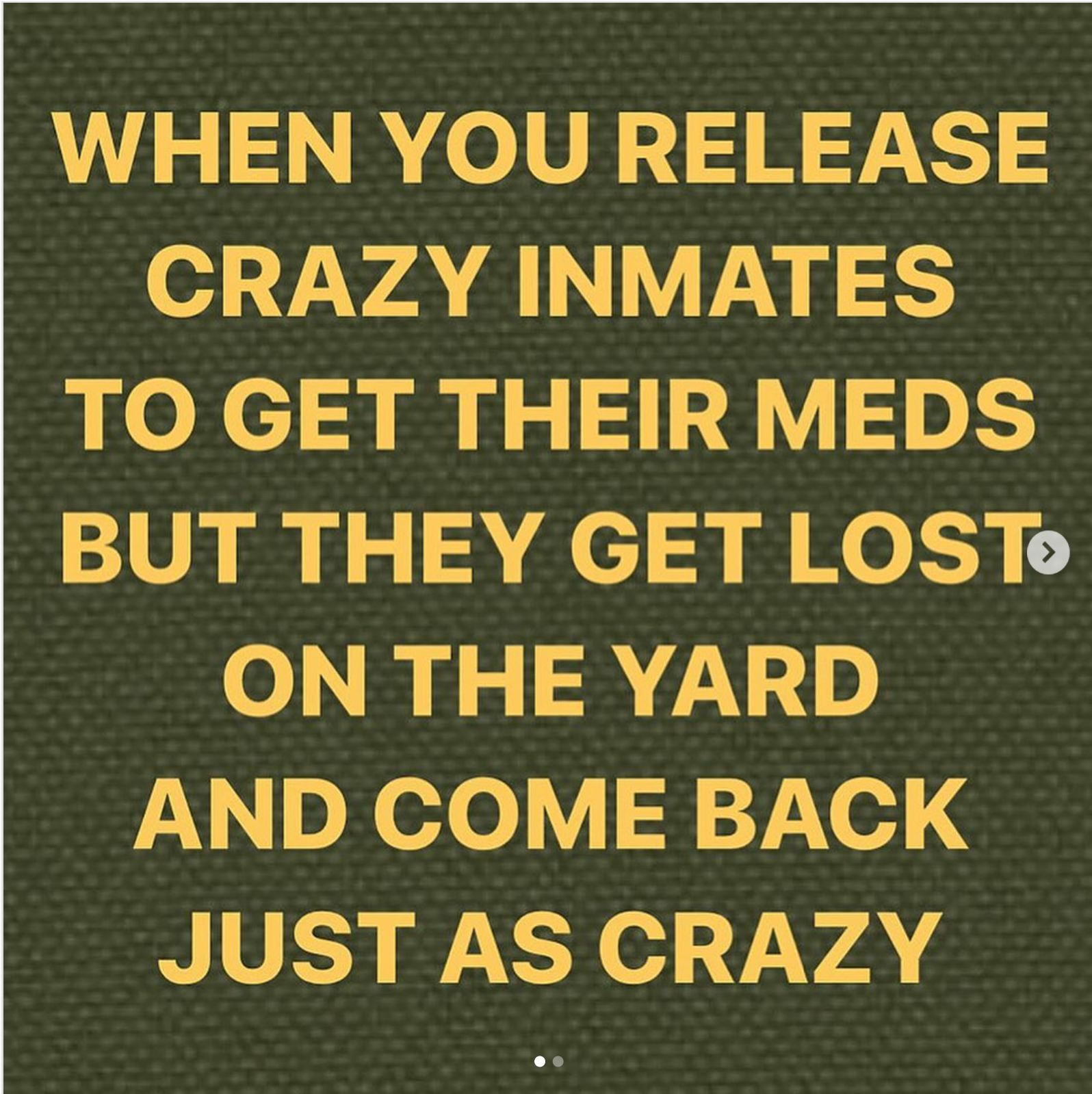


134 likes

OCTOBER 12, 2019

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thelaterrelief Who hasn't had this problem working on a lower level yard? 🤔 #cmf #crazymotherfuckers #cccms #eop #enhancedoutpatient #emotionallydisturbedperson #edp #mentaldisorder #crazyasfuck #vacaville #stockton #subway #fairy #newyork #subwaycreatures

21w



belvedere @lindynichole



21w 1 like Reply

View replies (1)



rweeks7mm I like when you ge call from another unit that they



168 likes

JANUARY 6

Add a comment...

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EXHIBIT W-2

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16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 JOHN ARMSTRONG, et al.,
21 Plaintiffs,
22 v.
23 GAVIN NEWSOM, et al.,
24 Defendants.

Case No. C94 2307 CW

NOTICE OF MANUAL FILING OF
EXHIBIT W-2 TO THE DECLARATION
OF GAY CROSTHWAIT GRUNFELD IN
SUPPORT OF MOTION TO STOP
DEFENDANTS FROM ASSAULTING,
ABUSING AND RETALIATING
AGAINST PEOPLE WITH
DISABILITIES

Judge: Hon. Claudia Wilken
Date: July 21, 2020
Time: 2:30 p.m.
Crtrm.: TBD, Oakland

Case No. C94 2307 CW

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Manual Filing Notification

Regarding: Exhibit W-2 to the Declaration of Gay Crosthwait Grunfeld

This filing is in physical form only, and is being maintained in the case file in the Clerk’s office. If you are a participant in this case, this filing will be served in hard-copy shortly. For information on retrieving this filing directly from the court, please see the court’s main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

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- 5. Conformance with the Judicial Conference Privacy Policy (General Order 53)
- 6. Other (please describe):
- 7.

DATED: June 3, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

EXHIBIT X

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California prison staff posted 'racist' and 'extremely hurtful' comments about George Floyd's killing, CDCR secretary says

Comments 'brought dishonor' to prison system, secretary wrote



By **NATE GARTRELL** | ngartrell@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: May 29, 2020 at 4:11 p.m. | UPDATED: May 30, 2020 at 5:22 a.m.

Some California prison staff members have taken to social to mock the death of George Floyd, according to the prison system's secretary who warned against "racist" and "extremely hurtful" remarks in a letter to the entire prison system Friday.

The social media posts, which were not described in detail, "brought dishonor to this department and cast a shadow on the fine work we do," wrote Secretary Ralph Diaz, who is in charge of the California Department of Corrections and Rehabilitation.

“In the aftermath of the tragic death of George Floyd in Minneapolis, it has come to my attention that some employees of this department have taken to social media to make distasteful jokes and comments that denigrate Mr. Floyd and are extremely hurtful and disrespectful to his family and members of the community, based solely on who they are,” Diaz wrote. “In addition to racist remarks, a religious group was also singled out for disparagement. To say I was upset to learn of these comments would be an understatement.”

Diaz added that such remarks were intolerable and a violation of the prison system’s ethical code. Any staff responsible would be subject to investigation, he wrote.

CDCR spokeswoman Dana Simas said in an email that staff members behind the postings are being disciplined.

“CDCR was made aware of abhorrent comments made on social media by some employees that will not be tolerated by the department,” Simas said. “The employees who made the comments were immediately suspended and we are investigating the incidents fully.”

Floyd, 46, died after several Minneapolis police officers forced him to the ground and sat on him for several minutes. One of the officers, Derek Chauvin, was captured on a now-viral video with his knee on Floyd’s neck for roughly nine minutes, ignoring pleas from Floyd and several bystanders to ease off

One of the officers, Derek Chauvin, was charged Friday with third degree murder and manslaughter. The complaint against him says that he ignored police training by refusing to release Floyd, and that he knew or should have known that his actions were putting Floyd in grave danger.

The officers were responding to a report by a storeowner who suspected Floyd had tried to use a fake \$20 bill at a store, a misdemeanor.

Floyd’s homicide had led to widespread condemnation, and nationwide protests, including the torching of a police precinct in Minneapolis. The four officers involved, including Chauvin, have been fired.

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