

OFFICE OF THE INSPECTOR GENERAL

MATTHEW L. CATE, INSPECTOR GENERAL



BUREAU OF INDEPENDENT REVIEW

DAVID R. SHAW

CHIEF ASSISTANT INSPECTOR GENERAL

HOWARD E. MOSELEY

LEAD SPECIAL ASSISTANT INSPECTOR GENERAL

ROBERT BARTON

STEPHEN MILLER

TIM RIEGER

SENIOR ASSISTANT INSPECTORS GENERAL

SEMI-ANNUAL REPORT

JULY - DECEMBER 2005

STATE OF CALIFORNIA

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FOREWORD

The Office of the Inspector General is the state agency charged with independent oversight of California's correctional system. My mission as the Inspector General is to safeguard the integrity of the state's correctional system—in effect, to act as the eyes and ears of the public in overseeing the state's prisons. The Bureau of Independent Review was added to the Office of the Inspector General in late 2004. The bureau's mission is to ensure the integrity of internal affairs investigations into allegations of serious misconduct inside the California Department of Corrections and Rehabilitation. Established as a central component in a court-ordered remedial plan in *Madrid v. Woodford*, a federal civil rights action against the former California Department of Corrections, the bureau began partial operations in January 2005 and full operations in July 2005.

Bureau attorneys and investigators are assigned to provide real-time, on-the-scene oversight of serious investigations carried out by department internal affairs investigators to make sure the investigations are thorough, objective, and timely. Once an investigation has been completed, bureau attorneys work closely with the attorneys of the Employment Advocacy and Prosecution Team and the appropriate hiring authority to ensure that this process is fair and that any discipline imposed is appropriate.

One of the chief goals of the Bureau of Independent Review is to make the employee disciplinary process transparent to the public as a means of promoting accountability while complying with applicable privacy laws. Consistent with that purpose, California Penal Code section 6133 calls for the bureau to publish semi-annual reports of its work. The second six months of the bureau's operations are covered within this report.

As the Inspector General, it has been my privilege to supervise the bureau as its attorneys and investigators mature into a professional organization. Under the direction of Chief Assistant Inspector General David Shaw, the bureau's three regional offices in Rancho Cordova, Bakersfield, and Rancho Cucamonga have been staffed with attorneys and investigators selected through a vigorous statewide recruitment effort.

In addition to its monitoring and oversight activities, the bureau, along with staff from the Office of Internal Affairs and the Employment Advocacy and Prosecution Team, has continued to conduct numerous statewide training sessions for investigators, wardens, and employee rights officers within the California Department of Corrections and Rehabilitation. The bureau also continues to fulfill an important role in the department's reorganization and the development of policy affecting investigations, correctional employee discipline, inmate health care, and related issues.

I would again like to extend my thanks to the many individuals and organizations assisting us during the bureau's first year of operation. In particular, I would like to thank Special Master John Hagar of the U.S. District Court and Chief Attorney Michael Gennaco of the Los Angeles County Office of Independent Review—upon which the Bureau of Independent Review is modeled—for support and assistance during the bureau's formation.

On behalf of their attorneys, investigators, and support staff of the Bureau of Independent Review, I invite you to review this second semi-annual report and provide us with your feedback. The bureau will continue to post reports and other information to the Office of the Inspector General's website at www.oig.ca.gov.

— MATTHEW L. CATE, INSPECTOR GENERAL

INTRODUCTION

I am pleased to submit our second semi-annual report of the Bureau of Independent Review, Office of the Inspector General, for the period of July 1 through December 31, 2005. This report is presented in accordance with the provisions of California Penal Code section 6133,¹ which mandates reporting as needed and on a semi-annual basis. The bureau's attorneys and investigators are dedicated to ensuring that the governor, the legislature, and the public gain increasing confidence in the competence and fairness of California Department of Corrections and Rehabilitation employee investigative, disciplinary, and appellate processes. Our ultimate goal is to assist the department in preventing misconduct and abuse by promoting integrity, efficiency, and fairness in the adult and juvenile divisions, and to maintain public trust in state government.

The bureau enhances the employee disciplinary process by assessing the quality of each internal affairs investigation meeting specified bureau criteria, as well as the appropriateness of proposed disciplinary actions. The bureau then makes recommendations on the disposition of the case, the level of discipline imposed, and the agreement or lack of agreement between its recommendations, the department's resolution, and the final outcome of the appellate process. At every stage of a monitored case, bureau attorneys work closely with internal affairs investigators, staff attorneys, employee relations officers, and hiring authorities. It is through this cooperation that consensus can ultimately be reached and the goals of fairness and transparency can best be realized.

To accomplish its mandate of providing real-time oversight of the internal affairs and employee disciplinary process at the California Department of Corrections and Rehabilitation, the bureau has employed 12 attorneys with extensive backgrounds in criminal law, civil rights, and public employment law. The bureau has also recently added several seasoned investigators to its staff to extend the range of its monitoring activities, with a complement of support staff in each regional office to further its performance.

During this reporting period, bureau staff increased its familiarity with the department and gained a more thorough knowledge of the complex operations within the state correctional system. Bolstered with increased knowledge and internal affairs investigative expertise, the bureau has influenced the quality of internal affairs investigations and, as a result, the direction taken by the employee disciplinary process.

Although bureau attorneys and investigators work cooperatively with the Office of Internal Affairs and the Employment Advocacy and Prosecution Team, the bureau has both the autonomy and legal authority to independently monitor internal affairs investigations into serious misconduct. Such autonomy and legal authority are central to the bureau's efficacy in performing its oversight role with a high degree of professionalism.

¹ See Appendix A: Senate Bill No. 1400 (2004), an act introducing Penal Code section 6133.

The bureau's staff meets routinely with wardens, superintendents, and the executive and investigative staff of department facilities statewide, as well as with parole staff. In addition, the bureau continues to meet with such key external stakeholders as the Prison Crimes Committee of the California District Attorneys' Association, the California State Sheriffs' Association, and the Prison Law Office, along with other outside law enforcement agencies across all jurisdictions.

As a liaison, the bureau has assisted outside law enforcement personnel in investigations of inmate homicides, narcotics trafficking, and staff assaults, and has also provided critical input toward departmental policy-making decisions. The bureau has regularly participated in the department's central intake project, which is now close to reviewing all requests for internal affairs investigations throughout the state. In addition, the bureau has recently completed an extensive review of the regulations, laws, practices, and precedents affecting internal affairs investigations and the overall staff disciplinary process.

This report represents the statistical data derived both from case monitoring and from the interaction between the bureau and the department over the past reporting period. Because many departmental internal affairs investigations and related administrative disciplinary or criminal prosecutions span two or more reporting periods, some cases may be reported in consecutive reports.

In closing, I would like to thank a number of individuals for their support of the Bureau of Independent Review. First and foremost, the bureau has enjoyed the continued endorsement of Inspector General Matthew Cate, who has made the bureau's full operation a top priority in his administration. The contributions of Judge Thelton Henderson, Special Master John Hagar, and Chief Attorney Michael Gennaco of the Los Angeles County Office of Independent Review have also been invaluable to the bureau's operations. The bureau also wishes to commend former California Department of Corrections and Rehabilitation Secretary Roderick Q. Hickman; former acting Secretary Jeanne Woodford; retired Assistant Secretary Mark Gantt; acting Assistant Secretary Martin Hoshino; and Assistant Chief Counsel Debra Ashbrook, whose unqualified cooperation has greatly assisted the bureau in establishing itself as a respected organization across the state.

— **DAVID SHAW, CHIEF ASSISTANT INSPECTOR GENERAL**

OPERATIONS OF THE BUREAU OF INDEPENDENT REVIEW

The Bureau of Independent Review developed rapidly during its second six months of operation from July through December 2005, recruiting and hiring additional staff, meeting with other correctional entities and stakeholders, conducting internal and external training, and participating in numerous California Department of Corrections and Rehabilitation policy and legal development activities. The bureau has continued to respond to critical incidents at the state's correctional institutions, monitoring an increasing number of internal affairs investigations into the most serious misconduct allegations. Those activities and outcomes are summarized later in this report.

STAFF AND ORGANIZATION

In addition to Chief Assistant Inspector General David R. Shaw, the bureau hired 11 full-time attorneys to staff its three regional offices in Rancho Cordova, Bakersfield, Rancho Cucamonga, and its Sacramento headquarters. Senior attorneys, classified as senior assistant inspectors general, supervise the northern, central, and southern California regional offices. The staff attorneys, classified as special assistant inspectors general, were selected for each office to furnish legal expertise in criminal and civil rights, medical malpractice, and public employment law. These attorneys also have significant experience working with law enforcement, labor organizations, and prosecutorial officials throughout the state.

The newest group of employees hired by the bureau includes internal affairs and criminal investigators with experience in such disciplines as correctional investigations, medical and death investigations, public corruption, and computer crimes. These trained investigators assist the attorneys in ways that are integral to the success of bureau operations.

Following are brief biographical sketches of the attorneys and investigators serving in the Bureau of Independent Review during this second reporting period, followed by the bureau's organization chart.

HEADQUARTERS — SACRAMENTO, CALIFORNIA

David R. Shaw was appointed chief assistant inspector general of the Bureau of Independent Review by Governor Arnold Schwarzenegger in July 2004. Before his appointment, Mr. Shaw served as deputy executive officer of the Victim Compensation and Government Claims Board; executive director of the Governor's Office of Criminal Justice Planning; chief counsel to the Assembly Public Safety Committee; and deputy district attorney for Sacramento County, where he was cross-designated as a special assistant U.S. Attorney for the Eastern District of California. Mr. Shaw is a colonel in the United States Army Reserve and an adjunct professor at McGeorge School of Law.

Howard E. Moseley was appointed lead special assistant inspector general for the Bureau of Independent Review by Governor Arnold Schwarzenegger in January 2005. He previously served as a deputy attorney general in the Criminal Law Division of the California Department

of Justice. While at the Attorney General's Office he was a member of the trial litigation team, was appointed the legal liaison for the California Witness Protection Program, and was the primary reviewer of criminal referrals from the California Department of Corrections. Before that, he was a linguist in military intelligence for the United States Army.

NORTHERN REGIONAL OFFICE—RANCHO CORDOVA, CALIFORNIA

Tim Rieger was appointed senior assistant inspector general of the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in May 2005. Before his appointment, Mr. Rieger served as the deputy director and chief counsel for the California Attorney General's Department of Justice Firearms Division. He also served the California Attorney General for several years as a deputy attorney general in the Criminal Division. Before he began his ten years with the Attorney General's Office, Mr. Rieger worked as a prosecutor in the Sacramento County District Attorney's Office. Mr. Rieger is a major in the Judge Advocate General's Corps, serving in the 22nd Legal Support Organization, United States Army Reserve.

Neil Robertson was appointed special assistant inspector general for the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Robertson served as senior tax counsel in the General Counsel Section of the California Franchise Tax Board, where he represented the department in all aspects of public sector employment law and provided legal support to the Criminal Investigations Unit for prosecution of state tax crimes. He also served as staff counsel to the California Department of Corrections, Office of Internal Affairs, and as staff attorney representing law enforcement agents with the California Union of Safety Employees and the California Correctional Peace Officer's Association.

Abel D. Ramirez was appointed special assistant inspector general for the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in January 2005. Before his appointment, Mr. Ramirez served as staff counsel for the California Youth Authority, where he represented the department in administrative hearings before the State Personnel Board. Mr. Ramirez also worked as a prosecutor for several years in the Sacramento County District Attorney's Office and as a deputy probation officer for the Sacramento County Probation Office.

Samuel Dudkiewicz was hired as assistant inspector general for the Bureau of Independent Review, Northern Region, in December 2005. Mr. Dudkiewicz served for 30 years in California law enforcement, including 12 years with the Richmond Police Department and 18 years with the Department of Justice, where he served in the Bureau of Investigation, Bureau of Narcotic Enforcement, and was most recently a deputy director in the Division of Gambling Control. Mr. Dudkiewicz is a colonel in the United States Army Reserve.

CENTRAL REGIONAL OFFICE—BAKERSFIELD, CALIFORNIA

Robert Allen Barton was appointed senior assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Mr. Barton began his career in law enforcement with the Fresno County Sheriff's Department. After

obtaining his law degree, Mr. Barton became a deputy district attorney for Kern County, where he worked in the Special Prosecutions Unit and was the supervising deputy district attorney of the Juvenile and Truancy Units, Gang Unit, and Prison Crimes Unit. Mr. Barton has been an adjunct faculty member with California State University, Bakersfield and Bakersfield College, teaching courses in public speaking, criminal law, gangs and crime, and media law.

Anna M. Ferguson was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Before her appointment, Ms. Ferguson served as a deputy district attorney in Kings County, leading the Drug Crimes, Prison Crimes, Sexual Assault, and Domestic Violence Units. In addition, Ms. Ferguson has worked as a deputy public defender for Tulare County and has several years of civil litigation experience.²

L. Gordon Isen was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Isen served as a deputy district attorney for San Bernardino County, prosecuting major felonies in San Bernardino and Santa Cruz Counties. In addition to his criminal trial work, Mr. Isen served as lead attorney of a white-collar crime unit and as a narcotics team supervisor. Mr. Isen has also served his community as a reserve police officer and as a judge pro tem.

Michael G. Allford was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in July 2005. Prior to his appointment, Mr. Allford served as a deputy city attorney for the City of Bakersfield, where he was legal advisor to the Bakersfield City Council and served numerous city commissions and boards. Mr. Allford has also worked in private practice representing plaintiffs and defendants in the areas of employment law and land use.

Brian Trott was transferred as deputy inspector general for the Bureau of Independent Review, Central Region, in 2005. Mr. Trott previously served as deputy inspector general in the Bureau of Audits and Investigations, Central Valley, since 2001, where he conducted investigations and worked on special reviews and audits. Mr. Trott has over ten years of experience in correctional healthcare and the inmate classification system.

SOUTHERN REGIONAL OFFICE—RANCHO CUCAMONGA, CALIFORNIA

Stephen Miller was appointed senior assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Before his appointment, Mr. Miller worked as an attorney for 22 years in private practice, litigating cases involving police misconduct, civil rights, medical malpractice, employment law, and other torts in state and federal court. He also served as a part-time U.S. magistrate judge in the Central District of California presiding over federal criminal matters. Mr. Miller has served as a school board member for a local school district and the County of San Bernardino. He was a reserve

² Regrettably, Ms. Ferguson left the employ of the Office of the Inspector General for a high-level position with the Kings County District Attorney's Office.

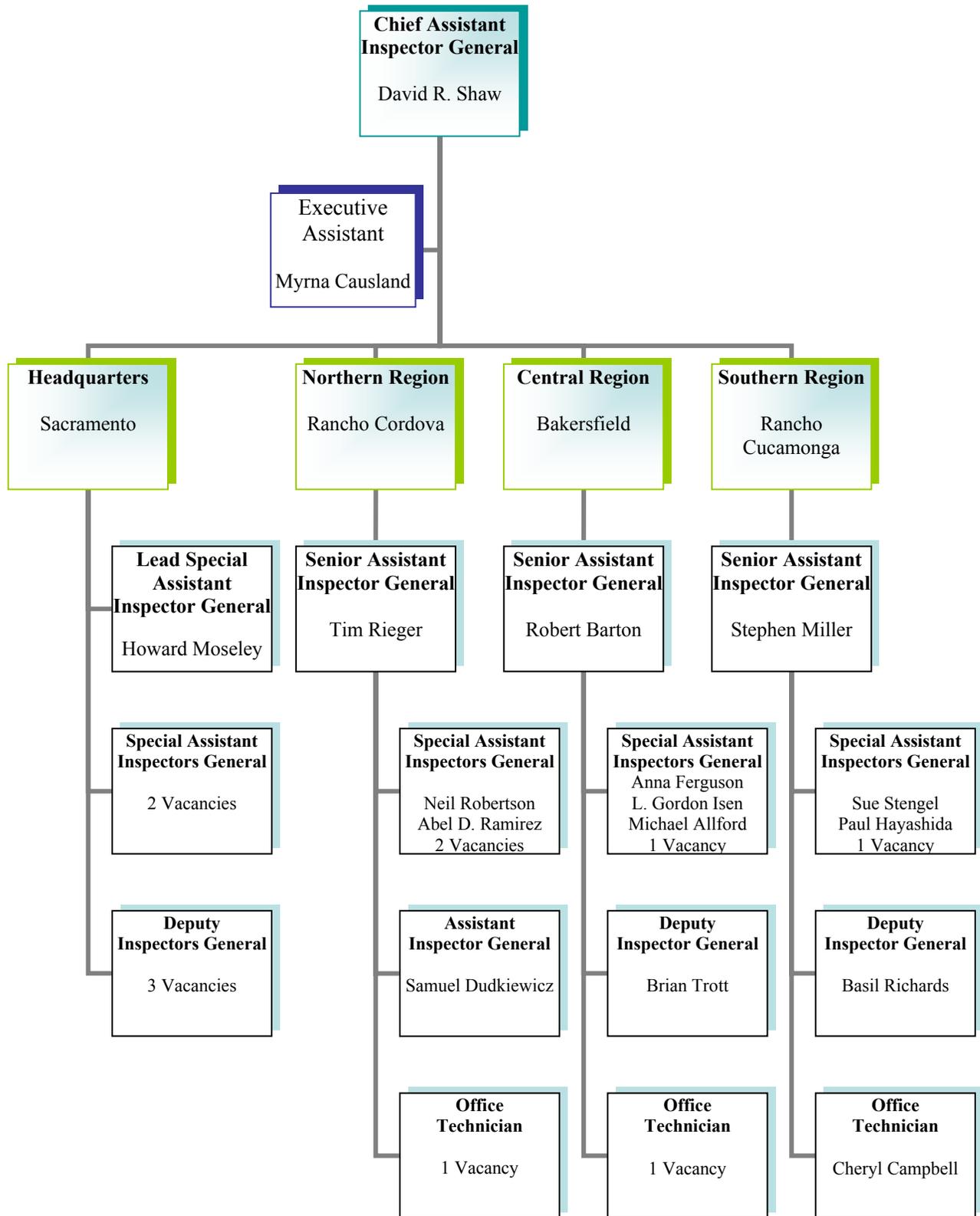
peace officer and continues to work as a crew chief/medic on an air rescue helicopter with a local sheriff's department in Southern California.

Sue Stengel was appointed special assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to her appointment, Ms. Stengel served as western states counsel for the Anti-Defamation League, a national civil rights organization. There she worked with law enforcement, educators, and community groups, combating hate crimes and extremism and preserving religious liberty. She also served as a deputy public defender in Los Angeles County. Ms. Stengel has worked as an instructor for the California Commission on Peace Officer Standards and Training and the Federal Law Enforcement Training Center.

Paul Hayashida was appointed special assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Hayashida worked as the officer-in-charge of the Complaint Intake and Review Section for the Los Angeles Police Commission's Office of the Inspector General, where he supervised a team of analysts during their review of hundreds of Los Angeles Police Department internal affairs investigations. He also worked as an associate attorney with Francell, Stickland, Roberts and Lawrence, where he represented the interests of law enforcement agencies and sworn officers in federal and state litigation. Mr. Hayashida served as a sworn member of the Glendale Police Department, retiring after 20 years as a police sergeant with significant patrol, major narcotics, personnel, and internal affairs experience.

Basil Richards was hired as deputy inspector general for the Bureau of Independent Review, Southern Region, in November 2005. Mr. Richards was previously employed by the California Department of Corrections since 1989, where he held positions as a correctional officer and sergeant in the investigative services unit. Mr. Richards was also assigned as an investigative sergeant, for which he conducted internal affairs investigations at the institutional level.

ORGANIZATION CHART – AS OF DECEMBER 31, 2005



TRAINING ACTIVITIES

During the second six months of Bureau of Independent Review operations, special assistant inspectors general and senior assistant inspectors general continued to receive and provide training on protocols, as well as California Department of Corrections and Rehabilitation operations, with emphasis on internal affairs investigations and legal advocacy. In addition, several bureau staff members attended the peace officer standards and training internal affairs investigation course and Los Angeles Police Department detective training course, along with other law enforcement training courses.

LIAISON ACTIVITIES

Attorneys in each of the regional offices have continued to meet with key personnel at institutions, camps, and district offices within their regions to discuss pending cases and consult on the bureau's mission and protocols. These contacts have facilitated effective professional relationships with department staff, including staff at the Office of Internal Affairs. The development of these relationships has resulted in the successful implementation of a recent institution-wide notification protocol, which has improved timely communication of critical incidents to the bureau.

To introduce bureau operations and the central intake process to a broader audience within the department, staff from the bureau, the Office of Internal Affairs, and the Employment Advocacy and Prosecution Team conducted several regional briefings for wardens, investigative service unit officers, and employee relations officers throughout all regions. Staff attendance at these briefings has been substantial and is enhancing the relationship among all entities.

Finally, the bureau continues to meet with the Prison Crimes Committee of the California District Attorneys' Association and other key stakeholders to refine strategies for better cooperation between institutions and local district attorneys' offices.

Adult and Juvenile Institutions. The bureau maintains regular contact with all adult institutions under the department's governance. Assigned bureau staff meets with wardens, chief deputy wardens, associate wardens, and other executive staff members, as well as employee relations officers, investigative services unit personnel, institutional gang investigators and lieutenants, and sergeants responsible for conducting inquiries into employee misconduct allegations. This contact has been critical in prompting the department to notify the bureau as soon as critical incidents occur, which has enabled the bureau to deliver a timely, comprehensive response when needed.

Office of Internal Affairs. Bureau attorneys and investigators are fully engaged with the Office of Internal Affairs staff at headquarters and in three regional offices. The bureau's chief assistant inspector general, senior assistant inspectors general, and their Office of Internal Affairs counterparts meet weekly and as needed to address issues of mutual concern. The bureau does not underestimate the value of the continued cooperation of the Office of Internal Affairs, which has resulted in the bureau's enhancement of investigative and disciplinary processes.

District Attorneys' Offices. Because district attorneys prosecute crimes that occur within institutions and facilities, including those committed by department personnel, the bureau regularly communicates with these prosecutors. To that end, each of the bureau's regional offices held meetings with vital personnel at the district attorneys' offices in Sacramento, Los Angeles, Kern, Kings, San Bernardino, San Diego, and Monterey Counties. As mentioned, the bureau has also continued to partner with the California District Attorneys' Association.

ASSESSMENT OF THE *MADRID V. WOODFORD* REFORMS

As the first year of the Bureau of Independent Review's existence has drawn to a close, we can report that overall the *Madrid v. Woodford*³ reforms are working. Key to that success has been the acceptance by the California Department of Corrections and Rehabilitation of the monitoring and oversight of the employee disciplinary process by the bureau as mandated by the federal court and by the recently modified California Department of Corrections and Rehabilitation Operations Manual, Article 22. The following provides a general assessment of the performance of the separate entities involved in investigating allegations of employee misconduct and in carrying out disciplinary action. Tables presented later in this report provide a more detailed assessment of the individual internal affairs cases completed during the reporting period. This first evaluation by the bureau is presented with the understanding that although the bureau has been in existence for a year, full-time monitoring and oversight operations did not begin until July 2005.

Executive Management. The California Department of Corrections and Rehabilitation's executive management staff has willingly embraced integrating the bureau's activities into the internal affairs investigative and employee disciplinary processes. While this endeavor remains a work in progress, department management—and in particular, the Office of Internal Affairs and the Employment Advocacy and Prosecution Team management staff—has made a sincere and sustained effort to develop an open and cooperative working relationship with the bureau.

Office of Internal Affairs. The professional relationship between the bureau and the department's Office of Internal Affairs continues to grow and mature, both at the regional level and at headquarters. Overall, the bureau has found the special agents of the Office of Internal Affairs to be dedicated and competent investigators who seek truth with a sense of fairness and proportionality in the vast majority of cases they investigate. While some areas—such as completing investigations within the one-year statutory requirement, using proper interrogation techniques to obtain truthful and complete responses, and keeping the bureau informed of critical case events—still need improvement, daily progress is typically seen in these and other areas of concern.

Office of Internal Affairs, Headquarters. Pivotal to the positive relationship between the bureau and Office of Internal Affairs headquarters has been the success of the Central Intake Unit, which reviews all requests for investigation submitted by the department's hiring authorities. Through that process, in which representatives from the bureau, the Office of Internal Affairs, and the Employment Advocacy and Prosecution Team meet weekly to discuss all investigation requests, participants have become familiar with mutual operations and acquired mutual respect. The Office of Internal Affairs executive managers have continued to be active proponents of the bureau's monitoring and oversight model and have repeatedly transmitted this support to the field. Without their continued support and good will, the relationship between the bureau and the Office of Internal Affairs might be adversarial, in contrast to the cooperative partnership enjoyed today.

³ The bureau's January – June 2005 semi-annual report provides a full discussion of the *Madrid v. Woodford* litigation, as well as a synopsis of the court's ruling.

Office of Internal Affairs, Northern Region. The relationship between the bureau and the Office of Internal Affairs, northern region has been good from the start of the bureau's monitoring and oversight operations. The managers and agents in the northern region embraced the bureau model early in the process and have made every effort to ensure that our mutual operations and interests are successful. It should be noted that the bureau staff and the Office of Internal Affairs staff have been sharing the same office since the formation of the bureau, allowing for easy face-to-face communication and case consultation. Compliance with the criteria set forth in California Department of Corrections and Rehabilitation Operations Manual, Article 22 has been generally good and the bureau is confident it will continue to improve.

Office of Internal Affairs, Central Region. In the central region, management and agents also enjoy a good relationship with the bureau. Because the bureau was not initially co-located with the Office of Internal Affairs due to building space limitations, the working relationship grew more slowly there than in the northern region. The cooperation level between the central region and the bureau has been good in all areas and involves more monitored cases than in any other region. In particular, the central region has produced a significant number of criminal cases in which the Office of Internal Affairs and the bureau have cooperated, allowing for more thorough investigations and better case presentations to local district attorney offices.

Office of Internal Affairs, Southern Region. In the southern region, the development of the professional relationship between the Office of Internal Affairs and the bureau has been more challenging than in the other two regions. In sum, there has been general reluctance on the part of some of the southern region agents and supervisors to comply with the bureau's monitoring and oversight plan as mandated by the federal court and the California Department of Corrections and Rehabilitation Operations Manual, Article 22. Specifically, during the reporting period, certain Office of Internal Affairs agents repeatedly failed to consult with the bureau during investigations, failed to provide final reports, and did not promptly notify or failed entirely to notify the bureau of subject interviews and *Skelly* hearings. Clearly, without timely notice of critical events in the investigative and disciplinary process, the bureau cannot expect to have a positive impact on the process. Some of these early difficulties may be partially attributable to the lack of consistent leadership in the southern region, which now has been addressed by the appointment of a new special agent in-charge. With the experience that the new special agent in-charge brings to the table, it is anticipated that a greater degree of cooperation with the bureau will be seen in the next reporting period. It should be noted that the professionalism and cooperation of agents in the Division of Juvenile Justice's southern region was excellent during this reporting period.

Employment Advocacy and Prosecution Team, Office of Legal Affairs. During this reporting period, the vertical advocacy model at the California Department of Corrections and Rehabilitation was in its infancy and therefore the bureau did not have as much interaction with vertical advocate staff attorneys as initially expected. The bureau remains convinced that assigning a single staff attorney with employment law experience to prosecute a disciplinary case

from start to finish is an excellent model. It seems clear, however, that the Employment Advocacy and Prosecution Team needs additional staff attorneys to effectively deal with the high volume of disciplinary cases that arise each year. In several cases the bureau monitored, the administrative discipline caseload appeared to have overtaken the available Employment Advocacy and Prosecution Team resources, with the result that no specific vertical advocate was assigned to the case. In other cases, a vertical advocate was assigned at the last moment and was therefore unprepared to effectively represent the department's interests during the disciplinary process. The reason for this shortfall in resources appears to be two-fold: the difficulty of recruiting qualified attorneys with litigation experience and the difficulty of keeping those attorneys from leaving to take other legal positions within the department, where presumably, the workload is lighter. The staffing shortage also fosters less-than-ideal supervision and mentoring of new vertical advocates to prepare them for cases that will be litigated at the State Personnel Board. The executive manager of the Employment Advocacy and Prosecution Team is to be commended for providing outstanding support to the bureau during the monitoring period and has effectively transmitted her support to her staff.

Hiring Authorities: Wardens, Superintendents, and Regional Administrators. As the hiring authorities within the department become familiar with the bureau (especially the special assistant inspectors general assigned to their facilities) and appreciate the assistance the bureau can provide, they are increasingly contacting the bureau when significant incidents occur. In addition, the bureau is included more often in the post-investigation disciplinary proceedings at the institutions. While a number of significant departures from the bureau monitoring and oversight plan mandated by the federal court and the California Department of Corrections and Rehabilitation Operations Manual Article 22 occurred during the reporting period, cooperation at the institutions is improving. The most common and significant departures from the plan have occurred when hiring authorities have abandoned the disciplinary matrix to achieve a different result than what is mandated in the Department of Corrections and Rehabilitation Operations Manual. While some of these departures from the matrix can be attributed to unfamiliarity with requirements of the new Article 22, other situations have revealed a willingness by some hiring authorities to reach a desired outcome. In particular, the bureau discovered several situations in which it appeared that certain hiring authorities intentionally violated the Department of Corrections and Rehabilitation Operations Manual to prevent disciplinary action from being taken against employees who had engaged in wrongdoing. In these situations, the bureau has reported the situation to the federal court and to the executive management of the Department of Corrections and Rehabilitation for appropriate action.

In conclusion, the bureau is encouraged by the progress the Office of Internal Affairs and the Employment Advocacy and Prosecution Team have made during this reporting period and during the bureau's first year of operation. The bureau recognizes significant progress by the hiring authorities as well.

IMPACT OF THE BUREAU OF INDEPENDENT REVIEW ON CORRECTIONAL POLICY

During the second six months of its operation, the bureau actively participated in policy and legal reform efforts affecting the California Department of Corrections and Rehabilitation. The major policy and procedure projects in which the bureau has participated over the period of this report are presented below.

CENTRAL INTAKE UNIT

The Central Intake Unit is made up primarily of special agents from the Office of Internal Affairs. Attorneys from the Employment Advocacy and Prosecution Team and the Bureau of Independent Review also regularly participate. Experts from the Health Care Services Division also occasionally participate to supply the unit with specialized knowledge that is often essential for it to make an informed decision. Hiring authorities, other senior management staff members, employment relations officers, and institution investigators are also invited to attend.

As part of the intake process, the unit presently assesses each request for investigation, determines whether an investigation should be conducted, and assigns that case to the appropriate investigative unit (for example, the Office of Internal Affairs, the institution's investigative services unit, or the Office of Civil Rights), depending on the nature and location of the investigation. Conversely, if a complaint does not warrant an internal investigation or fails to identify any misconduct, it is returned to the referring entity for disposition or closure at that level.

Since May 4, 2005, the unit has convened weekly to conduct this process. Special agents from the Office of Internal Affairs brief unit members on the facts of each case and provide them with a copy of the internal affairs investigative requests (form 989) and other supporting documentation so that they may determine whether investigations are warranted. Cases opened for investigation are typically assigned to an Office of Internal Affairs regional office but they may also be forwarded to the Office of Internal Affairs headquarters or the Office of Civil Rights, depending on an allegation's nature and sensitivity. Moreover, a case may be further delegated to an Office of Internal Affairs special agent or institution investigative services unit investigator with specific training in internal affairs investigations. If assigned to an institution investigative services unit investigator, the case is still supervised by a senior special agent from an Office of Internal Affairs regional office. Investigations involving alleged criminal violations, excessive force, inmate death or grave injury, officer integrity, or other serious allegations filed against department supervisors are generally assigned to an Office of Internal Affairs special agent.

The bureau is pleased to report that the weekly central intake meetings continue to be extremely successful. This multidisciplinary approach ensures that all requests for Office of Internal Affairs investigations and direct adverse actions submitted by department hiring authorities are thoroughly reviewed by both the department and the bureau. In particular, the timely notice afforded by the central intake process to bureau staff and Employment Advocacy and Prosecution Team staff attorney substantially increases the likelihood of a just outcome within the disciplinary process. Although the adult and juvenile institutions in the southern region did

not join the central intake process in December 2005 as the Office of Internal Affairs had originally forecasted, the department completed this conversion by February 2006.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATIONS MANUAL

Article 22, Employee Discipline. The bureau has continued to play a significant role in the review and update of the *California Department of Corrections and Rehabilitation Operations Manual*. The first section of the manual to be revised was Article 22, which encompasses the employee disciplinary process. The members of the bureau and chief staff attorney for the Office of the Inspector General reviewed the department's proposed changes to ensure legal compliance, clarity of process, and appropriate bureau input and oversight. The court-appointed expert in *Madrid v. Woodford* also reviewed the proposed changes to corroborate conformity to the court's orders and objectives in that case.

Highlights of the revisions include clarification of the staff attorney model, which ensures the department's legal representation over the entire internal affairs investigative and disciplinary process. Regular contact between the department and the bureau has been incorporated into the system to fulfill the bureau's statutory mandates of contemporaneous oversight for investigative sufficiency and disciplinary appropriateness. An executive review process was established to resolve substantive disagreements among staff attorneys, departmental management, and the bureau relative to findings, imposition of disciplinary penalties, and settlement agreements.

Among other revisions was a change to the *Skelly* hearing process, an informal proceeding in which a disciplined employee may respond to a manager outside the investigation's scope before discipline becomes effective. In the past, the manager who conducted a *Skelly* hearing was authorized to modify the discipline without consulting with the manager who had imposed it. The new policy provides that the *Skelly* hearing officer may only submit recommendations in writing to amend, modify, withdraw, or sustain the discipline; the manager who imposed the discipline, however, has the final authority over the nature and extent of the discipline imposed. In addition, the bureau must be given notice before any disciplinary modifications are implemented in a monitored case.

In addition to its work on policies integral to the employee disciplinary process, the bureau is reviewing those policies that govern internal affairs investigations, whistleblower retaliation, administrative immunity, subpoenaed witness notification, and incompatible activities. Major stakeholders across all policy revisions have been given the opportunity to review and suggest changes to each proposal, thereby ensuring department-wide consistency and fairness in policy application. The bureau expects that those policies currently under review will be finalized and submitted to the federal court for approval by the end of the calendar year.

After extensive review and refinement, the final draft of Article 22 was submitted to the federal court for approval on December 15, 2005 and was accepted on December 22, 2005.⁴ In its class action order accepting the *California Department of Corrections and Rehabilitation Operations*

⁴ See Appendix B: *California Department of Corrections and Rehabilitation Operations Manual*, Article 22.

Manual revisions, the court concluded that the revisions “are well supported and that the proposed modifications are an adequate and appropriate operational policy that will serve to implement the discipline matrix and vertical advocacy program.”

Article 14, Internal Affairs Investigations: The bureau has also played an important role in the review and update of Article 14 of the *California Department of Corrections and Rehabilitation Operations Manual*, which covers internal affairs investigations. Working closely with the Office of Internal Affairs, the bureau and chief staff attorney for the Office of the Inspector General conducted an in-depth review and update of this article to ensure legal compliance, clarity of process, and appropriate input and oversight from both the bureau and the staff attorney process. Among the topics delineated in the revised article are the roles and responsibilities within administrative, criminal, retaliation, workers’ compensation fraud, and deadly force investigations conducted by the Office of Internal Affairs. The revised draft of Article 14 was submitted for final review and comment in January 2006.

BARGAINING UNIT 6 MEMORANDUM OF UNDERSTANDING: REVIEW AND STIPULATION

The federal court in *Madrid v. Woodford* ordered the special master to investigate whether specified sections of the Unit 6 memorandum of understanding between the California Department of Corrections and Rehabilitation and the California Correctional Peace Officers Association violated, by their terms or practice, the court’s use of force remedial orders. The concern was that certain sections might be impediments to the integrity of the investigatory or disciplinary processes. Through document review and meetings with stakeholders, the special master drafted a stipulation, which has been submitted to the parties for final signature. When the stipulation is approved, statewide training will be implemented. Legal representatives from the bureau and the Office of the Inspector General provided feedback to the participants and will also participate in the statewide training.

The review group was made up of court experts Michael Gennaco and Dr. Patrick Maher; counsel for plaintiffs; counsel and one party representative for the California Department of Corrections and Rehabilitation defendants; counsel and one party representative for the California Correctional Peace Officers Association; department labor relations personnel; labor relations personnel from the Department of Personnel Administration; legal representatives from the California Department of Corrections and Rehabilitation and representatives from the Office of the Inspector General. Rather than conduct formal hearings, the group participated in discussions over roughly eight months to achieve a consensus on numerous memorandum of understanding components.

While the special master and court experts reviewed several provisions of the memorandum of understanding, the review group focused on sections considered to significantly affect internal affairs investigations and resulting disciplinary actions as they relate to the use-of-force remedial plan. The sections are as follows: 2.10 (Representation on Committees), 9.05 (Letters of Instruction/Work Improvement Discussions), 9.06 (Adverse Action and Citizen Complaint Documents), 9.09 (Personnel Investigations), Appendix #9 (Witness Admonishment), Side letter

#12 (Regarding Section 9.09 – CDC/CYA Personnel Investigations), and 2004 Addendum (CDC/CYA Access to Incident Videos).

The special master prepared a stipulation that was reviewed and edited by the review group. As part of the stipulation, the California Department of Corrections and Rehabilitation and the California Correctional Peace Officers Association submitted proposed training plans to ensure consistent statewide application of the memorandum of understanding. The California Correctional Peace Officers Association will train its job stewards with oversight from the court expert. The department, along with the bureau and Office of the Inspector General's chief counsel, will put on statewide training "road shows" directed toward staff attorneys; hiring authorities such as wardens and chief medical officers; employee relations officers; Office of Internal Affairs and investigative unit staff at the institutions; Division of Juvenile Justice staff; and inmate appeals coordinators.

CRITICAL INCIDENTS

During the six-month period beginning July 2005, the bureau increased its number of responses to critical incidents. While not all critical incidents result in a criminal or administrative investigation, it is the mission of the bureau to ensure that high-risk incidents are properly handled from inception, if possible, in the event that an allegation of impropriety arises later. Critical incidents are those that involve the significant use of force or that result in the death or serious injury of an inmate or staff member. Correctional officers at the California Department of Corrections and Rehabilitation are trained and authorized to use force, including deadly force, under certain circumstances.

Correctional officers routinely encounter situations in which the use of force may be necessary to protect themselves or others, prevent an escape, or control a riot. When the level of force deployed appears to exceed that which is legally justifiable or results in disproportionate injuries to the recipient, however, the circumstances require scrutiny. Use of force that results in an inmate's serious injury or death may precipitate inquiries or allegations of wrongdoing by legislators, the media, and prisoner's rights organizations. Often such incidents can result in civil actions against the officers and the department or, less frequently, state or federal criminal charges filed against the officers involved. The death or serious injury of an inmate is also an incident that spurs public interest, particularly relative to the appropriateness of an officer's actions.

As the tables below illustrate, bureau attorneys and deputies responded to 19 of the 20 critical incidents reported during the six-month period from July through December 2005. The tables include the bureau's assessment of whether the department's handling of the incident was adequate or inadequate and provide additional information about the response in the "conclusions and notes" column. The distribution of responses among regional bureau offices reflects the inception period of the regional offices and do not necessarily reflect the frequency of serious events in the California Department of Corrections and Rehabilitation institutions served by those offices. Nevertheless, given that the bureau's inception period limited the number of critical incidents to which it responded, it is reasonable to anticipate that more rollouts to such incidents will occur now that all regional offices are staffed and operational. Ultimately, critical incident responses will be driven by the number of serious incidents in tandem with the timeliness of hiring authorities reporting these incidents to the bureau.

CRITICAL INCIDENT RESPONSES⁵

	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	SUM
NORTHERN REGION	0	1	2	0	1	0	4
CENTRAL REGION	2	2	0	7	1	1	13
SOUTHERN REGION	0	1	2	0	0	0	3
BUREAU TOTALS	2	4	4	7	2	1	20

⁵ Omitted from this table is one critical incident response that occurred in March 2005.

SUMMARY OF CRITICAL INCIDENTS — JULY-DECEMBER 2005

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-039 (Central Region)</u> On March 20, 2005, an inmate allegedly kicked his cellmate to death after both had been drinking inmate-manufactured alcohol.</p>	<p>The Bureau of Independent Review responded to the institution and met with the district attorney's office investigators, who assumed primary responsibility for the criminal investigation. The bureau also reviewed the central and medical files of the inmates involved.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate. The department appropriately froze the crime scene pending the arrival of an outside law enforcement agency.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The district attorney's office investigators expressed frustration with their inability to access the inmate's medical files in a timely manner. Although the bureau, by virtue of its oversight role, has access to such records, local law enforcement does not, pursuant to Penal Code section 1543. The bureau is reviewing whether legislative action may be recommended to provide local law enforcement with timely access to the medical files of inmates who are the victims of criminal acts.</p> <p>Murder charges against the cellmate were filed by the district attorney's office.</p>
<p><u>Case No. 05-040 (Northern Region)</u> On July 14, 2005, an inmate kitchen worker suddenly and without provocation attacked two correctional officers, stabbing the first once in the face and once in the neck area, and the second twice in the shoulder area. A third correctional officer witnessed the attack and tackled the inmate to the ground. Both correctional officers sustained significant injuries, resulting in one officer's inability to return to work to date.</p>	<p>The Bureau of Independent Review responded to the institution and met with the warden and investigative services unit to discuss the status of the investigation. The district attorney's office's was informed of the incident but did not respond to the facility. No other law enforcement agencies were contacted regarding the incident nor did any respond to the scene. The bureau inspected the scene.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>Following the assault, the warden indicated that a review of institution policies and procedures concerning kitchen workers would be performed.</p> <p>The institution opened an investigation into the events leading up to the assault, which the bureau is monitoring.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>The inmate sustained a dislocated shoulder. Within five minutes of the assault, medical staff responded to the scene and provided emergency medical attention to the officers and the inmate.</p> <p>The crime scene was sealed off and evidence was collected, including a four-and-one-half-inch steel knife-like blade found on the inmate and another four-inch steel knife-like blade in the immediate area. Photos were taken of the area, along with pictures of the injured officers and the inmate.</p>			
<p><u>Case No. 05-041 (Central Region)</u> On July 20, 2005, a control booth officer discharged a department-issued, non-lethal, 40-mm launcher at an inmate involved in a large-scale riot, striking the inmate in the head. The officer discharged a total of three rounds during the incident. According to the officer, the inmate was not the intended target but had been struck in the head with one round when he moved into the line of fire. The inmate was taken Code 3⁶ by private ambulance to an area hospital, where a CT scan was taken and six sutures to the inmate's head were applied. The inmate was returned to the institution the same day.</p>	<p>The Bureau of Independent Review arrived at the institution shortly after the incident had been contained. The bureau viewed the scene and conferred with investigators from the Office of Internal Affairs and the institution's investigative services unit regarding the scope of the incident, evidence preservation, and staff interviews. The bureau identified further potential evidence at the scene, including blood stains, for investigative purposes.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Not Applicable.</p>	<p>The Department of Corrections and Rehabilitation opened a criminal investigation into the matter, which the bureau is monitoring.</p>

⁶ Code 3 is the highest level of medical response and is reserved for life-threatening situations, usually involving the use of emergency lights and sirens by the responding ambulance.

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-042 (Central Region)</u> On August 2, 2005, a control booth officer discharged three rounds from a department-issued, non-lethal, 40-mm launcher at inmates involved in a riot. One inmate was struck once in the back of the head, another inmate was struck once in the area of the upper-left shoulder blade, and a third inmate was struck in the head by a round that ricocheted off a table. All three inmates evidenced visible marks consistent with the 40-mm impact rounds. One of the three inmates was taken Code 3 by private ambulance to the hospital, where a CT scan was taken and four stitches were administered to close the head wound. This inmate returned to the institution that day.</p>	<p>The Bureau of Independent Review responded to the incident shortly after notification was received and conferred with the institution's administrative staff, the investigative services unit, and a special agent at the scene from the Office of Internal Affairs.</p> <p>The bureau helped to clarify the appropriate number of control booth officers and other officers required during the release of inmates for meals and ensured that a complete and thorough investigation of the incident was conducted.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Not Applicable.</p>	<p>The department opened a criminal investigation into the inmates' conduct during the riot, but no criminal charges were filed by the district attorney's office.</p> <p>The department also opened an investigation into the control booth officer's discharge of the weapon, which the bureau is monitoring.</p>
<p><u>Case No. 05-043 (Central Region)</u> On August 5, 2005, after an anonymous tip, correctional staff conducted a security count and found an inmate dead in his cell. The victim's apparent cause of death was ligature strangulation. The victim's cellmate was present in the cell when the victim's body was discovered and was therefore considered a suspect in the inmate's death.</p> <p>Homicide detectives from the sheriff's department were called to investigate.</p>	<p>The Bureau of Independent Review was notified of the incident shortly after the victim's body was discovered. The bureau responded to the institution to observe the scene, gather relevant facts, and help to identify important issues concerning the case. In addition, the bureau requested reports from the investigative services unit. The bureau raised proper crime scene preservation and witness availability issues with the institution.</p>	<p>Quality of the department's handling of any security/safety issues: Not Assessed.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The sheriff's department indicated that investigative reports would be available through the district attorney's office in approximately one month.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>At the beginning of the investigation, one correctional officer-witness had been permitted to leave institution grounds before being interviewed, although other officer-witnesses were required to remain after their shifts to be interviewed. The institution's investigative services unit subsequently reached the absent witness by telephone.</p>			
<p><u>Case No. 05-044 (Southern Region)</u> On August 18, 2005, an inmate uprising against staff erupted into a multi-incident riot injuring 25 correctional officers and led to the death of one rioting inmate. The riot, which originated when a correctional officer discovered a Southern Hispanic gang member in possession of a weapon while on the yard, triggered inmate assaults on several yard staff. When the assaults by other Southern Hispanic gang members spread to an adjacent housing unit and kitchen area, a Code 3 alarm was sounded.</p> <p>In the housing unit, inmates were witnessed going from cell to cell, constructing wooden handles into weapons. In response, one correctional officer fired two 40-mm direct impact rounds at those involved in the weapons distribution, to no effect. When numerous staff members entered the housing unit to regain</p>	<p>The Bureau of Independent Review responded to the institution immediately when notified of the disturbance, arriving after the inmate had been shot with a mini-14 rifle.</p> <p>As of the date of this incident, the institution had been under no agreement with the local law enforcement agency relative to the independent investigation of correctional officers involved in deadly shootings. As a result, the department's Deadly Force Investigative Team was designated to conduct the investigation. By the time the team arrived and took the lead, however, it was after midnight and the institution had to call many of the staff members involved (who had gone home) to return for interviews.</p> <p>Consequently, by the time the team left the scene on the following day, only six staff members had been interviewed, due largely to the</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The Department of Corrections and Rehabilitation opened criminal and administrative investigations into the matter, which the bureau is monitoring.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>control, Southern Hispanic gang members rushed the responding staff and attacked them with the wooden handles, resulting in at least 15 staff injuries.</p> <p>One inmate was observed attempting to stab an officer with two wooden handles but was struck by another officer with a baton. A second inmate was seen striking an officer on the ground with a wooden handle but was hit in the lower mid-section by another officer with one round fired from a mini-14 rifle. Despite medical assistance, this inmate died of his wound. When the mini-14 rifle was fired, all the Southern Hispanic gang members stopped fighting and surrendered to staff.</p>	<p>number of staff who had sustained injuries during the riot.</p> <p>Although the bureau and the Deadly Force Investigative Team agreed that the investigation should focus on the deadly shooting, there was disagreement on the scope of the overall investigation. The team maintained that the investigation should focus exclusively on the officer's decision to fire the deadly round, with limited inquiry into the facts leading up to the use of deadly force. Given, however, that the team's investigation will undoubtedly form the basis of any subsequent administrative investigation, the bureau recommended that the team's investigation address the entire incident in the housing unit, including any facts leading up to the officer's decision to use deadly force.</p>		
<p><u>Case No. 05-045 (Northern Region)</u> On August 31, 2005, a ward covered his cell windows with paper, in violation of safety protocols. After several unsuccessful attempts to obtain a response from him, staff requested security back-up to enter the ward's room. Approximately 38 minutes after staff initially observed that the ward had covered his room window and was non-responsive, staff</p>	<p>The bureau reviewed the ward's files, which indicated he had been on lock-down in his cell for approximately 56 days preceding his suicide.⁷</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Not Assessed.</p> <p>Was the bureau promptly notified? No.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>It appears that at the time of the ward's suicide, staff perceived themselves "under siege" by Northern Hispanic gang members, leading them to rely on the security detail to intervene if a ward became disruptive. In devising safety enhancements, however, staff compromised response time in critical situations by waiting for the security detail in potentially volatile situations involving Northern</p>

⁷ The Office of the Inspector General's Bureau of Audits and Investigations completed a special review of this incident and issued a report, which appears on the Office of the Inspector General's website.

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>entered the room, where they found the ward hanging with a sheet around his neck. He had no pulse or respiratory activity. Emergency CPR was initiated and the ward was transported to the hospital, where he was pronounced dead approximately one hour after he was discovered hanging in his cell.</p> <p>The ward was identified as a Northern Hispanic gang member. At the time, all Northern Hispanic gang members had been placed on administrative lock-down following several ward assaults on staff.</p>			<p>Hispanic gang members.</p> <p>The facility has instituted a new policy addressing wards papering their windows that necessitates an immediate staff response to intervene and verify a ward's condition.</p>
<p><u>Case No. 05-046 (Northern Region)</u> On September 6, 2005, an inmate was discovered unresponsive in his cell. His cellmate was removed and, although CPR was administered to the inmate, he was later pronounced dead. His cellmate was moved to administrative segregation and the area was secured as a crime scene. Based on the coroner's examination, the inmate was killed on September 4, 2005. Institution staff did not discover the dead inmate for two days, despite 11 intervening counts.</p>	<p>The Bureau of Independent Review traveled to the institution upon learning of the incident to consult with the Office of Internal Affairs regarding an investigative plan. The bureau also reviewed the deceased inmate's central file and medical records, as well as the institution's count slips, building logs, and employee timesheets. The bureau recommended that all evidence relevant to the inmate's murder be collected, along with any documents relevant to the failure to conduct proper counts and the decision to house the two inmates together.</p>	<p>Quality of the department's handling of any security/safety issues: Inadequate. The inmate's body went undiscovered despite 11 counts.</p> <p>Quality of the department's handling of any crime scene: Inadequate. Despite the fact the inmate was deceased for more than two days prior to discovery, staff initiated CPR and removed the body from the cell prior to any photographs, thus disturbing the crime scene.</p> <p>Was the bureau promptly notified? No.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The Department of Corrections and Rehabilitation opened an administrative investigation into the matter, which the bureau is monitoring.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-047 (Southern Region)</u> On September 22, 2005, approximately 270 Black and Hispanic inmates began to fight in their housing unit during the evening meal. Because of the number of inmates involved, a Code 3 alarm was activated. Housing unit staff lost control of the upper and lower levels and the adjacent west side kitchen. One correctional officer was barricaded in the staff office of the upper unit and had to be extracted through the roof hatch. Additionally, a medical technical assistant had secured himself in the housing unit pharmacy until extracted by the crisis response team. Through staff efforts, numerous injured inmates were removed and transported to area hospitals, including two by helicopter and six by ambulance. Two of the inmate injuries appeared to be life-threatening, while staff injuries were minimal. The housing unit became uninhabitable because of extensive damage.</p> <p>It was later learned that the disturbance began in the kitchen over an issue of disrespect between a White and a Black inmate.</p>	<p>The Bureau of Independent Review responded to the institution immediately, arriving while the medical technical assistant was still barricaded in the pharmacy. The bureau waited with the warden in the administration building during the successful extraction and remained at the institution until staff controlled the incident.</p> <p>Because the bureau was unable to view the scene on the day of the disturbance, it surveyed the yard on the following day.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The bureau monitored the disturbance and the staff response to the incident and found no evidence of staff misconduct.</p>
<p><u>Case No. 05-048 (Southern Region)</u> On September 29, 2005, an institution conducted a large-scale extraction of inmates from their administrative segregation cells to search for</p>	<p>The Bureau of Independent Review was advised of the extraction plans and responded to the institution to monitor the situation as it unfolded.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Not Applicable.</p>	<p>The bureau concurred with department that the extractions were performed in compliance with policy and that no unnecessary force was used.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>weapons. This activity followed receipt of information that the inmates had been arming themselves to take control of the unit. Based on this information, the institution developed a coordinated plan for the extractions and searches.</p>		<p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Not Applicable.</p>	
<p><u>Case No. 05-049 (Northern Region)</u> On September 30, 2005, a large quantity of narcotics was found in the administrative segregation section of an institution. Specifically, a search of the section recovered 44 grams of marijuana in one cell and 45 grams of heroin, 33 grams of marijuana, and 55 grams of methamphetamine in another.</p> <p>Based on information provided by a confidential informant, it was alleged that a correctional officer was the source of the narcotics, that he had smuggled them into the institution in exchange for money, and that there had been four transactions since late April 2005.</p>	<p>The Bureau of Independent Review accompanied five special agents from the Office of Internal Affairs to the institution. According to a senior special agent, when the narcotics were initially discovered at the institution, the Office of Internal Affairs and the institution's investigative services unit agreed to conduct surreptitious surveillance of the correctional officer in question and, if possible, arrange for a controlled drug transaction involving the same officer. These plans, however, were obstructed by the warden, who immediately placed the officer on administrative time off, thereby alerting him that he was suspected of wrongdoing.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? No.</p>	<p>This investigation was compromised by the lack of coordination between the warden and the Office of Internal Affairs concerning the need of the Office of Internal Affairs to investigate and that of the warden to maintain institution security. According to the Office of Internal Affairs, the warden acted prematurely in placing the officer on administrative time off and should instead have initiated a lock-down of the institution to conduct searches for the narcotics.</p> <p>The district attorney's office declined to pursue a criminal case against the officer because the institution's decisions had limited its ability to build a case against him.</p> <p>The Department of Corrections and Rehabilitation opened criminal and administrative investigations into the matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-050 (Southern Region)</u> On October 11, 2005, a correctional</p>	<p>The Bureau of Independent Review responded to the institution shortly</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p>	<p>The Department of Corrections and Rehabilitation opened an</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>officer reported that a work crew inmate (low-risk inmates assigned to institution maintenance jobs inside and outside the institution's secure perimeter) was not accounted for during his 12:40 p.m. count. At approximately 1:45 p.m., another correctional officer discovered that his car keys were missing and that his car was not in the parking lot. Based on this information, the institution initiated an emergency count at 2:05 p.m. and established that one inmate had, in fact, escaped in the officer's car.</p>	<p>after escape procedures were initiated and remained at the institution to monitor the situation.</p>	<p>Quality of the department's handling of any crime scene: Not Applicable.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>administrative investigation into whether the inmate counts were conducted properly. The bureau is monitoring that investigation.</p>
<p><u>Case No. 05-051 (Central Region)</u> On October 14, 2005, an inmate notified correctional staff that his cellmate was dead. The victim was unresponsive when staff entered the cell. The victim was removed from the cell, transported to the institution's clinic and then to a regional medical center, where he was pronounced dead. According to the pathologist, the cause of death appeared to be strangulation. Homicide detectives with the sheriff's department responded to the institution and assumed control of the investigation shortly thereafter.</p>	<p>The Bureau of Independent Review was notified of the incident and responded immediately. While at the institution, the bureau addressed issues concerning proper crime scene management and investigation. The bureau has maintained contact with the sheriff's department, established contact with the district attorney's office, and reviewed institution reports relative to the incident.</p>	<p>Quality of the department's handling of any security/safety issues: Not Assessed.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The institution appropriately managed the crime scene, and its collection and preservation of the physical evidence was adequate. The institution staff's decision to advise the inmate of his <i>Miranda</i> rights was premature, but does not appear to have adversely affected the case.</p>
<p><u>Case No. 05-052 (Central Region)</u> On October 16, 2005, correctional staff stopped a yard fight between two inmates, one of whom appeared to be</p>	<p>Upon arriving at the institution, the Bureau of Independent Review asked that the crime scene be "frozen," suggested that a systematic search for</p>	<p>Quality of the department's handling of any security/safety issues: Not Applicable.</p>	<p>The criminal investigation by the sheriff's department has been referred to the district attorney's office for consideration of criminal charges.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>having difficulty breathing. Although an ambulance was summoned, life-saving efforts were unsuccessful and the victim-inmate was pronounced dead. The autopsy report identified that the cause of death was cardiac arrhythmia resulting from stress induced by the altercation.</p> <p>The institution's immediate response to the incident was flawed in several respects. First, staff did not secure the scene of the crime. Second, no entry/egress log was established for the scene. Third, witnesses were not segregated from one another before their interviews relative to the incident. Fourth, the search for a possible weapon was neither timely nor organized. Fifth, the victim's fingerprints were taken before any attempt was made to recover DNA evidence from his hands. Sixth, evidence was seized from the suspect-inmate by the same staff member who took the fingerprint evidence, raising the possibility of cross-contamination. Seventh, the evidence taken from the victim and suspect were stored side-by-side in an unsecured area accessible to both the suspect and other inmates.</p>	<p>weapons be undertaken with maps and a metal detector, explained evidence cross-contamination to preclude further compromise to the evidence, and corrected the flawed photographic lineup by cropping the suspect's photo. The bureau also suggested that the records of all inmates involved be reviewed by homicide detectives to draft survey questions for the 68 witnesses.</p> <p>After the incident, the bureau met with the institution's administrative staff and the sheriff's department to suggest remedial measures to improve the institution's future handling of critical incidents. The bureau recommended the following measures: adopting a memorandum of understanding between the institution and the sheriff's department concerning the notification and investigation of criminal acts on institution grounds; developing a correctional staff critical incident checklist; implementing an advanced training program for the institution's investigative services unit staff; and conducting institution tours for homicide detectives with the sheriff's department.</p>	<p>Quality of the department's handling of any crime scene: Inadequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	
<p><u>Case No. 05-053 (Central Region)</u> On October 22, 2005, an inmate was discovered dead in his cell. The institution's investigative services unit, with the assistance of the district</p>	<p>The Bureau of Independent Review arrived on the scene and contacted the investigators. The bureau subsequently monitored the investigation by reviewing relevant</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p>	<p>The district attorney's office determined that the evidence did not support any criminal charges.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>attorney's crime lab, investigated the case as a possible homicide. The investigation determined that both of the inmates in the cell were intoxicated at the time of the incident and that the victim had sustained only minor abrasions. Furthermore, the inmate-suspect denied killing his cellmate. An autopsy revealed that the cause of death was intoxication and heart problems.</p>	<p>reports and interviews, obtaining the autopsy report, and conferring with institution management and the district attorney's office.</p>	<p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes (crime lab).</p>	
<p><u>Case No. 05-054 (Central Region)</u> On October 26, 2005, a correctional officer responding to an inmate's call for help found the inmate's cellmate lying on the cell floor, with visible injuries and a large amount of blood under his body. The suspect-inmate suggested that he had been responsible for the cellmate's injuries. The injured inmate was transported to the institution's emergency room, then to the hospital, where he was later pronounced dead.</p>	<p>In addition to monitoring the crime scene, the Bureau of Independent Review observed the collection and preservation of case evidence and inquired about the security measures that had been taken for the suspect-inmate. The bureau also contacted the district attorney's office relative to the case.</p> <p>The bureau consulted with the institution's administrative staff and investigators concerning the decision of local law enforcement to not respond to the incident. Plans of the investigative services unit to interview the suspect-inmate, particularly legal requirements governing such interviews and best practices for evidence collection, were also discussed.</p>	<p>Quality of the department's handling of any security/safety issues: Adequate.</p> <p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The institution managed the crime scene, evidence collection and preservation, security for the suspect-inmate, and overall investigation in an adequate and professional manner. The decision of the investigative services unit to interview the suspect-inmate was properly reached after consideration of all the relevant factors and key issues.</p> <p>The district attorney's office filed murder charges against the suspect-inmate.</p>
<p><u>Case No. 05-055 (Central Region)</u> On October 27, 2005, an inmate was transported Code 3 after a</p>	<p>The Bureau of Independent Review responded to the institution after receiving notification of the attempted</p>	<p>Quality of the department's emergency medical response: Adequate.</p>	<p>Although suicide appeared to be the cause of death, homicide was nonetheless considered until sufficient</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>correctional officer found him in his cell in a kneeling position hanging from a bed sheet. The victim's cellmate was not in the cell at the time and no other obvious marks were detected either on the victim or on his cellmate. The institution's investigative services unit processed the cell and questioned the cellmate. The inmate remained in a critical comatose condition on life support before expiring approximately two months later.</p>	<p>suicide. The bureau subsequently reviewed all incident reports and the death certificate.</p> <p>The bureau also suggested that the warden implement sentence recall proceedings on the victim. These proceedings allow for the recall (termination) of an inmate's sentence when he or she is diagnosed with a terminal illness and has less than six months to live, according to a department physician. In this case, recalling the critically injured inmate's sentence would eliminate the need for custody staff to guard him 24 hours a day while he was on life support. Eliminating the need for custody staff in this and similar situations would save the state significant salary costs.</p>	<p>Quality of the department's handling of any crime scene: Adequate.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Not Applicable.</p>	<p>evidence could be gathered to overrule that possibility. The bureau concurred in this finding.</p>
<p><u>Case No. 05-056 (Central Region)</u> On October 29, 2005, an inmate assaulted a correctional officer with a stabbing weapon. The officer was taken off-grounds to an urgent care center and was released after treatment.</p>	<p>The Bureau of Independent Review was not notified of the incident until two days later, on October 31, 2005, precluding the bureau's timely response to the institution. The bureau contacted the institution to determine the reason for the tardy notification and learned that the institution had also failed to notify the department's administrative officer of the day about the incident in a timely manner.</p> <p>The bureau reminded the institution of the importance of the notification procedures.</p>	<p>Quality of the department's handling of any security/safety issues: Not Assessed.</p> <p>Quality of the department's handling of any crime scene: Not Assessed.</p> <p>Was the bureau promptly notified? No.</p> <p>Were other law enforcement agencies promptly notified? Not Applicable.</p>	<p>The department opened a criminal investigation into the conduct of the inmate.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-057 (Central Region)</u> On November 27, 2005, an inmate committed suicide by means of self-induced asphyxiation. The inmate had been placed on suicide “precaution” by medical staff before because he had attempted to harm himself on previous occasions and had, therefore, been placed in a safety cell (rubber room) under constant video surveillance.</p>	<p>The Bureau of Independent Review responded to the institution and learned that although all security checks had been implemented in accordance with established procedures, the video surveillance recorder had never been activated and the recording device was not functioning properly—clear violations of procedures requiring equipment testing before every shift. Despite the lack of a functional recorder, however, a working television monitor did display the inmate’s image around the clock. Nonetheless, because the inmate had been placed on suicide “precaution” rather than “watch” (essentially, a lower level of suicide prevention), staff did not continually monitor the television.</p> <p>The bureau recommended that an administrative investigation be conducted concerning the failure to comply with video surveillance procedures. In addition, the bureau expressed concern that the medical staff had placed the inmate on suicide “precaution” rather than “watch,” despite his multiple past suicide attempts.</p>	<p>Quality of the department’s handling of any security/safety issues: Inadequate.</p> <p>Quality of the department’s handling of any crime scene: Not Applicable.</p> <p>Was the bureau promptly notified? No.</p> <p>Were other law enforcement agencies promptly notified? Yes (district attorney investigators).</p>	<p>The Department of Corrections and Rehabilitation opened an administrative investigation into the matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-058 (Northern Region)</u> In the early morning hours of November 29, 2005, an inmate informed a correctional officer that he could not wake his cellmate. After an</p>	<p>The Bureau of Independent Review responded to the institution because of the suspicious circumstances surrounding the death. The bureau conferred with the coroner, who</p>	<p>Quality of the department’s handling of any security/safety issues Not Assessed.</p> <p>Quality of the department’s handling of</p>	

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>unsuccessful attempt to wake the cellmate verbally, the officer entered the cell and suspected that the victim was dead. The officer activated an alarm to summon the nurse, who confirmed the death, as evidenced by the onset of <i>rigor mortis</i>. The victim was transported by gurney to the institutional emergency room, where he was pronounced dead by a medical doctor.</p> <p>Based on the type of injuries sustained by the deceased inmate, the incident was handled as a possible homicide. The coroner also determined that the circumstances and injuries were suspect. An autopsy was to be performed to determine the cause of death. The victim's cellmate is being retained in administrative segregation pending the conclusion of the investigation.</p>	<p>preliminarily assigned the cause of death as asphyxiation. The bureau also conferred with the members of the institution's investigative services unit, who had interviewed the victim's cellmate with the assistance of two investigators from the district attorney's office.</p> <p>The bureau noted that staff responding to the incident did not administer CPR, as required by department policy, presumably because the inmate had been dead approximately 24 hours before the coroner's arrival. The bureau also noted that evidentiary photos were not taken before the victim's body was removed from the cell. The deceased inmate's clothing and property had been properly preserved.</p>	<p>any crime scene: Inadequate. Despite staff acknowledging the inmate was deceased upon discovery, the body was removed from the cell prior to proper crime scene processing.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	
<p><u>Case No. 05-059 (Central Region)</u> On December 20, 2005, two inmates initiated a fight in their cell. During the fight, one inmate shouted for medical assistance. Upon arriving, a nurse observed one inmate attempting to strangle the other with an electric cord while punching the victim in the head with the other hand. The victim was transported to the hospital and was later pronounced dead. The sheriff's department responded to the scene and assumed primary responsibility for the investigation.</p>	<p>The Bureau of Independent Review responded to the institution and examined the institution's crime scene preservation efforts. The bureau contacted both the warden and lead homicide detective from the sheriff's department.</p> <p>The bureau made efforts to ensure that the crime scene was properly preserved until the arrival of the sheriff's department and answered detectives' questions regarding access</p>	<p>Quality of the department's handling of any security/safety issues: Inadequate. Victim and suspect were not supposed to be celled together.</p> <p>Quality of the department's handling of any crime scene: Inadequate. Pertinent evidence was destroyed.</p> <p>Was the bureau promptly notified? Yes.</p> <p>Were other law enforcement agencies promptly notified? Yes.</p>	<p>The criminal investigation by the sheriff's department is complete and the district attorney's office filed murder charges against the suspect.</p>

SUMMARY OF CRITICAL INCIDENT	BUREAU ACTIONS	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	to relevant inmate records. The bureau also alerted the warden to various concerns relative to potential staff misconduct for administrative consideration.		

CASE MONITORING ACTIVITIES

The bureau began full-time monitoring operations in July 2005 after intensive training of new staff attorneys was completed. During the six-month reporting period ended December 31, 2005, the bureau selected for monitoring 341 cases that met specified criteria and protocols. These cases, which are reported in more detail in the tables below, provide insight into the bureau's monitoring activities.

Internal affairs allegations generally fall into one of two broad categories: criminal or administrative. Cases that do not fall neatly into either of these classifications because they may be pending, involve direct action or inquiries, or constitute rejected or returned cases are classified as "other." The 341 cases selected for monitoring during the reporting period comprised 74 criminal cases, 210 administrative cases, and 57 cases designated as other. During the same period, the California Department of Corrections and Rehabilitation opened 449 criminal and administrative internal affairs investigations. Consequently, even though the bureau was not fully staffed, it monitored 63 percent of the criminal and administrative cases opened by the Office of Internal Affairs during the six-month reporting period.

Although it is the bureau's overarching goal to report on every case in a timely manner, exceptional circumstances may preclude such reporting. For example, the bureau includes a criminal investigation in its public reports only after the district attorney's office has reviewed the case. Similarly, it publicly discloses an administrative investigation once the hiring authority has determined the case findings. In broad terms, the bureau retains the discretion to delay reporting of a given investigation to avoid jeopardizing the investigation and any resulting disciplinary action or to avert the potential of placing inmates or staff at risk. Most monitored cases, however, are reported within the six-month timeframe to which they correspond.

The following table summarizes criminal and administrative investigations over the second reporting period.

CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

NORTHERN REGION		OPENED FOR MONITORING
JULY		17
AUGUST		29
SEPTEMBER		20
OCTOBER		23
NOVEMBER		32
DECEMBER		<u>13</u>
TOTAL		134
CENTRAL REGION		OPENED FOR MONITORING
JULY		26
AUGUST		37
SEPTEMBER		20
OCTOBER		16
NOVEMBER		19
DECEMBER		<u>18</u>
TOTAL		136

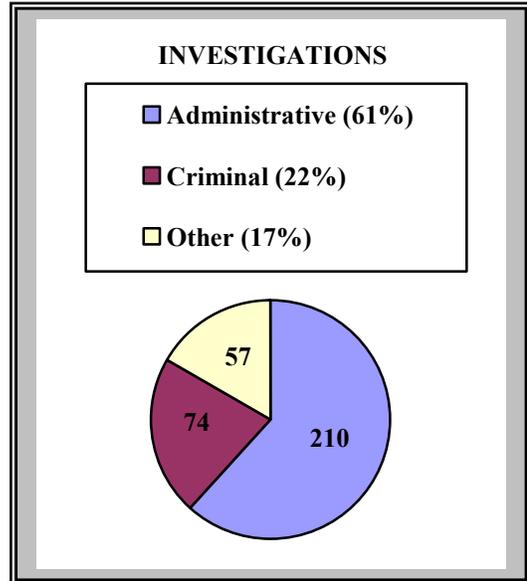
CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS (CONTINUED)

SOUTHERN REGION	OPENED FOR MONITORING
JULY	13
AUGUST	17
SEPTEMBER	5
OCTOBER	3
NOVEMBER	15
DECEMBER	<u>18</u>
TOTAL	71
BUREAU TOTALS	OPENED FOR MONITORING
JULY	56
AUGUST	83
SEPTEMBER	45
OCTOBER	42
NOVEMBER	66
DECEMBER	<u>49</u>
TOTAL	341

Additional demonstrations of the monitoring statistics are presented in the following charts.

The majority (61 percent) of cases the bureau monitored are administrative. These cases range from allegations of misuse of state resources to dishonesty during criminal investigation. They can also encompass the same allegations included in a criminal case, but must proceed independently of any criminal investigation. To further such autonomy, administrative allegations associated with criminal activity typically commence at the conclusion of a criminal investigation.

The second largest group of cases the bureau monitored are criminal. Considered the most serious of bureau-monitored cases, criminal cases represent 74 of the 341 (22 percent) total cases monitored. The remaining 17 percent of the cases monitored are composed of direct employee action, inquiries, pending evaluation, and cases returned to the hiring authorities. These “other” cases generally involve less severe allegations or require no investigative resources to proceed. Nonetheless, the bureau monitors these cases to ensure fairness within the employee disciplinary process.



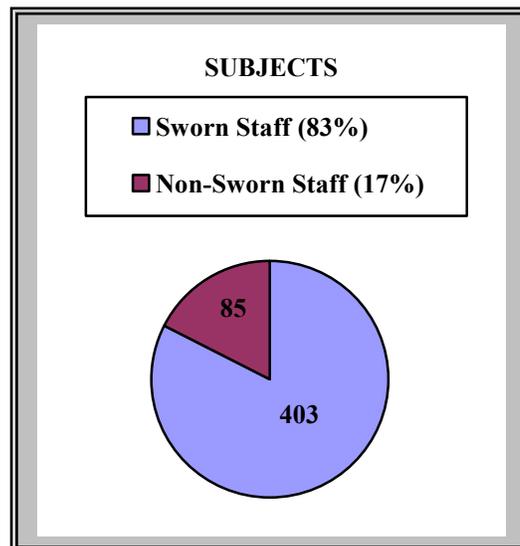
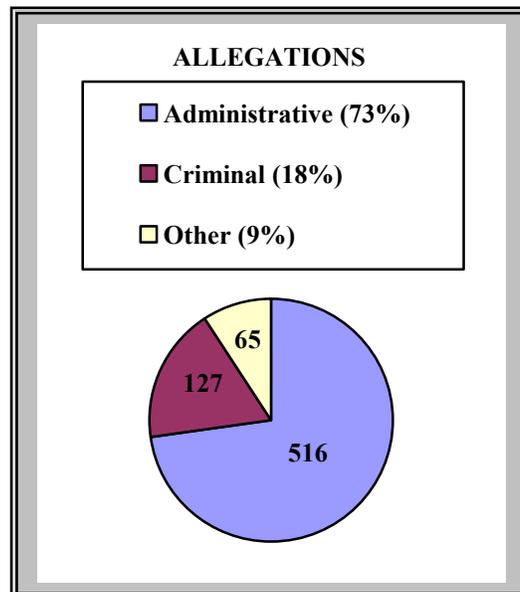
Cases under investigation usually cover multiple allegations. The number of allegations investigated in bureau-monitored cases totaled 708, averaging roughly two allegations per investigation.

The majority of cases the bureau monitors involve correctional officers, who make up approximately 61% of department employees. Because the inherent nature of the correctional environment places officers in situations that may require force, misuse of force is one of the most common allegations under investigation and bureau monitoring. The 341 cases monitored by the bureau during the six-month period ending December 31, 2005, involved 488 subject employees. Because the case management system used by the Office of Internal Affairs defines each case by incident, with some incidents involving more than one subject, bureau cases likewise may reflect more than one subject.

The bureau usually becomes involved in a case from the time a request for investigation is initially considered by the Office of Internal Affairs at the weekly intake meetings. During these meetings, the Office of Internal Affairs staff presents the investigation request on behalf of a department hiring authority. Based on the allegations, criteria, subjects, evidence, and topics, the bureau determines whether to monitor a particular case.

Once selected, cases are assessed for the type of monitoring required. The bureau engages in three levels of monitoring for internal affairs investigations. The most serious and time-sensitive allegations are monitored in a real-time, continuous fashion. Alternatively, critical juncture review is assigned to less time-sensitive allegations. Because both monitoring levels employ the same techniques, cases are not distinguished by monitoring type when reported.

Highlights of criminal and administrative cases from July through December 2005 are presented in the following tables.⁸ Pursuant to California Penal Code section 6133, the tables also include an assessment of the quality of the investigation as either “adequate” or “inadequate.”



⁸ The last and lowest level of case monitoring consists of case tracking. These cases are usually monitored by investigators from the Bureau of Independent Review and are assessed from an exception perspective, meaning that if the case is not progressing, the statute date is approaching, or an element of the case did not proceed as expected, the monitoring level may be raised. Because of the low level of monitoring, investigations monitored at the case-tracking level are not reported in the tables.

SUMMARY OF CRIMINAL INVESTIGATIONS — JULY-DECEMBER 2005⁹

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-060 (Southern Region)</u> In July, 2003, a non-sworn employee of the California Department of Corrections and Rehabilitation was appointed to a county grand jury. On April 27, 2004, the painter's supervisor sent a memorandum to the Office of Internal Affairs, outlining his belief that the employee had received his state salary for time when he was not on authorized grand jury business. The supervisor alleged that the employee had submitted false jury duty excuse letters to the department to justify his absences.</p>	<p>On June 10, 2005, the Bureau of Independent Review met with the special agent and senior special agent assigned to the case by the Office of Internal Affairs. On June 17, 2005, the bureau attended the investigator's presentation of the investigative findings to the district attorney's office.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>Both the district attorney's office and the Attorney General's Office declined to file criminal charges in this case.</p> <p>The department opened an administrative investigation into this matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-061 (Central Region)</u> On March 9, 2004, a control booth officer opened a cell door, allegedly permitting the inmate-occupant to be assaulted by other inmates. It was further alleged that later the same day the officer again opened the inmate's cell door, resulting in a second fight. An uninvolved inmate witnessed these assaults, as well as a separate attack on a different inmate, which had also been precipitated by the same officer in the same manner.</p>	<p>Because the criminal investigation into the incident began well before the Bureau of Independent Review was operational, the bureau began monitoring the investigation after its inception. The bureau elected to monitor the investigation because of the serious nature of the allegations.</p> <p>Because the cell door mechanisms have historically malfunctioned at this institution, the bureau recommended further study of the problem.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The district attorney's office rejected the case for criminal prosecution.</p> <p>The department opened an administrative investigation into the matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-062 (Central Region)</u> On April 10, 2004, an employee allegedly requested that several</p>	<p>The Bureau of Independent Review monitored the investigating agent's progress on the criminal case and</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The bureau found that the investigation conducted by the Office of Internal Affairs was thorough and</p>

⁹ Text in bold format indicates that the bureau has previously reported on a particular case, which is being updated in the present report.

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>female inmates show him their breasts. Two of the three alleged victims denied the occurrence, but a fourth inmate alleged that the subject-employee raped her. Evidentiary samples from the cell floor were submitted to the Department of Justice laboratory for DNA/seminal fluid analysis. During the internal affairs investigation into the allegations, the subject employee resigned from the department.</p>	<p>suggested an investigative strategy.</p> <p>To ensure that this subject is never rehired by the department, the bureau confirmed that the subject-employee's file reflects that his resignation was tendered while an internal affairs investigation was pending.</p>		<p>timely, despite the substantial delay attributable to the DNA analysis. Because the Department of Justice test results were negative for DNA/seminal fluid analysis, the criminal case was closed and was not referred to the district attorney's office due to insufficient evidence. The bureau concurred with this appraisal because the only evidence of misconduct would have been the uncorroborated testimony of the victim.</p> <p>An administrative case was not opened because the subject-employee resigned in light of other allegations of off-duty sexual misconduct.</p>
<p><u>Case No. 05-063 (Central Region)</u> On June 23, 2004, a correctional officer was discovered in a sexually compromising position with an inmate.</p>	<p>The Bureau of Independent Review noted an inaccuracy in the hiring authority's request for investigation and asked that it be corrected. The bureau also maintained contact with the district attorney's office.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The employee was charged by the district attorney's office with two counts of unlawful sexual acts with an inmate. The employee pleaded guilty to one of the felony counts and the court sentenced him to probation with 240 days of custody.</p> <p>The department opened an administrative investigation into this matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-064 (Central Region)</u> On July 1, 2004, an inmate with a history of suicidal gestures attempted suicide by hanging, after which the inmate was housed in administrative segregation and prescribed 20 mg. of</p>	<p>The Bureau of Independent Review consulted with the investigator assigned by the Office of Internal Affairs to discuss investigative strategy, contacted the staff attorney assigned by the Employment</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The bureau concurred with the department that no misconduct could be established but that errors in professional judgment had occurred on the part of personnel in the Correctional Clinical Case</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>Olanzapine, an antipsychotic drug, to be administered under direct observation. Two weeks later, the inmate died of an overdose. Postmortem blood testing disclosed a toxic level of Olanzapine.</p>	<p>Advocacy and Prosecution Team to facilitate production of the inmate's medical records, and reviewed the 48-page final investigative report.</p>		<p>Management Services Unit relative both to the choice of antipsychotic medication and the inmate's institutional placement. There were also deficiencies in the institution's documentation of the inmate's medications and cell searches, which permitted the inmate to hoard the medication without detection.</p> <p>The hiring authority, in this case the Health Care Services Division, indicated that it would recommend steps to clarify for staff the difference between "observation status" and "suicide watch." The hiring authority also recommended that a higher priority be assigned to cell searches of inmates with a history of suicide attempts and that medication precautions should be emphasized to psychiatric technicians in training.</p>
<p><u>Case No. 05-065 (Central Region)</u> On July 6, 2004, a parole agent allegedly logged onto one of the office computers and accessed the criminal history of a parolee who had been assigned to another parole agent to obtain a copy of the parolee's criminal history for a friend. The friend used the criminal history in family court during a child custody hearing involving the parolee.</p>	<p>The Bureau of Independent Review consulted with the assigned investigator and met with the district attorney's office.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The district attorney's office conducted further case review and subsequently filed a misdemeanor charge against the parole agent for furnishing confidential information to an unauthorized person.</p> <p>The case was set for jury trial on September 15, 2005. The district attorney's office dismissed the case before trial, citing concern with the credibility of a primary witness.</p> <p>The department opened an administrative investigation into the matter, which the bureau is</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
			monitoring.
<p><u>Case No. 05-066 (Northern Region)</u> On August 2, 2004, a private citizen reported to the Office of Internal Affairs that his Labrador retriever had been fatally shot on July 10, 2004, by a correctional lieutenant. The citizen also reported the incident to the sheriff's office. It was further alleged that the lieutenant was dishonest when questioned by the sheriff's investigators.</p>	<p>The Bureau of Independent Review did not begin monitoring this case until after the investigation was completed and the report had been forwarded to the hiring authority. The bureau assumed a monitoring role because a significant period of time had elapsed from the time the case was forwarded to the hiring authority in February 2005 without significant activity. The bureau met with the warden and his staff attorney to discuss the merits of the case and the delay.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>Because the overall evidence of misconduct was weak, the case was not prosecuted by the district attorney's office, nor was administrative discipline pursued by the hiring authority.</p>
<p><u>Case No. 05-067 (Central Region)</u> On October 18, 2004, it was alleged that a sergeant and several officers had conspired to have an inmate assaulted by other inmates in the administrative segregation unit. The allegation was based primarily on the officers' delayed response to a fight between the inmate-victim and two other inmates in the yard.</p>	<p>The Bureau of Independent Review met with the special agent and the senior special agent assigned by the Office of Internal Affairs. The bureau reviewed all of the interviews and reports, as well as the video of the incident, which indicated a 90-second delay in the tower officers' reaction.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The bureau agreed with the investigator's decision to narrow the scope of the case to the two subjects directly responsible for the yard and later concurred with the decision not to refer the case to the district attorney's office due to insufficient evidence of criminal misconduct.</p> <p>The criminal investigation was both thorough and timely.</p> <p>The department also opened an administrative investigation into the matter, which the bureau is monitoring.</p>
<p><u>Case No. 05-068 (Northern Region)</u> On November 9, 2004, it was alleged that a correctional officer was involved in selling tobacco and drugs</p>	<p>The Bureau of Independent Review reviewed the hiring authority's request for investigation and discussed the case with the special agent assigned.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>Because the case relied primarily on the uncorroborated statements of inmates, the bureau concurred with the investigator that it would be</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
to inmates.	During the course of the investigation, the main witness, an inmate, was moved to another institution and was unavailable to develop further evidence through means of surveillance or recordings. The special agent was unsuccessful in gaining further information through other means.		difficult to prove. The criminal investigation was forwarded to the district attorney's office but was rejected for prosecution due to insufficient evidence. The correctional officer nevertheless resigned his position with the department.
<p><u>Case No. 05-069 (Central Region)</u> On January 13, 2005, an institution instructor was alleged to have submitted a falsified travel expense claim for an off-site training event. The subject-employee had requested reimbursement for the use of his personal vehicle to and from the training event, but the institution discovered that the subject-employee had received a ride from a co-worker.</p>	The Bureau of Independent Review met with a special agent from the Office of Internal Affairs to suggest an interrogation strategy for the subject-employee and informed the agent that if the case were selected for jury trial, the prosecutor would need a copy of the cancelled check to prove that the subject-employee had taken unlawful possession of state money. The bureau also reviewed the final investigative report.	Quality of the investigatory process: Inadequate. Not all of the relevant evidence was collected.	<p>The district attorney's office filed charges of forgery and petty theft.</p> <p>The subject-employee pleaded no contest to the petty theft charges and was sentenced accordingly.</p> <p>Because the investigation initially lacked proof that the subject-employee had actually received state funds, the bureau found the investigation was timely but not thorough.</p> <p>The department also opened an administrative investigation into the matter and the agent obtained the necessary proof in that case, which the bureau is monitoring.</p>
<p><u>Case No. 05-070 (Central Region)</u> On February 18, 2005, a correctional officer allegedly physically assaulted another correctional officer while both were on duty. The victim alleged that the assailant had punched his arm and "karate-chopped" his forearm, resulting in bruises and numbness in</p>	The Bureau of Independent Review met with the investigator, attended witness interviews, suggested case strategies, and contacted the district attorney's office concerning the referral.	Quality of the investigatory process: Adequate.	<p>The case was rejected for prosecution by the district attorney's office due to concerns that it could not be proven beyond a reasonable doubt.</p> <p>The bureau found the investigation to be thorough and timely.</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
his fingers. Moreover, the subject-employee allegedly interfered in the ensuing investigation by the Office of Internal Affairs.			The department opened an administrative investigation into the matter, which the bureau is monitoring.
<p><u>Case No. 05-071 (Central Region)</u> On March 9, 2005, it was alleged that correctional officers had intimidated an inmate for cooperating with an investigation by the Office of Internal Affairs.</p>	<p>The Bureau of Independent Review confirmed the applicable statute of limitations date in the case and communicated to the Office of Internal Affairs the attendant urgency to conclude the investigation.</p> <p>The bureau's attention to the statute of limitations helped to ensure that the investigation was not irreparably compromised.</p>	Quality of the investigatory process: Inadequate, due to untimeliness.	There was insufficient evidence of criminal misconduct to refer the matter to the district attorney's office. Because of the untimely completion of the criminal investigation, the Office of Internal Affairs had inadequate time to complete the administrative investigation, which the bureau is monitoring.
<p><u>Case No. 05-072 (Northern Region)</u> On March 19, 2005, a correctional officer gave an inmate a confidential document concerning the housing status of another inmate and stated to the first inmate that the second inmate "needed to be taken care of" (or words to that effect), thereby conspiring with the first inmate to have the second inmate assaulted. Four additional correctional officers allegedly participated in the conspiracy to have the inmate-victim assaulted.</p>	The Bureau of Independent Review began to monitor this case after it had been substantially completed. The bureau was consulted in the administrative case, however, and worked with the investigator and reviewed the interviews, reports, and files.	Quality of the investigatory process: Adequate.	<p>The district attorney's office declined to prosecute this case.</p> <p>The department opened an administrative investigation into the matter which resulted in the termination of the principal subject, which the bureau monitored.</p>
<p><u>Case No. 05-073 (Central Region)</u> On April 11, 2005, a correctional officer allegedly engaged in sexual misconduct with an inmate. It was also alleged that the correctional officer had smuggled narcotics into</p>	The Bureau of Independent Review reviewed the investigative reports and interviews, consulted with the Office of Internal Affairs, and contacted the district attorney's office to discuss the case.	Quality of the investigatory process: Adequate.	<p>The investigation was timely and comprehensive.</p> <p>The subject-employee entered into a plea agreement with the district attorney's office and pleaded guilty to</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
the institution.	The bureau attempted unsuccessfully to persuade the district attorney's office to handle the case more aggressively, given the strong evidence in support of both felony charges for unlawful sexual misconduct with an inmate and unlawful communication with an inmate, even though evidence supporting narcotics smuggling was less strong.		one misdemeanor count of unauthorized communication with an inmate. The subject-employee subsequently resigned.
<p><u>Case No. 05-074 (Northern Region)</u> On April 28, 2005, a confidential informant revealed to the institution's investigative services unit that a senior radiological technician was in possession of methamphetamine on prison grounds with the intent to sell the methamphetamine to an inmate. During surveillance operations approximately 22 grams of suspected methamphetamine were seized. The subject-employee was subsequently booked into jail and charged by the district attorney's office.</p>	The Bureau of Independent Review met with the special agent assigned, discussed an investigative plan, and reviewed the investigator's interviews of the witnesses and the subject-employee.	Quality of the investigatory process: Adequate.	The subject-employee pleaded guilty to furnishing a controlled substance to a prisoner. The employee was subsequently terminated.
<p><u>Case No. 05-075 (Central Region)</u> On May 10, 2005, allegations were made that a correctional officer had been involved in an overly familiar relationship with an inmate.</p>	<p>The Bureau of Independent Review consulted with the investigator assigned to the case and reviewed the investigator's interview of the subject-employee.</p> <p>After initial rejection of the case by the district attorney's office, the bureau suggested further areas of inquiry and assisted in the investigator's interactions with the</p>	Quality of the investigatory process: Adequate.	<p>This matter was rejected for prosecution by the district attorney's office, despite the fact that the investigation was thorough and timely. Nevertheless, the subject-employee resigned.</p> <p>Despite additional case leads, the bureau concurred with the department's decision to close the case without re-referral to the district</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	district attorney's office.		<p>attorney's office.</p> <p>During the course of this investigation, a taped telephone call indicated that another officer might have improperly advised the subject-employee that she was under investigation. Based on this recording, the department opened a separate investigation. The bureau is now monitoring the separate investigation on the additional subject.</p>
<p><u>Case No. 05-076 (Northern District)</u> In the months preceding May 24, 2005, a surgeon employed by the department allegedly engaged in sexual misconduct with five separate inmates. It was alleged by another staff surgeon that the subject-employee was sexually abusing inmates during routine clinical evaluations. The complainant claimed that he knew of at least five inmates who could verify this allegation.</p> <p>During the course of the investigation, the Office of Internal Affairs attempted to obtain a list of the alleged victims from the complainant to pursue the investigation. The complainant, however, resigned his position after only four weeks of employment with the department, failed thereafter to return phone calls, and moved from his residence.</p> <p>The Office of Internal Affairs interviewed all staff members who</p>	<p>The Bureau of Independent Review met with the special agent to discuss the investigative plan, consulted with the special agent as the investigation progressed, and reviewed the final report before the case was closed.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The bureau concurred with the internal affairs decision to close the investigation.</p> <p>The investigation was thorough, as evidenced by internal affairs' exhaustive pursuit to gain relevant information regarding the allegations despite the lack of cooperation by the complainant.</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>had worked with the subject-employee but none corroborated the allegations and no victims were ever identified.</p>			
<p><u>Case No. 05-077 (Northern Region)</u> On June 9, 2005, a correctional officer discovered a department psychologist and an inmate engaged in a sexual act.</p>	<p>The Bureau of Independent Review met with the investigator to discuss a case strategy in light of the psychologist's refusal to be interviewed and also reviewed the final reports.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The district attorney's office elected not to prosecute the case.</p> <p>The psychologist resigned her position with the department.</p>
<p><u>Case No. 05-078 (Southern Region)</u> On June 29, 2005, a non-custody supervisor was observed entering an inmate housing area in which she had no authorization. A correctional sergeant witnessed the supervisor walk toward several inmates and allegedly drop an object. When the sergeant recovered the object, he observed that it was a vial of methamphetamine.</p> <p>The employee was detained in a conference room during the two- to three-hour period before an internal affairs investigator could respond to the institution.</p> <p>When the investigator arrives, he proceeded to immediately interview the supervisor without viewing the scene, examining evidence, or speaking with eye-witnesses.</p> <p>Shortly after the interview began, the investigator emerged from the</p>	<p>The Bureau of Independent Review was briefed by the institution's investigative services unit on the incident and actions were taken to secure both the evidence and the subject.</p> <p>The bureau expressed concerns regarding the length of time the supervisor was detained while waiting for the investigator to arrive.</p> <p>When the internal affairs investigator arrived, the bureau advised him to view the scene, examine the evidence, and speak to eye-witnesses prior to interviewing the supervisor. In addition, the bureau suggested that the investigator search the supervisor's car and residence to establish whether she had intended to sell the narcotics or retain them for personal use.</p> <p>The bureau learned that the investigator had obtained the incriminating statement from the</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>By the time the district attorney's office filed felony drug charges against the supervisor, the investigator had not yet notified prosecutors about the <i>Miranda</i> violation surrounding the supervisor's invocation of her right to an attorney that had occurred during her interrogation. The bureau met with the investigator and his supervisor to communicate its concern about the failure to report this information to prosecutors and the investigator indicated that he would contact the district attorney's office immediately to remedy the situation. When the bureau later conferred with the investigator, he reported that he had disclosed only the existence of the interview and the fact that the suspect had invoked, not that a <i>Miranda</i> violation had likely occurred.</p>	<p>During a briefing attended by the warden, the investigative services unit, the internal affairs investigator, and the bureau, it was first revealed that the supervisor had been allowed to use a restroom, unescorted, during her initial detention. The bureau expressed concern that the employee could have used this opportunity to discard evidence, including narcotics. The investigator acknowledged this constituted a significant investigative lapse, but the warden assured the bureau that the matter would be addressed through staff counseling and training.</p> <p>The supervisor pleaded guilty to smuggling narcotics into the institution, a violation of Penal Code section 4573, and to possession of methamphetamine, a violation of Health and Safety Code Section 11377. As a result, the supervisor's employment was terminated.</p>

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>interview room, stated that the supervisor had admitted there were drugs in her house, and expressed his intent to obtain a search warrant for the premises.</p>	<p>supervisor after she had invoked her right to an attorney. The bureau cautioned that if the investigator intended to use the statements in a warrant affidavit he needed to clearly establish the manner in which they had been obtained to avoid “misleading the magistrate.”</p> <p>A search warrant was eventually procured for the supervisor’s residence without using the incriminating statements. Drugs and other evidence supporting over familiarity with inmates were seized in the house.</p> <p>Finally, the bureau expressly requested that it be allowed to review the final investigative report before it was sent to the district attorney’s office. Despite this request, the investigator informed the bureau only after the report had been dispatched to the district attorney’s office. The report mentioned the supervisor’s incriminating statements to the investigator during the interview, but did not mention the circumstances under which they had been obtained, namely, in violation of her invocation of her right to an attorney; nor did the report mention that the interview had been recorded.</p>	<p>The bureau contacted the prosecutor to discuss the case. The prosecutor stated unequivocally that all the circumstances surrounding the supervisor’s invocation during her interview should have been reported by the investigator, as required by law.</p>	
<p><u>Case No. 05-079 (Southern Region)</u> On June 30, 2005, a correctional lieutenant received information from an inmate that another correctional</p>	<p>The Office of Internal Affairs initially informed the Bureau of Independent Review that the case would have to be closed because there was no video</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Despite a recommendation from the</p>	

SUMMARY OF CRIMINAL INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>lieutenant was allegedly having a sexual relationship with one of the inmates. In addition, the informant reported that the subject-employee and the inmate had engaged in sex after the subject-employee's normal work hours.</p>	<p>recording to corroborate the misconduct. The bureau, however, recommended that the other witnesses identified in the initial report be interviewed before making a determination to close the case. Despite indications that those interviews had occurred, the Office of Internal Affairs reported that no corroborative evidence had been obtained and the case was closed.</p>	<p>bureau, the Office of Internal Affairs failed to interview the inmate who made the original complaint. Furthermore, the possibility of obtaining video-recorded evidence of the misconduct was precluded when the hiring authority placed the subject-employee on administrative time off in another case.</p>	
<p><u>Case No. 05-080 (Central Region)</u> On July 7, 2005, it was alleged that a non-custody employee became pregnant as a result of a relationship with an inmate and that the subject-employee was also suspected of smuggling contraband into the prison for inmates.</p>	<p>The Bureau of Independent Review consulted with the assigned special agent, monitored the investigation, and reviewed all reports and interviews. On reviewing the final report, the bureau recommended areas of further investigation, which the special agent agreed to undertake. The special and senior special agents consulted the bureau before making the decision not to refer the matter to the district attorney's office.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The investigation was timely and comprehensive. The bureau concurred with the decision that there was insufficient credible evidence to sustain criminal charges. The original complainant was the subject's husband, who subsequently recanted his allegations.</p> <p>The investigation nonetheless disclosed certain policy violations regarding transporting mail and hobby items for inmates. As a result of this finding, an administrative investigation commenced, which is being monitored by the bureau.</p>

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SUMMARY OF ADMINISTRATIVE INVESTIGATIONS — JULY-DECEMBER 2005¹⁰

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-081 (Central Region)</u> On July 2, 2003, a correctional captain was alleged to have recruited inmates to spy on other staff members to collect evidence of misconduct for use against them. It was further alleged that when two lieutenants and an associate warden learned of the situation they called a meeting with the alleged inmate “informants,” after which the associate warden attempted to conceal the captain’s misconduct. It was further alleged that a staff member, who was targeted by the captain for surveillance and who submitted a complaint, received an adverse change in work assignments.</p>	<p>The Bureau of Independent Review received this case for monitoring after the investigative report was submitted to the hiring authority and after the statute of limitations for sworn staff had expired. After reviewing the report and meeting with the investigator, the bureau expressed a number of concerns to the Office of Internal Affairs about the investigation, including the protracted delay in completing the investigation. During consultations with the warden, additional problems with the report were identified, indicating the need for further investigation.</p> <p>The bureau closely examined a key interview in the investigation and transcribed passages that appeared to establish incontrovertibly that a chief deputy warden provided false information in an official document. The statute of limitations had not yet expired on this conduct. Confusion regarding who would assume responsibility to act as hiring authority further delayed imposition of discipline until after the chief deputy warden retired.</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? No.</p>	<p>This investigation failed to identify and pursue a key witness, examine critical missing documents, and recognize the significance of equivocal statements made by one of the subjects. A supplemental investigation was conducted and a supplemental report was filed.</p> <p>Although various parties debated about who would act as hiring authority, all were aware that the subject intended to retire, yet took no steps to expedite the process. Consequently, the subject retired before the hiring authority could or would act.</p> <p>After the subject retired, the hiring authority rendered a finding that there was insufficient evidence to support an allegation of dishonesty. The bureau strongly disagreed with the hiring authority’s finding of insufficient evidence.</p> <p>The bureau’s scrutiny of this investigation identified training issues related to Office of Internal Affairs</p>

¹⁰ Text in bold format indicates that the bureau has previously reported on a particular case, which is being updated in the present report.

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	<p>The bureau’s intervention prevented the case from being closed prematurely and resulted in its referral back to the Office of Internal Affairs for further investigation. The bureau’s analysis proposed a theory that could have been employed to extend the statute of limitations and also identified specific statements that implicated the chief deputy warden in dishonesty during an investigation.</p>		<p>interview techniques. While the bureau’s persistence prevented this case from completely “slipping through the cracks,” continuing delays ultimately frustrated the disciplinary process.</p>
<p><u>Case No. 05-082 (Northern Region)</u> On October 14, 2003, it was alleged that a lieutenant had filed a workers’ compensation claim for a back injury, but was subsequently seen engaging in physical activities that were potentially inconsistent with his alleged injuries.</p>	<p>The Bureau of Independent Review obtained relevant documents for review and conferred with the hiring authority’s return to work coordinator, who was monitoring the workers’ compensation case for the institution.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? No. Did the bureau concur? Yes.</p> <p>Disciplinary Charges: Not applicable.</p>	<p>The investigation was complete and timely. The report disclosed insufficient evidence to support the charge of fraud against the employee. The bureau concurred with this assessment.</p>
<p><u>Case No. 05-083 (Central Region)</u> On December 5, 2003, a control booth officer allowed two cellmates out of their cell to talk with him. The officer’s conduct violated institution security protocols, which require the presence of a floor officer before inmates can be released from their cell. When the two inmates became disruptive and refused to return to their cell, the administrative officer-of-the-day approved a plan that had been proposed by the facility lieutenant to extract the inmates with a team of officers armed with 37-mm launchers and sponge rounds. A fight</p>	<p>The Bureau of Independent Review determined that staff did not collect all of the relevant evidence in the case. In particular, they failed to search the inmates for remaining alcohol. Consequently, the bureau recommended that key staff members receive evidence collection training.</p> <p>The bureau also consulted with the special agent assigned to investigate the case regarding ways to expedite the investigation. Although the incident involved multiple subjects, the bureau advised against relying on that as a basis for tolling the</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Yes. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p>	<p>A <i>Skelly</i> hearing was held for the officer who failed to obtain the warden’s approval before using the 37-mm weapon, as required by institutional policy. The bureau concurred with the hearing officer’s recommendation to reduce the penalty to a letter of reprimand in light of the warden’s statement that he would have approved the use of the weapon regardless.</p> <p>Relative to the other subject-employees, the hiring authority and the department’s staff attorney decided not to pursue this case given</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>erupted during the extraction and numerous sponge rounds were fired from the launcher. Eventually, one inmate surrendered and officers subdued the other inmate, placing him face down on the ground. The facility lieutenant then ordered a “cease fire,” but two correctional officers fired additional sponge rounds, at least one of which struck the subdued inmate. The injuries to the inmate included two broken fingers and a laceration to the neck/back area. It was determined that the inmates had consumed illegally manufactured alcohol.</p>	<p>administrative statute of limitations and recommended instead that the investigation be completed within the standard limitation period of one year.</p> <p>The bureau later met with the subject-employee’s hiring authority and the staff attorney assigned to the case to discuss the appropriate administrative charges and corresponding disciplinary measures. The institution’s employee relations officer and the assigned Employment Law Unit staff attorney were briefed on the statute of limitations issue.</p> <p>The bureau’s assessment of the administrative statute of limitations in this case was disputed by the Office of Internal Affairs. Based on the bureau’s analysis, the time to initiate this action had expired before the bureau began to monitor the case. The Office of Internal Affairs justified its delay in completing the investigative report based on the statutory exception for investigations involving multiple subjects. The bureau determined, however, that the delay was attributable not to the existence of multiple subjects but rather to the failure of the Office of Internal Affairs to prioritize its caseload.</p>	<p>Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>recent State Personnel Board decisions that called into question their ability to extend the statute of limitations, as well as discrepancies in the administrative reports. Under the circumstances, the bureau found that the hiring authority’s decision was reasonable.</p>
<p><u>Case No. 05-084 (Central Region)</u> During the latter part of 2003 and throughout 2004, it was alleged that a warden used the institutional state</p>	<p>The Bureau of Independent Review verified the applicable statute of limitations and the request for investigation, suggested an</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes.</p>	<p>The bureau determined that the report was timely and comprehensive.</p> <p>Because the warden’s intent was not</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>discount to buy food for employee recognition luncheons, children's day festivities, and various wardens' meetings by coding these purchases as "inmate" food on state requisition forms. An improper loan of state funds was also alleged because state funds were not reimbursed until some time after food service had been provided.</p>	<p>investigative strategy to the case agent, and reviewed the final report. The bureau urged regional administration to issue a statewide memorandum prohibiting institutional misuse of state funds/purchasing power to furnish incentives to staff.</p>	<p>Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>to take state funds, the bureau and the Office of Internal Affairs concluded that criminal charges were not warranted. Although the bureau concurred that the subject had no wrongful intent and discipline levied should therefore be proportionate, its recommendation for training has been ignored.</p> <p>The bureau suggested investigative strategy to the case agent and also encouraged regional administration to issue a statewide memorandum and facilitate training across institutions on misuse of state funds/purchasing power to furnish incentives to staff.</p>
<p><u>Case No. 05-085 (Central Region)</u> During 2004, it was alleged that an inmate performed sexually explicit dances for a subject-employee in exchange for contraband.</p>	<p>The Bureau of Independent Review began to monitor this case after the statute of limitations had expired. The bureau reviewed the final investigative report and consulted with the hiring authority.</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The Office of Internal Affairs did not refer the case to the district attorney's office because of insufficient evidence, a decision in which the bureau concurred. The administrative reports were delivered to the institution one week before the statute of limitations was to expire. The bureau found the report to be thorough but not timely. The hiring authority did not sustain the charges due to lack of witness credibility. The bureau concurred with this assessment because the complaining witness was found to be deceptive under a computerized voice stress analysis and failed to fully provide the information requested.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-086 (Central Region)</u> On March 9, 2004, it was alleged that an officer had intentionally or negligently allowed inmates out of their cells, which resulted in a fight. No serious injuries resulted.</p>	<p>The Bureau of Independent Review reviewed reports and interviews of the investigation. It also consulted with the agent assigned, the employee relations officer, and the hiring authority. Along with the Office of Internal Affairs, the bureau recommended that the institution take additional action to repair any cell doors that were malfunctioning due to mechanical errors. The bureau also alerted the employee relations officer about the pressing need to expedite the case to avoid expiration of the statute of limitations.</p> <p>The bureau contacted the hiring authority early on in the case to ensure that the statute of limitations deadline was met. While the case was pending, the State Personnel Board finalized decisions on rules governing the statute of limitations in cases involving both criminal and administrative Office of Internal Affairs investigations. As a result of the effect on this case and other similarly affected cases, the bureau assisted in additional statewide training of employee relations officers.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? Yes.</p> <p>Was a settlement reached? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Quality of the disciplinary process: Inadequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>The district attorney's office declined to file criminal charges. The administrative investigation was completed before the bureau's involvement. The bureau became involved primarily to alert the employee relations officer to the time-sensitive nature of the case because of statute of limitations issues, particularly given recent State Personnel Board decisions. The employee relations officer did not file the adverse action—which sought a ten-day suspension because of the employee's negligence—in a timely manner. An ensuing <i>Skelly</i> hearing upheld the ten-day suspension. The subject filed an appeal; given the recent State Personnel Board decisions, however, the staff attorney did not pursue the case because the statute of limitations had expired. The bureau agreed that this position was reasonable.</p>
<p><u>Case No. 05-087 (Central Region)</u> On May 12, 2004, it was alleged that correctional officers had opened doors improperly, failing to follow proper safety procedures and permitting rival inmates the opportunity to fight. This</p>	<p>The Bureau of Independent Review reviewed information from previous cases to determine whether a pattern existed with the control officer. The bureau monitored the internal affairs investigation and consulted with the</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes, with</p>	<p>The floor officer originally had a 10-day suspension without pay imposed, but after <i>Skelly</i> hearing it was reduced to 3 days. That discipline was appealed. The control booth officer originally had discipline imposed of</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>was the first such complaint against the floor officer and the third time the control booth officer had been involved in this type of incident. Previous incidents in which inmates were improperly released from cells and subsequently fought occurred on March 12, 2003 and August 20, 2003. The control officer received employee counseling records for both incidents. The investigation determined that there is a problem in the unit with bar-box malfunctions, but procedures were in place to avoid the problem.</p>	<p>assigned agent. He completed his investigation on February 28, 2005. The bureau contacted the staff attorney and employee relations officer, advised them of a possible statute of limitations problem, and was told that the department believed sufficient time was tolled and that they would prevail on appeal to the State Personnel Board. The bureau met and consulted with the staff attorney and the hiring authority regarding discipline and the eventual outcome.</p> <p>The bureau attempted to advise the department of the pending statute problem, but at the time, the case law was not final and the employee law unit for the department was still optimistic of prevailing on the issue. The bureau also identified the need for training for both the staff attorneys and employee relations officers on the issue of current law and practice regarding statute of limitations issues. Training has now commenced.</p> <p>The bureau noted the problem of not requiring hiring authorities to act in a timely fashion once completed internal affairs reports are delivered to them. As a result, new Article 22 revisions were made to provide guidelines on this issue.</p> <p>The bureau determined that one of the subjects had already received an</p>	<p>the original penalty; not with the reductions.</p> <p>Disciplinary charges: Adequate. Was the bureau consulted? Yes.</p> <p>Penalty level: Adequate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? Yes.</p> <p>Was a settlement reached? Case Dismissed Was the bureau consulted? Yes Did the bureau concur? Yes, in view of the statute violation.</p> <p>Quality of the disciplinary process: Inadequate.</p> <p>Was discipline later modified? Not Applicable.</p>	<p>15 days suspended without pay, did not request a <i>Skelly</i> hearing, but did appeal the discipline. The bureau concurred with the original proposed penalties but not the reductions. The bureau was concerned about the employee relations officer reducing penalty time without obtaining a stipulation in return. This was done in this case without consultation with the bureau. Training on basic settlement negotiation tactics is now being implemented.</p> <p>The underlying investigation was timely and thorough. The fault lies with the institution for getting the case to the Office of Internal Affairs late and then failing to act in a timely manner once the report was delivered to them.</p> <p>The institution still had two and a half months to act to avoid missing the statute date. However, the institution was still under the belief that the brief amount of time spent on examining the case for criminal action would toll the statute. As the bureau advised, that belief was erroneous.</p> <p>Administrative discipline in the form of an employee counseling record had been issued to one subject before the bureau's involvement, which would have precluded additional discipline in any event.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	<p>employee counseling record before the bureau's involvement and therefore additional discipline was unavailable.</p> <p>The bureau made recommendations relative to correcting the malfunctioning equipment and procedures in the unit in which the incident occurred. The bureau informed the employee relations officer that in the future, cases of this nature should not be settled without consultation with the bureau. It should be noted that this case arose when the bureau and its responsibilities were relatively new to many of the institutions. In any event, the bureau determined that recent State Personnel Board decisions would cause discipline in this matter to exceed the statute of limitations.</p>		<p>Nevertheless, the investigation revealed, the hiring authority found, and the bureau concurred, that the officers did not have malicious intent but instead were negligent in following procedures to avoid the incident.</p>
<p><u>Case No. 05-088 (Central Region)</u> On June 13, 2004, an off-duty correctional officer was arrested for the willful discharge of a firearm and assault with the intent to inflict great bodily injury. The incident occurred while the officer was attending a party. A fracas erupted among the guests, and witnesses alleged that the officer pulled out a handgun and fired three rounds overhead. Witnesses also alleged that, without provocation, the officer repeatedly kicked another guest in the head and chest, after which the victim lost consciousness and was transported to a nearby</p>	<p>The Bureau of Independent Review monitored the investigation.</p> <p>The bureau reviewed all the relevant reports and consulted with the officer's hiring authority, the institution's employee relations officer, and the district attorney's office.</p> <p>The bureau recommended direction for the administrative investigation and assisted the employee relations officer in expediting dismissal in light of the officer's criminal plea of guilty.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? No</p>	<p>The hiring authority imposed termination on the subject-employee. The bureau concurred in the hiring authority's decision.</p> <p>The officer's employment has since been terminated.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>medical center. The victim received treatment for a split eyelid, lacerations, and bruising.</p> <p>The district attorney's office subsequently accepted the officer's criminal plea of guilty to negligent discharge of a firearm.</p>		<p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	
<p><u>Case No. 05-089 (Central Region)</u> On June 24, 2004, an inmate who had been denied parole accused a Law Enforcement and Investigations Unit investigator of having committed perjury at the inmate's parole hearing. The investigation was initiated because a recent parolee claimed that he was repeatedly solicited by the inmate to murder the inmate's former parole agent. As a result, the investigator was assigned to assess the threat to the parole agent. The investigator testified before the Board of Prison Terms regarding his findings and the inmate was denied parole.</p>	<p>The Bureau of Independent Review began to monitor the investigation well after its inception, but assumed the responsibility because of the serious nature of the allegations.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The bureau concurred with the department's decision that there was insufficient evidence to sustain an adverse action against the investigator.</p>
<p><u>Case No. 05-090 (Northern Region)</u> On July 12, 2004, an employee allegedly provided false testimony and fraudulent documents in a State Personnel Board hearing.</p>	<p>The Bureau of Independent Review reviewed the request for investigation, the case report, and the investigative file. The bureau also discussed the disposition of the case with the employee relations officer.</p> <p>The bureau also reviewed the investigative report to determine whether all the appropriate factors were considered when the hiring</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The allegations of providing false information during a State Personnel Board hearing were not sustained because there was no evidence of falsification.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	authority closed the case.		
<p><u>Case No. 05-091 (Central Region)</u> In August 2004, an institution allegedly learned that a correctional officer was living with a former inmate who was then on probation. On March 16, 2005, investigators conducted a probation search at the residence and found illegal narcotics, drug paraphernalia, and a stolen weapon. The probationer was arrested on new felony charges. Further review of records at the institution revealed that the probationer placed 14 phone calls to her family using the subject's office phone. The correctional officer was ordered not to discuss her case with anyone pending the conclusion of the investigation, yet the officer disregarded that order and attempted to influence the investigation by contacting the outside police agency regarding the search at her home.</p>	<p>The Bureau of Independent Review verified the accuracy of the allegations and when the statute of limitations would preclude filing an administrative action. The bureau met with the assigned investigator, made investigative recommendations, and reviewed the final report and interviews by the Office of Internal Affairs. The bureau also met with the department staff attorney assigned to the case and the employee relations officer to discuss the administrative charges to be filed and the appropriate discipline to be applied.</p> <p>The bureau offered suggestions to the employee relations officer for further investigation to prove the officer's contact with the probationer.</p> <p>The bureau also facilitated the meeting between the department's staff attorney and the hiring authority to discuss the charges.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>The investigation by the Office of Internal Affairs was timely and complete. Because the probationer accepted full responsibility for the illegal items seized and the officer denied knowledge of the contraband, there was insufficient evidence to prove that the officer was involved in the illegal activity.</p> <p>Nevertheless, administrative action was taken against the officer for her willful relationship with the probationer (and former parolee) and failure to follow the order not to impede investigation.</p> <p>The administrative action against the correctional officer sought to suspend her for a period of 60 days. Following the <i>Skelly</i> hearing, the case was settled instead for a 30-day suspension. The bureau agreed that the resolution was reasonable in light of the evidence and potential defenses.</p>
<p><u>Case No. 05-092 (Southern Region)</u> On August 5, 2004, a multi-agency task force, which included parole agents assigned to the Law Enforcement Investigations Unit, was conducting a surveillance to locate a homicide suspect, who was also a parolee-at-large. When the task force members attempted to approach the</p>	<p>The Bureau of Independent Review visited the scene and met with the local law enforcement investigators who investigated in the incident. The bureau also attended the presentation to the Deadly Force Review Board.</p> <p>The bureau was concerned that the parole agents fired numerous rounds</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? No.</p>	<p>On June 3, 2005, the department's Deadly Force Review Board concluded that the department agents involved were fully in compliance with the department's use-of-force policy when they discharged their service weapons to stop what they perceived as a life-threatening attack by a parolee-at-large, who was a</p>

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<p>parolee-at-large (who had just entered his car), the parolee-at-large drove onto the pedestrian walkway fronting a strip mall toward two police officers who were on foot. Several task force officers, including two parole agents, fired at the parolee-at-large, at which time the car crashed into parked vehicles. The parolee-at-large was discovered to have been wounded by the officers and was later pronounced dead at a local hospital.</p> <p>After the shooting, a citizen in one of the strip mall businesses was discovered with a gunshot wound to the chest. Her wound was found to be non-life-threatening. A third parole agent sustained a superficial graze wound to the head. The local law enforcement agency secured the crime scene and investigated the shooting.</p>	<p>at the parolee-at-large despite the potential danger to patrons and employees of businesses in the surrounding environment. The outside agency investigation indicated that the task force bullets struck four businesses, resulting in one bystander being struck in the chest and one agent being grazed in the head by gunshot. The bureau noted that the Law Enforcement Investigations Unit presentation to the Deadly Force Review Board failed to include specific information about the rounds fired by the department agents, including where the rounds landed and whether the department agents were cognizant of the businesses nearby when they employed deadly force.</p>		<p>principal suspect in a murder investigation. On June 18, 2005, the director approved the Deadly Force Review Board finding. Based on the issues regarding the discharge of firearms where innocent citizens were at risk, the bureau disagreed that the agents' actions were "fully in compliance" with policy.</p> <p>The bureau is discussing the issues raised in this case with the department as part of a comprehensive review of the Deadly Force Review Board process and use-of-force policy.</p>
<p><u>Case No. 05-093 (Central Region)</u> On August 24, 2004, it was alleged that correctional officers participated in, witnessed without reporting, or instigated an assault on an inmate that resulted in a broken tooth. This administrative case followed a criminal investigation that produced insufficient evidence to present to the district attorney's office. Despite numerous opportunities to do so, the complaining inmate did not report the incident after it allegedly occurred. It is possible he may have broken the tooth during other documented fights</p>	<p>The Bureau of Independent Review consulted with the case agent, at which time most of the investigation had already been completed on the criminal case. The bureau reviewed reports and interviews in which all officers denied the allegations. The bureau reviewed additional information and records that could have accounted for the inmate's broken tooth, in that the inmate had been involved in other cell fights around that time. Unfortunately, the inmate's dental inventory exam upon entry to the institution, like all initial</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The investigation was completed in a timely, thorough manner. The hiring authority determined that there was insufficient evidence to warrant disciplinary action. The bureau concurred. The hiring authority will instruct health care services to rectify entry dental exams so that they reflect actual dental disposition, thereby avoiding future ambiguity.</p>

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he had with inmates.	<p>inmate dental exams, tallied only existing teeth based on root intactness. As a result, no documentation could be produced to isolate when damage was sustained. The bureau consulted with the hiring authority and employee relations officer.</p> <p>The bureau requested that the hiring authority recommend a change in dental inventory procedure and practice. The warden sent a letter on this subject to dental services.</p>		
<p><u>Case No. 05-094 (Northern Region)</u> On September 1, 2004, a correctional officer was criminally charged with indecent exposure.</p>	<p>The Bureau of Independent Review met with the employee relations officer and staff attorney to discuss the tolling of the statute of limitations.</p> <p>The bureau ensured that the investigation was completed and maintained in the correctional officer's personnel file to preclude the officer's reinstatement to the department.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? No. Did the bureau concur? Yes.</p> <p>Disciplinary charges: None. The subject resigned prior to the conclusion of the investigation/</p>	<p>The correctional officer resigned before the investigation's conclusion. The employee relations officer agreed to maintain the investigative report in the correctional officer's personnel file.</p>
<p><u>Case No. 05-095 (Central Region)</u> On September 5, 2004, a correctional officer was convicted in a criminal prosecution for violations of Penal Code sections 415 (disturbing the peace) and 148 (resisting arrest) after a domestic violence incident.</p>	<p>The Bureau of Independent Review reviewed the investigative report, the transcript of the subject-employee's interview, and underlying evidence. It also conferred with the employee relations officer and staff attorney regarding the quality of the evidence developed, appropriate administrative charges, and range of discipline. The bureau also reviewed the settlement documentation.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate.</p>	<p>Because the bureau began to monitor this case only after the investigation was completed, it did not assess the propriety of the investigation. When the hiring authority consulted with the bureau, it indicated that it would likely seek a 10 percent salary reduction for 12 months against the subject-employee. The bureau concurred but indicated that the discipline was the minimum</p>

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	<p>The bureau's role was limited in this case because of the hiring authority's failure to notify the bureau of critical events in the disciplinary process, such as service of the adverse action on the subject-employee and the <i>Skelly</i> hearing.</p>	<p>Was the bureau consulted? Yes.</p> <p>Was the case appealed? Yes.</p> <p>Was a settlement reached? Yes.</p> <p>Was the bureau consulted? No.</p> <p>Did the bureau concur? No.</p> <p>Quality of the disciplinary process: Inadequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>acceptable. The hiring authority then reduced the discipline to a 5 percent salary reduction for 12 months, a disposition that the bureau regards as inappropriately lenient.</p>
<p><u>Case No. 05-096 (Southern Region)</u> On September 10, 2004, an in-cell assault occurred at an administrative segregation unit, resulting in an inmate's death. The single suspect in the homicide was the victim's cellmate. During the course of the homicide investigation, it was discovered that upon the victim's arrival in administrative segregation, a correctional lieutenant and correctional sergeant failed to follow established administrative segregation procedures that required them to review the appropriate housing needs of inmates being placed into administrative segregation. Specifically, before housing these inmates together, they failed to review the central files of both inmates to evaluate case factors, security concerns, and disciplinary behavior to ensure their compatibility. Furthermore, they failed to interview</p>	<p>The Bureau of Independent Review recommended that the Office of Internal Affairs broaden the scope of the investigation beyond failure to complete the double-celling form. The bureau recommended that the investigation include interviews of staff members who had been in contact with the inmates during the nearly three weeks they were celled together to determine whether either had spoken about or had been spoken to regarding cellmate compatibility.</p> <p>Because the investigator disagreed with the bureau's recommendation, he interviewed only the two subjects in this case. During the interviews, it became apparent that three separate policies addressing procedures for the same double-celling inmates exist at the institution: two conflict and the third is ambiguous regarding staff responsibilities for ensuring that</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? No.</p> <p>Was the bureau consulted? Yes.</p> <p>Did the bureau concur? No.</p> <p>During the consultation, the bureau, vertical advocate, and hiring authority agreed to pursue additional investigation. However, these avenues were never pursued, and for reasons unknown to the bureau, the hiring authority ultimately determined the investigation to be sufficient.</p>	<p>The investigator maintained minimal contact with the bureau and failed to notify it of scheduled interviews. Except for the initial meeting, the investigator essentially completed the investigation without notifying the bureau of the case progress. As a result, the bureau's discussions with the investigator had been minimal when the policy conflict was discovered and the bureau had no other input until the case was completed and submitted to the hiring authority.</p> <p>The investigator interviewed only the two subjects and his interviews were inadequate. He failed to ask about training or probe the subjects' knowledge of policies and procedures.</p> <p>According to the investigator, the department's staff attorney was</p>

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<p>the inmates before housing them together and failed to complete a double-celling form, acknowledging that the review had been completed.</p>	<p>cellmates are compatible and for completing the form. As a result, the bureau recommended that the investigator determine the subjects' knowledge of and experience with the policy that they believed governed their actions and the policy that took precedence at the time of the death and whether the lieutenant's ultimate responsibility was to ensure that policies and procedures were followed. This information was not obtained in the investigation.</p> <p>When the investigations were completed, the bureau consulted with the department's staff attorney and employee relations officer, among whom the consensus was that the investigation had been insufficient and that further action was needed. Without pursuing further action or consulting the bureau, the hiring authority deemed the investigation sufficient and did not sustain the allegations.</p> <p>The department's staff attorney supported the hiring authority's decision because the policy had been routinely violated (a warning to staff is required before enforcing such policies) and, because after being celled together for a period of time, neither inmate had raised an incompatibility issue with staff. In further support of this position, the department's staff attorney cited</p>		<p>briefed throughout the case and never indicated that additional information was necessary. It appears that the investigator and department's staff attorney were in agreement regarding the scope of this investigation from its inception. The final decision not to pursue the case, however, was made in part because the investigation lacked the information the bureau originally suggested was necessary to obtain.</p>

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	several factors not found in the investigation.		
<p><u>Case No. 05-097 (Central Region)</u> On September 11, 2004, it was alleged that a correctional officer engaged in an overly familiar relationship with an inmate, trafficked in narcotics, and misused state food while assigned to a facility dining hall.</p>	<p>The Bureau of Independent Review verified the statute of limitations date after reviewing the investigation file and the completed investigation report. The bureau then consulted with the hiring authority.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p>	<p>The bureau concurred with the hiring authority's judgment that the investigation produced evidence insufficient to support allegations other than those relating to misuse of state food. The bureau concurred that a letter of instruction was the appropriate level of discipline.</p>
<p><u>Case No. 05-098 (Central Region)</u> On October 5, 2004, it was alleged that an associate warden had provided confidential information to unauthorized individuals.</p>	<p>The Bureau of Independent Review consulted with the agent assigned to the case and reviewed all case reports and interviews. The bureau consulted with the staff attorney and hiring authority regarding action on the case.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The investigation was thorough and timely. The investigation failed to reveal credible evidence of wrongdoing to sustain the allegation. The hiring authority did not sustain the allegation, a decision with which the bureau concurred.</p>
<p><u>Case No. 05-099 (Southern Region)</u> On October 8, 2004, an inmate died after significant force was applied by multiple correctional officers. Officers were bitten by the inmate during the altercation. A spit mask was placed on the inmate and the extent to which he was exposed to pepper spray before the mask was applied, and whether he was decontaminated, was in dispute.</p>	<p>Although the death in this case occurred on October 8, 2004, the department did not initiate an investigation on its own. After the Bureau of Independent Review's repeated requests, the department finally agreed to initiate an investigation on June 23, 2005. Furthermore, an investigator was not assigned until July 11, 2005. Such an unreasonable delay seriously compromised the ability of the special</p>	<p>Quality of the investigatory process: Inadequate. The nine-month delay in starting an investigation was not appropriate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? No.</p> <p>Disciplinary charges: Appropriate as to medical technical assistant. Was the bureau consulted? No.</p>	<p>The bureau and the Office of Internal Affairs disagree on whether the statute of limitations was tolled by the investigation conducted by the sheriff's department. Notwithstanding the disagreement, the Office of Internal Affairs made a commitment to complete the investigation as if there were no tolling. They are to be commended for taking this action.</p> <p>During initial interviews, the</p>

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<p>When the inmate was transported to the emergency medical clinic by a facility ambulance, the medical technical assistant drove the ambulance instead of remaining in the back of the ambulance with the inmate as required. On arrival at the emergency medical facility it was recognized that the inmate was in full cardiac arrest.</p> <p>On May 20, 2005, the coroner's office issued its autopsy report. It concluded that the cause of death was "Methamphetamine toxicity, restraint maneuvers, and other unestablished factors." The medical examiner also described his meticulous dissection of the neck and stated, "These injuries are potentially and possibly fatal injuries of the anterior neck associated with restraint asphyxia due to compression of the neck.</p> <p>A review of the written reports prepared by the officers who used force failed to provide an explanation for how neck injuries could have been inflicted.</p> <p>A written policy required a medical technical assistant to ride with the inmate while he was being transported to a medical facility. During the investigation a medical technical assistant provided repeated and detailed oral statements claiming he had ridden in the back of the</p>	<p>agent to conduct a thorough and complete investigation. Once the investigation was initiated the bureau attended interviews and recommended areas of questions and inquiry. Some of the suggestions were finally accepted in some of the medical areas of inquiry.</p>	<p>Penalty level: Appropriate as to medical technical assistant. Was the bureau consulted? No.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? Yes. Was the bureau consulted? No.</p> <p>Quality of the disciplinary process: Inadequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>questions were not sufficiently probing. The agent asked leading questions and by the questions asked could have been accused of creating defenses for the officers, or of steering the investigation toward a desired result. These and other concerns were observed and verified by the staff attorney who also attended the interviews. The bureau expressed concerns about these improper interview techniques. This case, and other cases, led the Office of Internal Affairs to conduct training in the area of interviewing techniques</p> <p>It should be noted that on the day following the interview, the agent conducted additional interviews with marked improvement, for which he is to be commended. While there is still room for more improvement, the agent demonstrated a genuine desire to improve and learn.</p> <p>During the initial discussion of this case, local Office of Internal Affairs personnel indicated that "medical" cases were not investigated by local agents and that the investigations were conducted by a specialized unit at Office of Internal Affairs headquarters. Office of Internal Affairs management has advised that medical cases are indeed investigated by local agents. Clarification therefore needs to be provided to local Office of Internal Affairs offices.</p>

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<p>ambulance with the inmate to the medical facility and had performed life-saving procedures during that time. The oral statements contradicted the written reports that were submitted immediately after the incident. The medical technical assistant was terminated for making untruthful statements during the investigation.</p>			<p>The department failed to notify the bureau when a <i>Skelly</i> hearing was to be held and as a consequence the <i>Skelly</i> hearing was held without the bureau's presence. At the <i>Skelly</i> hearing, the hiring authority and the medical technical assistant entered into a settlement agreement, whereby the medical technical assistant's disciplinary action was reduced from termination to a letter of reprimand.</p> <p>Once it was learned that the department had failed to provide notice to the bureau in the <i>Skelly</i> process and had failed to involve the bureau in the agreement that reduced the termination to a letter of reprimand, the bureau brought the failures to comply with Article 22 to the attention of the department and the federal court.</p> <p>The bureau strongly disagrees with the hiring authority's decision to reduce the disciplinary action in this case from dismissal to a letter of reprimand. This action was inexplicable and completely disregarded the court-approved disciplinary matrix.</p>
<p><u>Case No. 05-100 (Southern Region)</u> On October 15, 2004, a parole agent was involved in a shooting while attempting to arrest two parolees-at-large.</p>	<p>The Bureau of Independent Review conducted an initial case conference with the internal affairs investigator. A local law enforcement agency conducted an investigation of the</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes.</p>	<p>The bureau received a copy of the Deadly Force Review Board's finding that the agent was fully in compliance with the department's use-of-force policy. The recommendation was</p>

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	<p>parolees' acts, but did not investigate the agent's conduct, nor did the department investigate the agent's actions. Instead, the Office of Internal Affairs submitted the local law enforcement agency's report to the district attorney's office for prosecutorial review. The bureau attended the Deadly Force Review Board presentation.</p>	<p>Did the bureau concur? Yes.</p>	<p>approved by the department director on June 13, 2005. The bureau concurred in this decision.</p>
<p><u>Case No. 05-101 (Southern Region)</u> On October 28, 2004, a ward filed a grievance alleging that a youth correctional officer had verbally abused him and used excessive force while restraining him, twisting his fingers and jamming his arm behind his back. As a result, the ward sustained a fracture of his right hand. It was also alleged the youth correctional officer failed to report the use of force.</p>	<p>The Bureau of Independent Review met with the investigator to establish an investigative plan. The bureau attended numerous interviews throughout the investigation and discussed the final report with the investigator. Nevertheless, the investigation was not completed and delivered to the hiring authority until just before the one-year statute of limitations was to expire.</p> <p>The hiring authority was unaware of both the correct calculation for the one-year statute of limitations and the imminence of that date. The bureau informed the hiring authority of the actual statute date. The bureau also provided the hiring authority with the most recent version of the disciplinary matrix.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? No.</p> <p>Was the case appealed? No.</p> <p>Quality of the disciplinary process: Adequate, but only because of the level of intervention by the bureau.</p>	<p>The hiring authority consulted with the bureau about the allegations, but not about the level of discipline to be imposed.</p> <p>The hiring authority sustained the allegations regarding the youth correctional officer's failure to report the use of force but did not sustain the allegations of excessive use of force. The bureau agreed with this assessment.</p> <p>The youth correctional officer received a 5 percent pay decrease for three pay periods. After the initial consultation with the hiring authority, the department failed to maintain contact with the bureau concerning the level of discipline, the adverse action, or the <i>Skelly</i> hearing. The case was closed without further bureau input.</p>
<p><u>Case No. 05-102 (Central Region)</u> On November 3, 2004, a correctional officer allegedly assaulted a fellow</p>	<p>The Bureau of Independent Review ensured the accuracy of the allegations and the determination of</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The administrative investigation was timely and comprehensive. The hiring authority issued a letter of instruction</p>

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<p>officer by touching the other officer's hair, describing it as "greasy," voicing a racial slur about Hispanics having greasy hair, and smacking his head.</p>	<p>the statute of limitations date. The bureau monitored the investigation, reviewed the final Office of Internal Affairs report, and met with the staff attorney, hiring authority, and employee relations officer to discuss the appropriate charges and range of penalties. The bureau met with the hiring authority and staff attorney to discuss the appropriate charges and penalty.</p> <p>The victim later stated that he regretted having reported the incident and no longer wanted to pursue the matter. Nevertheless, the bureau recommended that the department take appropriate steps to prevent future occurrences and establish that racial slurs will not be tolerated.</p>	<p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>to the subject. Given both the subject's remorse and the victim's desire to drop the case, the bureau concurred that this penalty was reasonable.</p>
<p><u>Case No. 05-103 (Northern Region)</u> On November 9, 2004, it was alleged that a correctional officer was involved in selling tobacco and drugs to inmates.</p>	<p>The Bureau of Independent Review reviewed the investigation request and discussed investigative strategy with the Office of Internal Affairs special agent. The inmate-witness was no longer incarcerated at the institution and was consequently unavailable to participate in the investigation. The bureau reviewed both the final administrative and criminal reports and agreed with the analysis.</p>	<p>Quality of the investigation: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: None. The subject-employee resigned prior to the issuance of an adverse action.</p>	<p>The investigation was timely and thorough. The case relied heavily on inmate statements and testimony. The Office of Internal Affairs special agent unsuccessfully attempted to gain additional information through other means. The correctional officer resigned before an adverse action was issued.</p>
<p><u>Case No. 05-104 (Northern Region)</u> On November 17, 2004, an inmate was discovered hanging from a rafter in an institution. A correctional</p>	<p>The Bureau of Independent Review examined the investigative interviews conducted by the Office of Internal Affairs and the actions of the hiring</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes.</p>	<p>The correctional officer received a Letter of Instruction and was required to complete additional training on procedures related to inmate death</p>

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<p>officer failed to immediately summon medical assistance, as required by institutional protocol, and did not initiate life saving measures established by the operations manual. In addition, it was alleged that a sergeant and a lieutenant failed to provide the correctional officer with clear direction or instruction to cut the inmate down and attempt resuscitation.</p>	<p>authority.</p>	<p>Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? No.</p> <p>Penalty level: Appropriate. Was the bureau consulted? No.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? No. Was the bureau consulted? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>and medical procedures.</p> <p>Allegations against the sergeant and lieutenant were also sustained and they received additional training on procedures related to inmate death and medical procedures.</p>
<p><u>Case No. 05-105 (Central Region)</u> On November 18, 2004, a sergeant allegedly committed gross negligence in failing to ensure inmate safety. Inmates alleged that a suicide victim had informed the subject that she was suicidal, but that the subject ignored her and told her to stop lying or receive a rules violation. The inmate subsequently hanged herself by a noose in her cell.</p>	<p>The Bureau of Independent Review reviewed the internal affairs reports and monitored the investigation. The bureau also attended the subject interview. The bureau met with the case agent, employee relations officer, and staff attorney to discuss the case against the subject.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The investigation was thorough and timely. The hiring authority found that charges against the subject could not be sustained based on insufficient evidence. The bureau concurred with this assessment, but recommended that the department review the medical standard of care.</p>
<p><u>Case No. 05-106 (Northern Region)</u> On November 30, 2004, an inmate was the victim of a vicious stabbing by another inmate on a main exercise yard, necessitating the use of deadly force by a correctional officer. In an</p>	<p>The Bureau of Independent Review responded to the institution within an hour of the stabbing and shooting. The bureau monitored the investigation from the initial stage and reviewed the video tapes of the</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>No allegation was sustained and no action was taken in this case. The bureau concurred with the decision that the use of deadly force was within department policy and that no misconduct was involved by the</p>

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<p>attempt to stop the assault and protect the life of the fleeing victim-inmate, an officer fired one .223 warning round from his state-issued Mini 14 rifle into the grass at the base of his tower. The warning shot did not stop the assault in progress and the officer fired one additional .223 round at the aggressor's upper torso as he chased the victim-inmate with a stabbing instrument in his hand. Another officer, observing the assault from across the yard, simultaneously fired a department-issued non-lethal 40-mm launcher at the aggressor, but it is unknown whether the round struck the aggressor.</p> <p>The aggressor sustained a lethal gunshot wound to his right rib area. Medical staff immediately started emergency CPR on the inmate, but at approximately 12:04 p.m., he was pronounced dead by a department physician.</p> <p>The victim sustained one stab wound to the right side of the neck and two stab wounds to the right side of the chest. The inmate was transported to a local trauma center for further medical evaluation and treatment. He eventually recovered from his wounds and was returned to the facility.</p>	<p>incident, the request for investigation, and the case files. The bureau attended the witness and subject interviews, reviewed the reports, and consulted with the hiring authority.</p>	<p>Disciplinary charges: Not applicable. Was the bureau consulted? Yes.</p>	<p>officer.</p>
<p><u>Case No. 05-107 (Southern Region)</u> On December 20, 2004, two parole agents shot and killed an armed</p>	<p>The Bureau of Independent Review conducted an initial case conference with the internal affairs case agent.</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The bureau received a copy of the Deadly Force Review Board recommendation that the agent was</p>

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<p>parolee-at-large while trying to arrest him. This incident was investigated by an outside law enforcement agency, as well as by the department.</p>	<p>The local law enforcement agency submitted the local law enforcement agency report to the district attorney's office for prosecutorial review and to the department for review by the Deadly Force Review Board. The bureau attended the Deadly Force Review Board presentation.</p>	<p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>fully in compliance with the department's use-of-force policy. The recommendation was approved by the department director on June 13, 2005. The bureau concurred in this decision.</p>
<p><u>Case No. 05-108 (Northern Region)</u> On December 22, 2004, it was alleged that a sergeant had used unnecessary force that was likely to injure an inmate. Specifically, after requesting the inmate to submit to handcuffing, he forced the inmate to the ground despite the fact that the inmate had his hands behind his back. The inmate sustained injuries to his neck and knees.</p>	<p>The Bureau of Independent Review reviewed all preliminary evidence and met with the Office of Internal Affairs special agent to discuss the investigative plan and interview strategies. The bureau reviewed the final report and also met with the staff attorney, chief deputy warden, and employee relations officer to discuss the investigation. These discussions culminated in the decision that while the correctional officer's conduct did not warrant disciplinary measures, it called for further training on the importance of handcuffing inmates before counseling them in an open environment.</p>	<p>Quality of the investigation: Adequate.</p> <p>Were any allegations sustained? No.</p>	<p>The investigation was complete and addressed critical proactive measures to avoid the use of force. No charges were sustained against the subject. The bureau concurred with this finding. The bureau assisted in facilitating discussions on possible policy changes for officers using handcuffs before counseling in open environments within the institution. The chief deputy warden agreed that additional staff training in this area is needed and will follow up on this need.</p>
<p><u>Case No. 05-109 (Northern Region)</u> On December 24, 2004, a correctional sergeant relayed to an associate warden a conversation wherein another correctional sergeant allegedly admitted to kicking an inmate in the head. At the time he was kicked, the inmate was handcuffed, subdued, and lying prone on the floor.</p> <p>The subject sergeant claimed that the</p>	<p>The Bureau of Independent Review examined the request for investigation, case file, case reports, and notes. The bureau also discussed case strategy and case perspective with the Office of Internal Affairs agent. After the case ruling, the bureau discussed lessons learned with the investigator.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The hiring authority determined that there was insufficient evidence to sustain any allegation and no action was taken. The bureau concurred with this decision.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>inmate was shouting to other inmates and he kicked him to quiet him down.</p>			
<p><u>Case No. 05-110 (Southern Region)</u> On December 25, 2004, it was alleged that an inmate stepped out of his cell and told a correctional officer that he wanted to commit suicide. The inmate then voluntarily took a prone position on the walkway in front of the cells. Numerous inmate witnesses reported that the correctional officer grabbed the prone inmate by the ankles and dragged him down the tier toward his cell with an additional correctional officer assisting. It was further alleged that the inmate was thrown into his cell and then kicked by one of the officers. The officers allegedly then failed to obtain assistance for the inmate despite the suicidal ideation. Shortly after being returned to his cell, the inmate slashed his arm and subsequently required sutures. The officers were charged with failing to report the use of force and engaging in an intentional code of silence to cover up the incident. After receiving medical attention the inmate was placed on suicide watch and was subsequently discharged from custody as scheduled.</p> <p>One of the three subjects admitted in his interview that he had used inappropriate force on the inmate when he dragged him down the tier by his ankles. The same subject</p>	<p>The special agent and the Bureau of Independent Review staff attorney met concerning the matter to discuss the statute of limitations and the investigative plan and to review certain relevant records. The bureau indicated an interest in attending interviews of the subjects, but this did not occur because the agent to whom this matter was assigned failed to provide advance notice of when any of the interviews were to be held, with the exception of one follow-up interview.</p> <p>Once it was determined that the agent to whom this matter was assigned had failed to follow the monitoring plan, that failure and the need to comply with the monitoring in the future were brought to his attention, and to the attention of his supervisors.</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? No.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? No.</p> <p>Penalty level: Appropriate. Was the bureau consulted? No.</p> <p>Was the case appealed? Yes, as to two subjects.</p> <p>Was a settlement reached? Yes, as to one subject. Was the bureau consulted? No.</p> <p>Quality of the disciplinary process: Inadequate. The original penalty level was later reduced without bureau consultation.</p> <p>Was discipline later modified? Unknown.</p>	<p>The three correctional officers were all served notices of termination and the bureau will continue to monitor the terminations as they proceed through the appeals process.</p> <p>The agent to whom this matter was assigned did not conduct a timely investigation despite numerous reminders by the bureau. No real substantive work was performed in the case by the special agent from March 24, 3005 until August 16, 2005, at which time the special agent learned that the inmate had been granted parole and was classified as a parolee-at-large.</p> <p>Once the report was finally completed, it was discovered that there were significant differences between the proposed report and what was actually said by witnesses in some of the statements that had been obtained initially. None of the discrepancies pointed out by the bureau were resolved or corrected in the final report.</p> <p>Finally, the bureau was not consulted by the hiring authority or staff attorney regarding the investigative findings and penalties, nor was the bureau provided with the notices of adverse action or of the <i>Skelly</i></p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>admitted he failed to properly respond to the inmate's statements that he wanted to commit suicide. The subject also admitted that the three officers had failed to properly report the use of force.</p>			<p>hearings.</p> <p>Originally, all three of the subjects were served notices that terminated their employment. The termination of one officer was reduced from termination to a 60-day suspension without pay as a result of the <i>Skelly</i> hearing. The bureau was not consulted about this reduction in penalty, nor were the required forms completed in this case, in violation of the department operations manual, Article 22.</p>
<p><u>Case No. 05-111 (Central Region)</u> On January 15, 2005, a correctional officer is alleged to have engaged in an overly familiar relationship with an inmate. The officer reportedly admitted to unauthorized communication with the inmate.</p>	<p>The Bureau of Independent Review monitored the investigation and consulted with the assigned agent, staff attorney, and hiring authority. The bureau also monitored the related criminal investigation.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Adequate. Was the bureau consulted? Yes.</p> <p>Penalty level: Adequate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No. Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate. The subject-employee resigned pending termination.</p>	<p>The officer resigned, pending the adverse action. Based on its review, the bureau determined that the Office of Internal Affairs investigation was both timely and thorough.</p> <p>The bureau ensured that the investigation was completed and maintained in the correctional officer's personnel file to preclude the officer's reinstatement to the department.</p> <p>The bureau also assisted in forwarding the case for review to the district attorney's office and subsequently monitored the related criminal case, which resulted in a conviction.</p>
<p><u>Case No. 05-112 (Northern Region)</u> On February 14, 2005, the</p>	<p>The Bureau of Independent Review reviewed the investigative reports and</p>	<p>Quality of the investigatory process: Adequate.</p>	<p>The clinical psychologist refused to be interviewed for the investigation,</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>investigative services unit interviewed Inmate 1, who reportedly had information regarding two staff members who were allegedly involved in overly familiar relationships with inmates.</p> <p>During a follow-up interview with the inmate, he admitted to having an overly familiar relationship with a correctional officer. Inmate 1 also claimed that a clinical psychologist was involved in an overly familiar relationship with Inmate 2. Inmate 1 indicated that he believed that Inmate 2 was involved in a sexual relationship with the clinical psychologist. Inmate 2 was paroled in January 2005.</p> <p>During questioning, the correctional officer admitted having engaged in a sexual relationship with Inmate 1 and corroborated that the clinical psychologist was also involved in an overly familiar relationship with Inmate 2.</p>	<p>interviews.</p>	<p>Were any allegations sustained? Yes. Was the bureau consulted? No. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Not applicable. The subject-employee resigned.</p>	<p>submitted a letter of resignation dated February 2005, and agreed not to seek further employment with the department. The investigation was completed in March 2005. The allegations against the clinical psychologist were sustained.</p> <p>The correctional officer cooperated with the investigation, admitted the misconduct, submitted a letter of resignation dated February 2005, and agreed not to seek further employment with the department. The investigation was completed in March 2005. The allegations were sustained.</p> <p>The bureau concurred with both findings in the case.</p>
<p><u>Case No. 05-113 (Northern Region)</u> On February 26, 2005, an associate warden was involved in a non-injury vehicle accident. He attempted to flee the scene but his vehicle became trapped in a ditch. When contacted by law enforcement officers, he was uncooperative and refused to submit to alcohol testing. He eventually</p>	<p>The Bureau of Independent Review reviewed the request for investigation, case reports, and case file. The bureau also spoke with the employee relations officer and institution staff regarding the final outcome.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? No.</p>	<p>The associate warden pleaded guilty to driving under the influence in criminal court.</p> <p>The associate warden's behavior was determined to be "other failure of good behavior." The discipline was mitigated to six days of suspension based on the associate warden's</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
submitted to a blood test that indicated his blood alcohol level was nearly three times the legal limit.		Penalty level: Appropriate. Was the bureau consulted? No. Was a settlement reached? Yes. Was the bureau consulted? No. Quality of the disciplinary process: Adequate. Was discipline later modified? .Yes	otherwise impressive career. Before the State Personnel Board hearing, the parties agreed to drop a sustained allegation of “intemperance” based on an understanding of administrative case law.
<u>Case No. 05-114 (Northern Region)</u> On March 1, 2005, an inmate alleged that a correctional counselor was possibly engaged in an overly familiar relationship with another inmate. It was also alleged that the correctional counselor had violated institutional security policies by providing the second inmate with confidential departmental documents relating to inmate classification issues. The inmate-complainant also alleged that the correctional counselor altered classification chronologies, modifying specific case factor issues outside the purview of the classification committee chair person. He believed that second inmate could use these documents to retaliate against other staff members.	The Bureau of Independent Review reviewed the request for investigation, reviewed the investigative report, and conferred with the investigator to discuss strategies and explore possible avenues for obtaining additional evidence.	Quality of the investigatory process: Adequate. Were any allegations sustained? No. Was the bureau consulted? No. Did the bureau concur? Yes.	The investigation was timely and complete. The report revealed insufficient and contradictory evidence regarding the allegations. Moreover, the alterations on the unit classification committee forms appeared to be legitimate. The correctional counselor retired in March 2005 before completion of the investigation.
<u>Case No. 05-115 (Central Region)</u> On March 2, 2005, a correctional officer was arrested for spousal abuse, assault with intent to commit great bodily injury, and mayhem. The	The bureau became involved after the administrative investigation was completed when it corroborated the accuracy of the statute of limitations date and the request for investigation.	Quality of the investigatory process: Adequate. Were any allegations sustained? Yes. Was the bureau consulted? Yes.	The <i>Skelly</i> hearing was held and the case was closed without further action. Given the poor quality of the victim’s testimony at the preliminary hearing, the bureau concurs with the

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<p>subject allegedly broke through his estranged wife's apartment door to confront her and her boyfriend. A fight ensued between the subject and the boyfriend, resulting in injuries to the boyfriend.</p>	<p>The bureau met with the staff attorney and hiring authority to discuss the appropriate charges and penalty.</p>	<p>Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Not Applicable. Was the bureau consulted? Yes</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>determination to take no action.</p>
<p><u>Case No. #05-116 (Central Region)</u> On March 2, 2005, a correctional officer was charged with burglary by the local sheriff's department.</p>	<p>The Bureau of Independent Review reviewed all criminal reports and consulted with the district attorney's office and the arresting agency.</p> <p>The bureau facilitated communication among the Office of Internal Affairs agent, district attorney's office, and arresting agency. The bureau was instrumental in having law enforcement's follow-up investigation resubmitted to the district attorney's office.</p> <p>The bureau discussed the case with the Office of Internal Affairs and reviewed all interviews and reports in the administrative investigation. The bureau also consulted with the hiring authority and employee relations</p>	<p>Quality of Investigation: Adequate.</p> <p>Any allegations sustained? Not applicable, because the subject resigned before the hiring authority received the final report.</p>	<p>The Office of Internal Affairs investigation was timely and thorough. The subject-officer resigned pending adverse action and his personnel file was so noted.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
	officer.		
<p><u>Case No. 05-117 (Central Region)</u> On March 10, 2005, a correctional officer allegedly requested a female inmate's contact information before she was paroled. Following her release from the institution, he contacted the former inmate. She subsequently resided with him at his hotel room and borrowed his car. She was arrested for driving while under the influence of alcohol, driving on a suspended license, and running a red light.</p>	<p>The Bureau of Independent Review monitored the Office of Internal Affairs investigation and met with the assigned agent to suggest investigative strategy. The bureau reviewed police reports relative to the use of the subject's vehicle, as well as final reports from the Office of Internal Affairs.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Not Applicable. The subject-employee resigned.</p>	<p>The Office of Internal Affairs investigation was timely and complete. Although the inmate denied any sexual activity with the officer, the officer resigned before the administrative investigation was concluded.</p> <p>The bureau ensured that the officer's employment file reflected that resignation was tendered pending the investigation.</p>
<p><u>Case No. 05-118 (Northern Region)</u> On March 19, 2005, a correctional officer gave an inmate a confidential document concerning the housing status of another inmate and stated to the first inmate that the second inmate "needed to be taken care of" (or words to that effect), thereby conspiring with the first inmate to have the second inmate assaulted. Allegedly, four additional correctional officers participated in the conspiracy to have the inmate-victim assaulted.</p>	<p>The Bureau of Independent worked with the investigator and reviewed interviews, reports, and the files.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? No.</p> <p>Penalty level: Appropriate. Was the bureau consulted? No. Was the case appealed? Yes.</p> <p>Was a settlement reached? No. Was the bureau consulted? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>The investigation was thorough and timely. The allegations were sustained against the correctional officer accused of releasing confidential information. The correctional officer was terminated from the department. No allegations against the remaining four officers were sustained.</p>

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<p><u>Case No. 05-119 (Central Region)</u> On April 4, 2005, a correctional officer was arrested for suspected domestic violence.</p>	<p>The Bureau of Independent Review reviewed the police reports from the criminal case and consulted with the Office of Internal Affairs agent assigned to the administrative case. The bureau also consulted with the district attorney's office and arresting agency, discussed investigative strategies with the internal affairs agent, and reviewed the final Office of Internal Affairs report. The bureau also consulted with the warden and employee relations officer on proposed action.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The Office of Internal Affairs investigation was thorough and timely. The district attorney's office ultimately declined to file criminal charges. The administrative investigation revealed serious credibility problems with the complaining party. The officer involved was fully cooperative in both investigations. The hiring authority did not sustain the administrative allegations, a decision with which the bureau concurred.</p>
<p><u>Case No. 05-120 (Southern Region)</u> On April 6, 2005, while searching an inmate before admitting him into the clinic, a medical technical assistant detected a possible weapon in the inmate's waistband and attempted to control him. The inmate struck the medical technical assistant in the head and body. A registered nurse came to the medical technical assistant's aid as the fight spilled out of the clinic and onto the yard. The observation officer witnessed the fight, sounded the alarm, and dropped chemical agents. The inmate ward off the staff members and crawled into the clinic. The first responding staff member was a captain, who controlled the inmate. The captain alleged that the medical technical assistant came into the clinic and kicked the inmate in the chest. The</p>	<p>The Bureau of Independent Review held its initial case conference with the Office of Internal Affairs and the staff attorney to discuss the issues in the case. The Office of Internal Affairs discovered that the captain had submitted an initial version of his incident report and was also allowed to submit a second, more lengthy and more detailed incident report. The Office of Internal Affairs also discovered that the captain's internal affairs interview statement was not consistent with the information contained in the reports and with what witnesses said they heard the captain say on the day of the incident. Furthermore, the captain's statements contradicted the warden's statement reporting what the captain had told the warden on April 6, 2005.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The bureau met with the hiring authority for the sergeant and officer on June 20, 2005 and with the hiring authority for the medical technical assistant on June 23, 2005. The bureau concluded that the internal affairs investigation did not support sustaining charges against the staff members, largely because of the inconsistencies in the captain's statements.</p> <p>The hiring authority exonerated both the sergeant and the officer. The bureau disagreed with this disposition. The hiring authority did not sustain the allegations against the medical technical assistant. The bureau disagreed with this disposition.</p> <p>The bureau discussed with the Office</p>

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<p>captain also alleged that a sergeant and correctional officer, who escorted the inmate to the program office, used excessive force on the inmate. The captain reported his observations to the warden. Based largely on the captain's observations, the warden placed the medical technical assistant, the sergeant, and the officer on administrative time off . The union reacted strongly to this decision because it had been made before staff members completed their reports.</p>			<p>of Internal Affairs and the hiring authority whether the captain's inconsistent statements warranted investigation. The bureau was unable to obtain a commitment from the department that the matter warranted a request for investigation.</p>
<p><u>Case No. 05-121 (Southern Region)</u> On April 26, 2005, a correctional officer was allegedly seen exiting a room from which an odor of marijuana was detected. A sergeant reported the incident to the watch commander, who did not relieve the officer for nearly four hours. The correctional officer was eventually taken to a facility for a urine sample. The correctional officer allegedly provided a false sample that was not saved. He later provided a valid sample that tested positive for marijuana.</p>	<p>The Bureau of Independent Review requested and reviewed information concerning the lack of evidence preservation, the failure to relieve the correctional officer, the initial sobriety tests, and the obtaining of a urine sample rather than a blood sample.</p> <p>The bureau reviewed the institution's overall response to the situation and met with the institution to ensure that procedures are in place to appropriately respond to such incidents in the future.</p>	<p>Quality of the investigatory process: Inadequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No. Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate as to the officer terminated.</p> <p>Was discipline later modified? Unknown.</p>	<p>The correctional officer's employment was terminated and he waived any appeal. The bureau concurred with this outcome.</p>
<p><u>Case No. 05-122 (Northern Region)</u> On April 30, 2005, a correctional</p>	<p>The Bureau of Independent Review received and reviewed the request for</p>	<p>Quality of the investigatory process: Adequate, although it would have</p>	<p>Further training and instruction was provided. The bureau concurred with</p>

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<p>sergeant failed to notify the duty lieutenant of a use-of-force incident. The sergeant allegedly did not initiate the required use-of-force reporting procedures and instructed a correctional officer who was involved to prepare a report concealing the use-of-force incident.</p>	<p>investigation and the case summary. The bureau also conferred with a lieutenant about the sergeant's disciplinary action and questioned the decision by the Office of Internal Affairs not to investigate. The lieutenant stated that the hiring authority understood the department's decision not to investigate the matter, in short because it was the opinion of the Office of Internal Affairs that the sergeant's instructions to the correctional officer simply resulted in the use of an incorrect form and was not an attempt to conceal the matter.</p>	<p>been preferable to have tested the veracity of the explanation through interviews and investigation.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>this outcome.</p>
<p><u>Case No. 05-123 (Central Region)</u> On May 22, 2005, a correctional officer was arrested by the California Highway Patrol for violation of Penal Code section 192(3), vehicular manslaughter, and Vehicle Code section 23153(a), felony driving under the influence. The district attorney's office filed the case. The subject-employee pleaded guilty on August 4, 2005 to Vehicle Code section 23153(a), plus multiple victim enhancements, plus Penal Code section 192c(3), for a prison exposure of five years, eight months.</p>	<p>The Bureau of Independent Review obtained and reviewed the underlying police reports. The bureau monitored the administrative investigation, maintained contact with the assigned investigator, contacted the district attorney's office for information, and advised the Office of Internal Affairs of the criminal case progress. The bureau contacted the institution to verify that the resignation was noted in the subject-employee's personnel file with adverse action pending.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p> <p>Disciplinary charges: Not Applicable. The subject-employee resigned.</p>	<p>The Office of Internal Affairs investigation was timely and complete. The subject pleaded guilty in the criminal case and was ultimately sentenced to two years and four months in prison for vehicular manslaughter. The subject-employee resigned from employment.</p>
<p><u>Case No. 05-124 (Central Region)</u> On May 31, 2005, a local police department arrested a correctional officer for spousal abuse. Before the bureau's involvement, he pleaded guilty to misdemeanor battery against</p>	<p>The bureau met with the assigned investigator about investigative strategy and reviewed police reports and the final report from the Office of Internal Affairs. The bureau also met with the employee relations officer</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>Because the subject pleaded guilty to misdemeanor battery against a spouse, a firearm restriction was imposed by the court, prohibiting his employment as a peace officer.</p>

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<p>a spouse, in violation of Penal Code section 243(e).</p>	<p>and staff attorney to move the case expeditiously toward the officer's dismissal because of the subject's firearm restriction resulting from his criminal plea.</p> <p>The bureau suggested investigative strategy, contacted the staff attorney, and recommended that the hiring authority expeditiously terminate the subject in light of his firearm restriction.</p>	<p>Disciplinary charges: Appropriate. Was the bureau consulted? Yes.</p> <p>Penalty level: Appropriate. Was the bureau consulted? Yes.</p> <p>Was the case appealed? No.</p> <p>Was a settlement reached? No.</p> <p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? Unknown.</p>	<p>The bureau found the investigation to be timely and complete. When the bureau alerted the department to the subject's firearm restriction, the department terminated the subject's employment.</p>
<p><u>Case No. 05-125 (Northern Region)</u> On June 9, 2005, a correctional officer discovered a psychologist and an inmate engaged in a sexual act.</p>	<p>The Bureau of Independent Review examined the request for investigation and case file. The bureau also met with the investigative agent regarding case strategy in light of the subject-psychologist's refusal to be interviewed. The bureau reviewed and concurred with the final criminal and administrative reports.</p> <p>The bureau consulted with the case agent, investigative services unit, employee relations officer, and hiring authority.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? No. Did the bureau concur? Not Applicable.</p>	<p>The investigation was timely and thorough. The psychologist submitted her resignation through her attorney.</p>
<p><u>Case No. 05-126 (Central Region)</u> On June 23, 2005, it was alleged that a correctional officer traded tobacco and other contraband with inmates in exchange for sexual favors. The same subject was later allegedly discovered</p>	<p>The Bureau of Independent Review monitored the investigation, met with the agent assigned and the hiring authority, and reviewed reports and interviews. The bureau alerted the department to potential problems with</p>	<p>Quality of the investigatory process: Inadequate</p> <p>Were any allegations sustained? No. The subject-employee resigned.</p>	<p>The administrative investigation into the allegations of smuggling contraband in exchange for sexual acts was timely and complete.</p> <p>Relative to the subsequent incident</p>

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<p>in a sexually compromising situation with a female inmate. The inmate alleged reciprocal acts of oral copulation.</p>	<p>the statute of limitations deadline.</p>		<p>involving alleged sexual acts, the bureau was compelled to repeatedly encourage the investigative agent to finish the investigation in a timely manner and to schedule a subject interview.</p> <p>The Office of Internal Affairs did not recognize the need to prioritize the administrative investigation relative to the second incident because it determined that charges were not likely to be sustained by the hiring authority. The bureau believed that this decision lay with the hiring authority and, moreover, that the investigations needed to be completed in a timely manner. At the bureau's urging, the agent established an interview for the subject, who resigned on the day of the interview. The bureau confirmed that the employment file reflected that his resignation had been tendered pending an investigation.</p>
<p><u>Case No. 05-127 (Northern Region)</u> On July 4, 2005, an off-duty correctional officer was involved in a single vehicle accident when he crashed his vehicle into a drainage ditch. The responding officer observed that the correctional officer had red eyes and blurred speech. The correctional officer originally denied he had consumed alcohol but later admitted to having had one drink. The</p>	<p>The Bureau of Independent Review reviewed the request for investigation and case summary. The case was referred back to the institution for direct action. The bureau met with the employee relations officer and chief deputy warden to discuss adverse action. Based on the department matrix, the correctional officer was issued an adverse action calling for a 10 percent reduction in salary for 12</p>	<p>Quality of the investigation: Adequate.</p> <p>Were any allegations sustained? Yes.</p> <p>Disciplinary charges: Appropriate.</p> <p>Penalty level imposed: Appropriate.</p> <p>Was the case appealed? No.</p>	<p>The correctional officer received a 10 percent reduction in salary for 12 months. The bureau concurs with this action.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>correctional officer was arrested with a blood alcohol level of .33 percent and reported his arrest to the institution on July 8, 2005.</p>	<p>months. The action went into effect on November 30, 2005, and the employee did not file an appeal with the State Personnel Board.</p>	<p>Quality of the disciplinary process: Adequate.</p> <p>Was discipline later modified? No.</p>	
<p><u>Case No. 05-128 (Northern Region)</u> On July 8, 2005, a sergeant reported that an inmate alleged he was approached by a correctional officer who told him to remain silent regarding an investigation involving two other correctional officers.</p>	<p>The Bureau of Independent Review reviewed the request for investigation, case files, and reports. The bureau also discussed the case with the employee relations officer and hiring authority at the institution's monthly case meeting.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>The hiring authority did not sustain any allegation and no action was take against the correctional officer.</p>
<p><u>Case No. 05-129 (Northern Region)</u> On or about July 28, 2005, it was alleged that a non-custody supervisor was engaged in over familiarity and other misconduct with two inmates. It was also alleged that the supervisor brought drugs into the institution.</p>	<p>The Bureau of Independent Review reviewed the request for investigation and case summary, discussed the investigative strategy with the Office of Internal Affairs special agent, and met with the chief deputy warden, employee relations officer, and staff attorney.</p>	<p>Quality of the investigation: Adequate.</p> <p>Were any allegations sustained? Yes.</p> <p>Disciplinary charges: Not Applicable. Employee resigned prior to the conclusion of the investigation.</p>	<p>The bureau encouraged the Office of Internal Affairs to complete the investigation and forward it to the hiring authority for the supervisor personnel file, should she attempt to reinstate with the department after her resignation.</p>
<p><u>Case No. 05-130 (Central Region)</u> On July 29, 2005, a correctional officer claimed to have been battered by an inmate. The inmate was taken to a sergeant's office. The sergeant allegedly removed the handcuffs from the inmate without first ascertaining why the inmate had been cuffed. Both that sergeant and another sergeant allegedly learned about the battery but did not submit reports. The inmate claimed that he was forced to kneel and apologize to the correctional officer.</p>	<p>The Bureau of Independent Review was briefed on this case before its submission to central intake and reviewed the incident package and the inmate's grievance.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? No. Was the bureau consulted? Yes. Did the bureau concur? Yes.</p>	<p>Because of the unique features of this case, it was determined that the warden could not be involved, which caused a significant delay. Given the nature of the investigation conducted, the bureau concurred that a letter of instruction was the appropriate discipline; however, no such letter could be issued due to the expiration of the applicable time limit.</p> <p>The hiring authority elected to treat the allegations as supervisory issues. All subjects received on-the-job training relative to reportable incidents.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-131 (Southern Region)</u> On August 1, 2005, an inmate summoned officers, indicating that his cellmate was having difficulty breathing. Officers took the cellmate to the housing unit medical clinic, where he began to vomit and had a seizure. When he stopped breathing and staff failed to locate his pulse, CPR was initiated. After the cellmate was transferred to the institution infirmary, paramedics arrived. He was pronounced dead that evening. The inmate had visible bruises on his body.</p> <p>When interviewed the night of the death, the inmate who summoned the officers informed staff that he and his cellmate had played “punching games” with each other. At the autopsy two days later, the coroner told staff about trauma to the cellmate’s body which was not apparent from the bruising.</p> <p>The medical technical assistant who examined the inmate suspected of homicide on the night of the death did not record any injuries on the form for medical report of injury/unusual occurrence.</p> <p>According to reports submitted by other responding staff, however, the inmate was taken for examination because he had visible injuries. Also,</p>	<p>The institution informed the Bureau of Independent Review of the cellmate’s death on the night it occurred and indicated that there was no evidence of foul play. It was not until the institution’s staff called the bureau about the autopsy results that the bureau was informed of the interview with the inmate who had summoned the officers and the fact that he and the cellmate had engaged in “punching games.”</p> <p>It also appears that the sheriff’s department was not called until several days after the incident, even though the incident involved potential criminal charges, which would later be referred to the district attorney’s office.</p> <p>Had the bureau known the night of the cellmate’s death about the “punching games,” it would likely have responded to the institution immediately and suggested that the sheriff’s department also be notified immediately.</p> <p>The bureau contacted the chief medical officer at the institution, communicating the bureau’s concerns with the medical issues and recommending that he review the file.</p> <p>The bureau pursued the discrepancies between the medical technical</p>	<p>Quality of the investigatory process: Inadequate, as to the actions of the medical technical assistant.</p> <p>Were any allegations sustained? Yes. Was the bureau consulted? No. Did the bureau concur? Insufficient information.</p> <p>Quality of the disciplinary process: Inadequate.</p> <p>Because the situation was not investigated, it is unclear whether the level of discipline, an employee counseling record, was appropriate or inappropriate in this case.</p>	<p>The bureau learned that the chief medical officer approved discipline for the medical technical assistant but without properly reviewing the incident package or completely understanding the facts of the case. Because discipline was imposed without a thorough case review, the bureau referred the case to the regional health care administrator.</p> <p>The bureau was since informed that the hiring authority determined the case should be handled as a supervisory and training issue. The bureau will continue to monitor this matter and will update the case when appropriate.</p>

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p>later that night, staff members took photos of the injuries. The incident reports reflect that when the incident commander noted the discrepancy between the responding staff's reports and the medical report, a second medical report was requested.</p>	<p>assistant's report and the reports submitted by other responding staff. When the institution failed to adequately address those issues, the bureau referred the case to the regional health care administrator. Throughout the case, the chief medical officer at the institution failed to maintain contact with the bureau or follow up with additional information when it was requested.</p>		

SUMMARY OF ADMINISTRATIVE INCIDENT	BUREAU ACTION	BUREAU ASSESSMENT	CONCLUSIONS & NOTES
<p><u>Case No. 05-132 (Northern Region)</u> On August 31, 2005, a ward covered his cell window in violation of safety protocols. Upon entry, the ward was found with a sheet around his neck. He was declared dead at the scene.</p> <p>The ward was identified as a Northern Hispanic gang member and, at the time, all Northern Hispanic gang members were placed on administrative lock-down following several ward assaults on staff.</p>	<p>The bureau recommended that the facility implement a streamlined procedure for entering cells to reduce the likelihood of a recurrence.</p> <p>The Office of the Inspector General's Bureau of Audits and Investigations issued a special review in this case.</p>	<p>Quality of the investigatory process: Adequate.</p> <p>Were any allegations sustained? Case pending.</p>	<p>At the time of the ward's suicide, staff members perceived themselves to be "under siege" by Northern Hispanic gang members, which led to their reliance on a security detail to intervene whenever one of these wards became disruptive. In devising ways to enhance staff safety, however, staff response time to serious situations became significantly compromised.</p> <p>The facility has instituted a new policy addressing the issue of wards covering their windows that calls for an immediate staff response to determine a ward's condition.</p>

SPECIAL REVIEWS

The Bureau of Independent Review will sometimes determine that a special review into a particular subject or incident warrants more comprehensive treatment than would ordinarily be reflected in a semi-annual report. The *Special Review into the Shooting of Inmate Daniel Provencio on January 16, 2005 at Wasco State Prison*, published in June 2005, and the review conducted jointly by the Bureau of Audits and Investigations and the Bureau of Independent Review, *Special Review into the Death of Correctional Officer Manuel A. Gonzalez, Jr. on January 10, 2005 at the California Institution for Men*, published in March 2005, are two examples. The full text of all special reviews can be viewed on the Office of the Inspector General's website at www.oig.ca.gov.

- **Update on the Special Review into the Shooting of Inmate Daniel Provencio on January 16, 2005 at Wasco State Prison**

In June 2005, the bureau conducted a special review into the circumstances surrounding the death of inmate Daniel Provencio at Wasco State Prison. On January 16, 2005, after an inmate fight erupted during the evening meal, Provencio was struck in the head by a direct-impact sponge projectile from a 40-mm launcher fired by a correctional officer. Provencio lapsed into a coma and died on March 4, 2005. The bureau became involved immediately following the incident to ensure the timeliness, thoroughness, and objectivity of investigations conducted by several entities, as well as to identify possible systemic policy or training deficiencies, procedural violations, or other factors that may have contributed to Provencio's death.

In the special review, the bureau issued six specific recommendations to address the findings. In response, the department provided a corrective action plan designed to address the recommendations. The corrective action plan had been substantially implemented as of this report's publication. The only major recommendation that has not been fully resolved relates to defining the roles and responsibilities of each departmental investigative entity designated to participate in use-of-force investigations.

APPENDIX A: SENATE BILL No. 1400 (2004)

An act to add Section 6133 to the Penal Code, relating to corrections.

[APPROVED BY GOVERNOR SEPTEMBER 24, 2004.
FILED WITH SECRETARY OF STATE SEPTEMBER 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, Romero. Corrections: Internal Affairs.

Existing law provides for the administration of a system of state prisons under the Department of Corrections within the Youth and Adult Correctional Agency. Existing law establishes the office of the Inspector General, who is responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections and related state offices, as specified. Existing statutory and case law provides for some of the procedures by which public employees may be disciplined. Existing law limits the release of certain types of information relating to public employment, including special provisions that protect against the release of information concerning complaints against peace officers, including correctional officers in state prisons.

This bill would establish the Bureau of Independent Review within the Office of the Inspector General to provide public oversight of investigations conducted by the Department of Corrections and the Department of the Youth Authority, and to issue reports, as specified, to the Governor and the Legislature.

The people of the State of California do enact as follows:

SECTION 1. Section 6133 is added to the Penal Code, to read:

(a) There is created within the Office of the Inspector General a Bureau of Independent Review (BIR), which shall be subject to the direction of the Inspector General.

(b) The BIR shall be responsible for contemporaneous public oversight of the Youth and Adult Correctional Agency investigations conducted by the Department of Corrections' Office of Investigative Services and by Internal Affairs for the Department of the Youth Authority. The BIR shall also be responsible for advising the public regarding the adequacy of each investigation, and whether discipline of the subject of the investigation is warranted. The BIR shall have discretion to provide public oversight of other Youth and Adult Correctional Agency personnel investigations as needed.

(c) (1) The BIR shall issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of Youth and Adult Correctional Agency allegations of internal misconduct and use of force. The BIR shall also issue regular reports, no less than semiannually, summarizing its oversight of Office of Investigative Services and Internal Affairs investigations pursuant to subdivision (b). The reports shall include, but not be limited to, the following:

- (A) Data on the number, type and disposition of complaints made against correctional officers and staff.
- (B) A synopsis of each matter reviewed by the BIR.
- (C) An assessment of the quality of the investigation, the appropriateness of any disciplinary charges, the BIR's recommendations regarding the disposition in the case and when founded, the level of discipline afforded, and the degree to which the agency's authorities agreed with the BIR recommendations regarding disposition and level of discipline.
- (D) The report of any settlement and whether the BIR concurred with the settlement.
- (E) The extent to which any discipline was modified after imposition.

(2) The reports shall be in a form which does not identify the agency employees involved in the alleged misconduct.

(3) The reports shall be posted on the Inspector General's Web site and otherwise made available to the public upon their release to the Governor and Legislature.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATIONS MANUAL, SECTION 3, ARTICLE 22, EMPLOYEE DISCIPLINE

33030.1 Policy

All disciplinary action shall be imposed in a fair, objective, and impartial manner, and the California Department of Corrections and Rehabilitation (Department) shall consistently apply accepted principles of due process and progressive discipline when corrective or adverse action is imposed.

33030.2 Purpose

To ensure effective and efficient departmental operations and employee adherence to reasonable and acceptable rules of conduct and performance.

33030.3 Employee Performance Standards

33030.3.1 Code of Conduct

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Appreciate differences in people, their ideas, and opinions;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;
- Respect the rights of others and treat them fairly regardless of race, color, national origin, ancestry, gender, religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation;
- Comply with all applicable laws and regulations;
- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.

33030.3.2 General Qualifications

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), title 2, section 172, General Qualifications, which states, in pertinent part, the following:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

33030.3.3 Law Enforcement Code of Ethics

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.

I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, organizational associations or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

Confidential information received in my official capacity shall remain undisclosed unless disclosure is necessary in the performance of my duty. I will never engage in acts of corruption, bribery, insubordination or the obstruction of justice, nor will I condone such acts by other peace officers. I will immediately report acts of misconduct by staff of my department and cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession... law enforcement.

33030.4 Definitions

Adverse Action - A documented action, which is punitive in nature and is intended to correct misconduct or poor performance or which terminates employment.

Affected Employee - An individual who is the subject of adverse action.

Appointing Power - The Secretary of the Department.

Assistant General Counsel (AGC) - An individual responsible for managing the Employment Advocacy and Prosecution Team (EAPT) in the Department's Office of Legal Affairs.

Bureau of Independent Review (BIR) – A unit within the Office of the Inspector General responsible for contemporaneous public oversight of the Department’s investigative and disciplinary processes. .

Charging Package (Also known as the “Skelly package”) – All documentation used to substantiate the charges in the action and which is presented to the employee with the Preliminary or Final Notice of Adverse Action. This material may include but is not limited to the following: the investigative report; applicable policies, procedures, and Government Code sections; records of training the employee has attended; job descriptions; and duty statements and/or post orders that are related to the charges. This package does not include the CDCR Form 402, Hiring Authority Review of Investigation, and CDCR Form 403, Justification of Penalty.

Chief Assistant Inspector General (CAIG) – An individual responsible for the operation and functions of the BIR.

Corrective Action - A documented non-adverse action (verbal counseling, in-service training, on-the-job training, written counseling, or a letter of instruction) taken by a supervisor to assist an employee in improving his/her work performance, behavior, or conduct.

Designated Cases – Those cases assigned to the Vertical Advocates, including matters involving staff integrity and/or dishonesty, abuse of authority, sexual misconduct, use of force in which an inmate suffers death or serious injury, use of deadly force, serious allegations made against supervisors, and high profile or dismissal cases assigned to the Vertical Advocate by the AGC.

Employee Counseling Record - A written record of counseling, documented on a CDC Form 1123, between a supervisor and subordinate which provides formal instruction about laws, rules, policies and employer expectations.

Employee Relations Officer (ERO)/Disciplinary Officer – An employee designated by the Hiring Authority to coordinate adverse actions.

Employment Advocacy and Prosecution Team (EAPT) - The team, formerly known as the Employment Law Unit, responsible for operation of the Vertical Advocacy Model in the Department’s Office of Legal Affairs.

Executive Review – A secondary, management-level review conducted to resolve a significant disagreement(s) regarding an investigative finding, proposed disciplinary penalty, or settlement agreement.

Hiring Authority – The Undersecretary or General Counsel or any Chief Deputy Secretary, Executive Officer, Chief Information Officer, Assistant Secretary, Director, Deputy Director, Associate Director, Warden, Superintendent, Health Care Manager, Regional Health Care Administrator, or Regional Parole Administrator authorized by the appointing power to hire, discipline, and dismiss staff under his/her signature authority. The Administrator at the Richard A. McGee Correctional Training Center shall serve as the Hiring Authority for Correctional Officer Cadets. The appointing power is a hiring authority, for purposes of this Article.

In-Service Training (IST) - Formal training conducted departmentally and/or at the direction of the Hiring Authority and usually conducted away from the employee’s work site.

Letter of Instruction (LOI) - A written document, which outlines requirements for an employee to advance his/her job performance or conduct to an acceptable level.

Notice of Adverse Action - Notification to the affected employee of the charges against him/her, the adverse action penalty, and the effective date.

Office of Internal Affairs (OIA) - The entity within the Department with authority to investigate allegations of employee misconduct.

On the Job Training (OJT) - Training conducted by a supervisor (or a designated employee with the required expertise under the direction of a supervisor) at the job site while the employee is working.

Preliminary Notice of Adverse Action – Notification required of some Hiring Authorities in accordance with the Bodiford Settlement Agreement, to an affected employee regarding charges against him/her and the intent to impose adverse action. This notification summarizes the specific subsections of the Government Code that have been violated, as well as the actions that constituted the violation. For Hiring Authorities mandated to serve a Preliminary Notice of Adverse Action, the charging package shall also be served with this notice.

Senior and Special Assistant Inspectors General (SAIG) – Attorneys employed by the BIR who report to the CAIG.

Skelly Hearing - An informal proceeding in which the employee, together with his or her representative, is provided a predeprivation opportunity to respond to management regarding the charges in the Notice of Adverse Action. The employee may present any arguments for amending a pending adverse action before the action becomes effective. *Skelly* Hearings are required at the request of the affected employee for the following: adverse actions; rejections during probation; non-punitive actions resulting in the employee's dismissal or demotion; and transfers for purposes of punishment and/or in conjunction with an adverse action.

Skelly Letter – A document transmitted to an affected employee, following the *Skelly* Hearing, stating the Hiring Authority's final decision regarding the imposition of a disciplinary penalty.

Skelly Officer - A noninvolved manager, usually at the level of a Correctional Administrator, who will make a recommendation to the Hiring Authority after a *Skelly* Hearing to amend, modify, withdraw, or sustain the pending adverse action. The *Skelly* Officer must be a management employee above the organizational level of the disciplined employee's supervisor unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond. Unless the affected employee waives his/her right to have a noninvolved manager serve as the *Skelly* Officer, the *Skelly* Officer shall not be the person who completed the CDCR Form 989, Internal Affairs Investigation Request; who signed the employee's Notice of Adverse Action; or who participated in the decision to take adverse action.

Summary of Adverse Action – A summary compiled by the ERO/Disciplinary Officer of allegations of misconduct, from the evidence contained in an investigative report and other documents.

Vertical Advocacy Model – A system that ensures legal representation for the Department during the entire investigative and employee disciplinary process in order to hold staff accountable for misconduct by way of thorough and complete internal investigations, principled decision-making and assessment of the investigations, and consistent and appropriate discipline.

Vertical Advocate – An EAPT attorney assigned to one or more specific Hiring Authority locations to consult with the investigators and Hiring Authorities concerning investigative findings, disciplinary decisions, and to prosecute designated cases.

33030.5 Responsibility

33030.5.1 Appointing Power

The appointing power shall ensure implementation and compliance with the Department's employee discipline policy and programs.

33030.5.2 Hiring Authority

Each Hiring Authority shall be responsible for the following:

- Taking adverse action whenever warranted by an employee's behavior/conduct;
- Ensuring adverse actions are imposed in a fair, objective, and impartial manner and are consistent with this policy, the principles of just cause, and due process;
- Submitting CDCR Forms 989 to the OIA including those cases in which direct adverse action is taken without an investigation;
- Reviewing investigative reports, determining investigative findings, and completing CDCR Form 402;
- Determining and justifying appropriate penalty level for employee misconduct by utilizing the Employee Disciplinary Matrix and completing the CDCR Form 403;
- Executing and causing the Notice of Adverse Action to be served on employees;
- Consulting with the Vertical Advocate, for designated cases, and the SAIG for cases the BIR is monitoring, regarding sufficiency of investigations and appropriateness of penalty;
- Consulting with the Vertical Advocate, for designated cases, and the SAIG for cases the BIR is monitoring, before agreeing to any modification, stipulation, or withdrawal affecting the proposed action and before approving any settlement agreement;
- Participating in Executive Review, as necessary, and forwarding material, as appropriate, for Executive Review;
- Informing the Vertical Advocate, for designated cases, and the SAIG, for cases the BIR is monitoring, of any new case developments.

Each Chief Deputy Secretary, shall be responsible for the following:

- Participating in Executive Review, as necessary;
- Coordinating with the CAIG and the AGC on matters referred for Executive Review;
- Elevating high-profile cases to the Secretary and Undersecretary, as necessary.

The Chief Information Officer and General Counsel and each Assistant Secretary, Executive Officer, Director, Deputy Director, and Associate Director, shall be responsible for the following:

- Facilitating and participating in Executive Review, as necessary;
- Coordinating with the CAIG and the AGC on matters referred for Executive Review;
- Coordinating with and informing the appropriate Chief Deputy Secretary, Undersecretary, or Secretary regarding high-profile cases being monitored by the BIR

and especially for cases where there is significant disagreement regarding a penalty level and/or settlement agreement;

- Approving requests for Administrative Time Off (ATO);
- Elevating cases to the appropriate Chief Deputy Secretary, Undersecretary, and Secretary, as necessary.

33030.5.3 Supervisors and Managers

Each supervisor and manager shall be responsible for the following:

- Supervising the performance, behavior, and conduct of subordinate staff and imposing corrective action as necessary;
- Filing documentation related to corrective action in the employee's supervisory file;
- Reviewing the employee's supervisory file for documentation of any corrective actions for similar misconduct occurring within one (1) year, prior to the imposition of corrective or adverse action;
- Referring alleged misconduct and requests for investigation or adverse action to the Hiring Authority immediately following discovery of facts which may constitute misconduct;
- Serving as a *Skelly* Officer, as necessary.

33030.5.4 ERO/Disciplinary Officer

The ERO/Disciplinary Officer shall be responsible for the following:

- Monitoring and coordinating the adverse action processes;
- Drafting Notices of Adverse Action, in consultation with the Vertical Advocate for all non-designated cases;
- Arranging for proper service and review of adverse action documentation;
- Providing a copy of the declaration of service and serving all adverse actions to affected employees;
- Assisting the Vertical Advocates in hearing preparation for designated cases , including service of subpoenas on witnesses;
- Scheduling and attending *Skelly* Hearings and assisting the *Skelly* Officer with administrative duties as requested;
- Representing the Hiring Authority in all non-designated cases and supporting the Vertical Advocate in all designated cases before the State Personnel Board (SPB);
- Coordinating with the Hiring Authority, Vertical Advocate, SPB representatives, affected employees and employee representatives, and other individuals and entities as appropriate;
- Maintaining an accurate log of all formal discipline served and providing copies of the log and all documents relevant to pending actions quarterly to the Office of Personnel Services Employee Discipline Unit;
- Maintaining an accurate log of all contacts by employees at the worksites (for which the ERO/Disciplinary Officer is responsible) regarding contacts about potential testimony and subpoenas the employee has received;

- Retaining adverse action documentation, including CDCR Forms 403, in the Adverse Action File.

33030.5.5 Vertical Advocate

The Vertical Advocate shall be responsible for the following:

- Monitoring and coordinating the adverse action process for all designated cases, from the onset of an investigation;
- Calculating statute of limitations expiration dates;
- Consulting with and advising the Hiring Authority and ERO/Disciplinary Officer on all cases, as requested by the Hiring Authority;
- Providing legal consultation for all designated cases to the assigned investigator, including developing the investigative plan, preparation of investigative interviews and attending investigative interviews as appropriate to assess witness demeanor and credibility;
- Providing legal consultation to the Hiring Authority on all designated cases and coordinating with the SAIG, for cases the BIR is monitoring, regarding application of the Disciplinary Matrix to determine the appropriate penalty;
- Drafting Notices of Adverse Action (in consultation with the ERO/Disciplinary Officer and the SAIG) for all designated cases;
- Participating in Executive Review, as necessary;
- Attending *Skelly* Hearings for all designated cases;
- Representing the Department for designated cases in disciplinary matters before the SPB;
- Drafting settlement agreements for all designated cases;
- Assisting the Hiring Authority and ERO/Disciplinary Officer in drafting settlement agreements and reviewing the form and substance of each proposed settlement agreement drafted by the Hiring Authority and/or the ERO/Disciplinary Officer, prior to the Hiring Authority entering into any settlement;
- Coordinating with the SAIG, for cases the BIR is monitoring, at each step of the investigative and disciplinary process;
- Coordinating with the Hiring Authority, SPB representatives, and other individuals and entities as appropriate;
- Maintaining accurate records of assignments and documenting in the legal database all communications with the Hiring Authority and SAIG regarding disciplinary penalties; the *Skelly* Hearing; the *Skelly* Officer's recommendation; the outcome of Executive Review; settlement agreements; SPB Hearings; and any appellate proceedings;
- Documenting in the legal page of the CMS all communications with the investigator Hiring Authority, and SAIG regarding investigative reports and investigative findings.

33030.5.6 Office of Personnel Services, Human Resources

Personnel Services staff and/or local personnel staff shall be responsible for the following:

- Processing adverse actions as indicated by the Hiring Authority on the Notice of Adverse Action;
- Filing and retaining Final Notices of Adverse Action in employee official personnel files for three (3) years unless the retention period is reduced by the Hiring Authority after the *Skelly* Hearing or otherwise agreed to by stipulated settlement.

Office of Personnel Services, Employee Discipline Unit, staff shall be responsible for the following:

- Collecting and maintaining the official departmental copies of all adverse action documents separate and apart from those held in the Official Personnel files;
- Maintaining statistical information and generating reports on adverse actions using the Case Management System;
- Drafting adverse actions and representing the Department before the SPB for nondesignated cases emanating from the Headquarters Offices and Divisions, Juvenile Justice Divisions, and all Parole Regional Offices.

33030.6 Managerial Employees

Supervisors or managers appointed after January 1, 1984, as a designated managerial employee, but who are not in a career executive category, are subject to the provisions in Government Code section 3513 et seq. (Ralph C. Dills Act). The managerial employee may be disciplined for any cause except for a cause constituting prohibited discrimination as found in Government Code sections 19700 through 19703.

33030.7 Peace Officer Procedural Bill of Rights

All employees designated by the Penal Code as peace officers, both probationary and permanent, are fully guaranteed their Peace Officer Procedural Bill of Rights (Government Code sections 3300 through 3311) during any adverse action procedure, including related interviews and investigations.

33030.8 Causes for Corrective Action

Not all inappropriate behavior will require the imposition of disciplinary action. In some cases, corrective action and documentation may be more appropriate and must generally be issued within thirty (30) calendar days of discovering inappropriate behavior or poor performance. [For use of force incidents, Letters of Instruction must generally be issued within thirty (30) days from when the Institution Executive Review Committee concludes its review of the incident.] The purpose of corrective action is to help an employee change problem behavior or performance before discipline is necessary and may be imposed for any employee conduct or performance that is correctable by means of counseling and/or training (up to and including a Letter of Instruction). Corrective action may precede adverse action or an adverse action penalty may include corrective action. For peace officers covered by the Bargaining Unit 6 Agreement, behaviors that resulted in corrective action may not be used as cause for adverse action but may be cited in an adverse action for subsequent violations to prove the employee knew about a

statute, regulation, or procedure or to prove that the employee has engaged in a pattern of violating a statute, regulation, or procedure within the past year. Corrective actions may also be used to rebut the employee's claim that he/she did not know about a statute, regulation, or procedure and/or expectation.

33030.8.1 Types of Corrective Action

33030.8.1.1 In-Service Training (IST)

When IST is ordered, the supervisor or manager shall complete section one of the memorandum form "Order for Formal IST or Documentation of OJT." Orders for IST shall direct the employee to report to the IST Training Manager, Assistant IST Training Manager, or other departmental training officer for completion of specific IST by a specified date. When formal training is ordered, the employee is responsible to report to the appropriate Training Manager and complete the training prior to the due date set for the completion of the training. Orders for formal IST and completed IST documentation shall be filed in the employee's supervisory file.

33030.8.1.2 On the Job Training (OJT)

When OJT is ordered, the supervisor shall complete section two of the memorandum form "Order for Formal IST or Documentation of OJT" and shall complete the CDC Form 844, In-Service Training Sign-In Sheet. The employee shall be given the opportunity to sign the CDC Form 844 to indicate his or her participation in discussion and acknowledge receiving and understanding the training provided. Orders for OJT and completed OJT documentation shall be filed in the employee's supervisory file.

33030.8.1.3 Employee Counseling Record

The supervisor or manager shall meet with the employee and discuss his or her conduct or performance level and complete a CDC Form 1123, Employee Counseling Record. In the Action Plan section of the CDC Form 1123, the supervisor or manager shall indicate any training the supervisor or manager has provided to the employee or indicate training directed to the employee to attend, specifying the training the employee is required to complete and the length of time the employee is allowed to complete the training. The employee shall be given the opportunity to sign for a copy of the CDC Form 1123. Follow-up discussions with employees who receive a CDC Form 1123 shall occur and shall be documented and placed in the employee's supervisory file. The CDC Form 1123 shall be filed in the employee's supervisory file.

33030.8.1.4 Letters of Instruction

An LOI may not deprive employees of pay or benefits (e.g., removal from a position, loss of differential pay). The LOI shall be prepared on a memorandum and shall (1) state the expected performance standards to be met; (2) provide a plan to meet expected performance; and (3) indicate time frames to meet the expectation. The memorandum shall be as follows:

- Entitled "Letter of Instruction;"
- Clearly addressed to employee;
- Clearly state the nature and circumstances of the problem;
- Cite previous discussions with employee;

- Include an explanation of why the employee's conduct is considered inappropriate, and what conduct would have been appropriate;
- Clearly state exactly what standards of performance are expected from the employee;
- Include results of face-to-face discussion;
- Develop a plan and set a date, not to exceed one year, by which the employee is to meet the expected performance.

The LOI shall be signed by the supervisor and presented to the employee for his/her signature. A copy of the signed LOI shall be provided to the employee. The Hiring Authority shall sign the space "Approved for Placement in Personnel File." A copy of the LOI shall be forwarded to the ERO/Disciplinary Officer and to the local personnel office for placement in the employee's official personnel file and the employee's supervisory file.

Follow-up discussions with employees who receive an LOI shall occur and be documented and filed in the employee's supervisory file. [See *Otto v. Los Angeles Unified School District* (2001) 89 Cal. App. 4th 985]

33030.8.2 Initiating Corrective Action

The responsible supervisor/manager shall review the employee's supervisory file for documentation of any prior corrective actions for similar misconduct occurring within the past one (1) year. The one-year period runs from the date of issuance of the corrective action (e.g., LOI). Corrective actions that are beyond the one-year period shall not be considered in this review. If prior corrective actions exist, supervisors/managers shall review each corrective action to determine if referral for adverse action is more appropriate than issuance of another corrective action.

33030.8.3 Documentation Retention

- Orders for and documentation regarding completion of OJT and IST and CDC Forms 1123 shall be retained in the employee supervisory file for one (1) year from date of issuance.
- LOIs shall be retained in the employee's personnel and supervisory files for one (1) year from the time management should reasonably have known of the incident resulting in the LOI or once all of the requirements in the LOI have been met, whichever is earlier.
- The Hiring Authority may set forth certain conditions of performance to be completed by the employee for a specified period of time prior to consideration of the early removal of the document.
- If an employee submits a rebuttal to an LOI, the rebuttal shall be retained with the LOI in the employee's personnel file or the supervisory file.

33030.9 Causes for Adverse Action

Pursuant to Government Code section 19572, each of the following constitutes cause for discipline of an employee, or of a person whose name appears on any employment list:

- (a) Fraud in securing appointment.
- (b) Incompetency.

- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality.
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.
- (p) Misuse of state property.
- (q) Violation of this part or of a board rule.
- (r) Violation of the prohibitions set forth in accordance with section 19990.
- (s) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.
- (t) Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
- (v) The use during duty hours, for training or target practice, of any material that is not authorized for that use by the appointing power.
- (w) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of section 12940, as those bases are defined in sections 12926 and 12926.1, except as otherwise provided in section 12940, against the public or other employees while acting in the capacity of a state employee.
- (x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job.

33030.10 Employee Representation Rights

Employees with permanent or probationary status (regardless of time base) are entitled to representation at all stages of the adverse action process. This representation may be provided by the exclusive representative (union) for rank-and-file employees. For all non-represented employees, a personal advisor, attorney, or another state employee may attend the interview that may lead to adverse action. This is appropriate during *Skelly* or appeal hearings related to the

adverse action. Employees who are possible subjects or witnesses in the investigation are excluded as employee representatives.

33030.10.1 Temporary Authorization (TAU) Appointments

Employees with TAU appointment status are not necessarily entitled to have a representative present during an interview which is preparatory to a separation from the TAU appointment. However, if a proposed action against an employee in this status is attributable to a specific incident that would have resulted in an adverse action, investigatory interviews shall be handled like adverse action cases and employee representation shall be allowed.

33030.10.2 State Time

Use of state time is restricted and shall be approved by the affected employee's supervisor.

- Absent an emergency, employees may request and shall be allowed reasonable state time by the supervisor to contact/secure a representative and to discuss the matter prior to any meeting/interview regarding an adverse action.
- The employee shall also be allowed reasonable state time to prepare for the interview/meeting with the representative.
- Job stewards shall be allowed reasonable time for the purpose of representing employees during working hours without loss of compensation. No other employee representative shall be allowed to confer with employees on state time.

33030.11 EAPT Processing of Cases

The AGC, or designee, shall assign designated cases to a Vertical Advocate immediately following the case being accepted for investigation by Central Intake. The AGC shall document the case assignment in the Case Management System (CMS) and the ProLaw Database (legal database). Following assignment by the AGC, the Vertical Advocate shall be responsible for the continual update of the CMS legal page until transfer of the investigation to the Hiring Authority. Upon transfer of the investigation to the Hiring Authority, the Vertical Advocate shall ensure that the case is entered into the legal database and shall be responsible for continual update in that database until closure of the case. The legal database shall cross-reference the investigation number in order to track the case through the CMS and the legal database.

As soon as operationally feasible, but no later than twenty-one (21) calendar days after the assignment of a case, the Vertical Advocate shall contact the assigned investigator for designated cases and the assigned SAIG, for cases the BIR is monitoring, to discuss the elements of a thorough investigation of the alleged misconduct. All contacts with the assigned investigator and the SAIG shall be documented by the Vertical Advocate on the CMS legal page or in the legal database.

33030.12 Statute of Limitations

As soon as operationally possible, but no later than twenty-one (21) calendar days following assignment of a case, the Vertical Advocate shall confirm in the CMS the date of the reported incident, the date of discovery, the statute of limitations expiration date, and any exceptions to

the statute of limitations known at that time. The Vertical Advocate shall consult with the assigned investigator and the SAIG, for cases being monitored by the BIR, if the deadline for filing the adverse action should be modified. The factors to consider in making an assessment of timeliness are as follows:

33030.12.1 Peace Officers

According to Government Code section 3304 (d), the following applies:

Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the oneyear time period.*
- (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.*
- (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.*
- (4) If the investigation involves more than one employee and requires a reasonable extension.*
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.*
- (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.*
- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.*
- (8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.*

Government Code section 3304 (g) states the following:

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

- (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.*
- (2) One of the following conditions exist:*

(A) *The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.*

(B) *The evidence resulted from the public safety officer's predisciplinary response or procedure.*

33030.12.2 Non-Peace Officer Employees

According to Government Code section 19635, the following applies:

No adverse action shall be valid against any state employee for any cause for discipline based on any civil service law of this state, unless notice of the adverse action is served within three years after the cause for discipline, upon which the notice is based, first arose. Adverse action based on fraud, embezzlement, or the falsification of records shall be valid, if notice of the adverse action is served within three years after the discovery of the fraud, embezzlement, or falsification.

33030.13 Investigation Review

Upon completion of the investigative report for designated cases, the investigator shall provide a copy of the investigative report and all supporting documentation to the Vertical Advocate, for designated cases, and the SAIG, for cases monitored by the BIR, for review. As soon as operationally possible, but no more than twenty-one (21) calendar days following receipt of the investigative report, the Vertical Advocate shall review the investigative report and supporting documentation and provide feedback to the assigned investigator. This feedback shall address the thoroughness and clarity of the report, shall provide recommendations regarding any Peace Officer Bill of Rights or union contract issues, and shall recommend additional investigation that may be necessary to complete the investigative report. The Vertical Advocate shall provide a written confirmation of these discussions (i.e. memorandum or e-mail) to the investigator, with a copy to the Hiring Authority and SAIG. The investigator shall forward a copy of the written confirmation of these discussions to his/her OIA case supervisor. The Vertical Advocate shall document all related communications in the legal page of the CMS.

Following completion of the review process above, the investigator shall provide the investigative report to the Hiring Authority. As soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the final investigative report, the Hiring Authority shall review the investigative report and supporting documentation. The Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when reviewing the investigation and making investigative findings. The following shall be considered:

- Whether the investigation is sufficient;
- Whether the allegation(s) in the investigation are founded or not;
- Whether corrective or disciplinary action is supported by the facts;
- If disciplinary action is supported by the facts, what penalty is appropriate within the parameters of the Disciplinary Matrix;
- What causes for discipline under Government Code section 19572 are supported by the factual findings;

- What recommendations are made by the SAIG, for cases the BIR is monitoring.

The Vertical Advocate shall document all related communications in the legal page of the CMS including, specifically, his/her recommendations to the Hiring Authority regarding the investigative findings.

For investigations that are sufficient, the Hiring Authority shall indicate the findings on CDCR Form 402 for each allegation and shall indicate whether corrective or disciplinary action shall follow. The CDCR Form 402 shall be forwarded to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall (1) record the findings in the CMS database, and either (2) initiate corrective or disciplinary action as directed by the Hiring Authority, for non-designated cases or (3) forward a copy of the CDCR Form 402 to the Vertical Advocate, for designated cases, to initiate disciplinary action. If there is significant disagreement regarding investigative findings on a designated case or a case monitored by the BIR, the CDCR Form 402 shall not be completed until Executive Review has concluded (Refer to section 33030.14 “Executive Review.”)

For investigations that are insufficient, the Hiring Authority shall document requests for additional investigation on the CDCR Form 402 and shall forward the CDCR Form 402 to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall retain the original CDCR Form 402 in the Adverse Action file and shall forward a copy of the CDCR Form 402 to the assigned investigator; the Central Intake Unit; the appropriate OIA regional office; the Vertical Advocate for designated cases; and SAIG for cases monitored by the BIR. The investigator shall provide to the Hiring Authority the requested information or complete additional investigations as soon as operationally possible.

33030.13.1 Investigative Findings

The findings of each allegation shall be determined by the Hiring Authority in consultation with the Vertical Advocate for designated cases and the SAIG for cases the BIR is monitoring. The findings and their explanations are as follows:

- **NO FINDING:** The complainant failed to disclose promised information to further the investigation; the investigation revealed that another agency was involved and the complainant has been referred to that agency; the complainant wishes to withdraw the complaint; the complainant refuses to cooperate with the investigation; or the complainant is no longer available for clarification of facts/issues.
- **NOT SUSTAINED:** The investigation failed to disclose a preponderance of evidence to prove or disprove the allegation made in the complaint.
UNFOUNDED: The investigation conclusively proved that the act(s) alleged did not occur, or the act(s) may have, or in fact, occurred but the individual employee(s) named in the complaint(s) was not involved.
- **EXONERATED:** The facts, which provided the basis for the complaint or allegation, did in fact occur; however, the investigation revealed that the actions were justified, lawful, and proper.
- **SUSTAINED:** The investigation disclosed a preponderance of evidence to prove the allegation(s) made in the complaint.

33030.13.2 Investigative Closure Memorandum

Upon conclusion of each internal affairs investigation, the ERO/Disciplinary Officer shall transmit an "Internal Affairs Investigation Closure" memorandum to each subject of an investigation. The closure memorandum shall be signed by the Hiring Authority, shall outline the findings for each specific allegation, and shall be transmitted after the Hiring Authority completes CDCR Form 402 and prior to the imposition of disciplinary action. The ERO/Disciplinary Officer shall forward the original closure memorandum to the subject of the investigation, forward copies to the Vertical Advocate for designated cases and the SAIG for cases monitored by the BIR, and shall retain a copy of the closure memorandum in the Adverse Action file.

33030.14 Executive Review

The purpose of Executive Review is to resolve significant disagreements between stakeholders about investigative findings, imposition of a penalty, or settlement agreements. Executive Review may be requested by the Hiring Authority, Vertical Advocate, AGC, SAIG, or CAIG and may be in person or via teleconference. Participants shall include, but are not limited to the following: the Hiring Authority; the Hiring Authority's supervisor, or designee; the AGC, or designee; and the CAIG, or designee.

In all cases, Executive Review shall be concluded prior to the statute of limitations expiration date. When Executive Review is initiated, completion of the CDCR Forms 402 or 403, service of the Final Notice of Adverse Action or *Skelly* Letter, and/or approval of the settlement agreement shall be delayed until the Executive Review is concluded and a determination has been made regarding investigative findings, imposition of a penalty, or details of the settlement agreement. If Executive Review is requested, the Hiring Authority shall immediately forward the CDCR Forms 402 and 403 (as applicable), the investigative report (if an investigation was conducted), and the proposed settlement agreement (if applicable) to his/her supervisor; the AGC; and the CAIG. The Hiring Authority's supervisor, or designee, shall schedule the Executive Review and shall notify the appropriate Chief Deputy Secretary, as necessary, following each Executive Review and provide all requested information. If a decision cannot be reached through Executive Review, the Hiring Authority's supervisor shall immediately elevate the matter to the appropriate Chief Deputy Secretary or higher for resolution.

33030.15 Types of Adverse Action Penalties

The five types of penalties for adverse actions are as follows:

33030.15.1 Letter of Reprimand

A letter of reprimand is the lowest level of penalty in the adverse action process and may be used when an action greater than corrective action is necessary. A letter of reprimand shall be retained as an official part of the employee's personnel record.

33030.15.2 Salary Reduction within the Salary Range of the Class

A salary reduction may be one (1) or more salary steps down to the minimum salary of the

employee's class and is usually utilized in place of a suspension of an employee whose continued service on the job is necessary.

33030.15.3 Suspension without Pay

Suspension shall be specified in working days and may incur a penalty level from one (1) work day to several pay periods. The suspension is considered a temporary separation during which the employee does not work and salary is docked for the specified period of time. Any holiday falling within the time period is not counted as a working day. An employee's service credits and health benefits may be affected, depending upon the length of the suspension.

If Work Week Group E or SE employee receives a suspension penalty, it shall not be for a period of less than five (5) working days, unless the union contract provides otherwise.

33030.15.4 Demotion to a Lower Class

Demotions shall occur when continued service is of value, but the employee is not working at the expected level of the classification. A demotion shall be imposed only when the employee qualifies for and can be expected to do a satisfactory job at the lower level. Demotion may be to any salary in the next lower class that does not exceed the salary the employee last received; however, it is possible to demote to any lower class, within the promotional chain, at a lower than maximum salary. The Notice of Adverse Action must contain the exact salary for each class. A demotion may be permanent or temporary. If temporary, the employee automatically returns to the higher class on the date specified and at the salary step determined by the Hiring Authority. If permanent, the employee can compete for a promotion at a later date.

33030.15.5 Dismissal from State Service

Dismissal is appropriate for exceptionally serious misconduct, misconduct that is not correctible through discipline, or misconduct which immediately renders the individual unsuitable for continued employment. Dismissal may or may not be preceded by other forms of adverse action (i.e. progressive discipline). (See CCR, title 2, section 211 for additional information.)

33030.16 Employee Disciplinary Matrix Penalty Levels

1 Official Reprimand	4 Salary Reduction 10% for 3-12 months <i>or</i> Suspension w/o pay for 6-24 work days	7 Suspension w/o pay for 49-60 work days
2 Suspension w/o pay for 1-2 work days	5 Salary Reduction 5% for 13-36 months <i>or</i> Suspension w/o pay for 13-36 work days	8 Demotion to a lower Class
3 Salary Reduction 5% for 3-12 months <i>or</i> Suspension w/o pay for 3-12 work days	6 Salary Reduction 10% for 13-24 months <i>or</i> Suspension w/o pay for 26-48 work days	9 Dismissal
Work Week Group E and SE employees shall not receive a suspension of less than five (5) work days, unless the union contract provides otherwise.		

33030.17 Applying the Employee Disciplinary Matrix

Sufficient evidence establishing a preponderance is necessary before any disciplinary action can be taken. The Employee Disciplinary Matrix shall be the foundation for all disciplinary action considered and imposed by the Department and shall be utilized by the Hiring Authority to determine the penalty to impose for misconduct. No favor shall be afforded simply because of an employee's rank, and managers, supervisors, and sworn staff may be held to a higher standard of conduct. Off duty misconduct for non-sworn staff requires a nexus between the employee's behavior and the employment.

The Employee Disciplinary Matrix is based on the assumption that there is a single misdeed at issue and that the misdeed is the employee's first adverse action. The Matrix provides a base penalty within a penalty range. The base penalty (represented with bold and underlined text) shall represent the starting point for an action. The Hiring Authority shall impose the base penalty unless aggravating or mitigating factors are found. The Hiring Authority or designee is not required to impose an identical penalty in each case because there are a variety of factors which may influence the Hiring Authority to take stronger action in one case than it does in another. The appropriate level of penalty within the specified range shall be based on the extent to which the employee's conduct resulted in or, if repeated, is likely to result in harm to public service; the circumstances surrounding the misconduct; and the likelihood of recurrence.

A single misdeed may result in several different violations of the Government Code. It is the nature of the misconduct and aggravating or mitigating factors, as discussed below, which determine the final penalty included in the Notice of Adverse Action and not the number of Government Code sections cited in the Notice of Adverse Action.

Multiple acts of misconduct may occur during a continuing event, contiguous or related events, or may be entirely independent of each other. When multiple acts of misconduct occur, the Employee Disciplinary Matrix shall be used to determine which single act warrants the highest penalty. The penalty range for the most severe charge shall be utilized, and other acts of misconduct are considered as aggravating circumstances that may increase the penalty up to and including dismissal.

33030.18 Mitigating and Aggravating Factors

Aggravating and mitigating factors shall be considered and may increase or decrease the penalty within the penalty range. Aggravating or mitigating factors may not pertain directly to the circumstances of the misconduct but shall be relevant. Rarely will mitigating circumstances exonerate employees; however, mitigating circumstances may be used to reduce the penalty that might otherwise be imposed. Aggravating circumstances may increase a penalty to dismissal, for misconduct where dismissal is not included in the penalty range. Mitigating circumstances may decrease a penalty to corrective action for misconduct only when penalty level number 1 (Letter of Reprimand) is the expected penalty within the penalty range.

The following mitigating factors shall be considered when determining a penalty:

- The misconduct was unintentional and not willful;
- The misconduct was not premeditated;

- The employee had a secondary and/or minor role in the misconduct;
- Based upon length of service, experience, policy directives, and the inherent nature of the act, the employee may not have reasonably understood the consequences of his/her actions;
- Commendations received by the employee;
- The employee was forthright and truthful during the investigation;
- The employee accepts responsibility for his/her actions;
- The employee is remorseful;
- The employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

The following aggravating factors shall be considered when determining a penalty:

- The misconduct was intentional and willful;
- The misconduct was premeditated;
- The employee had a primary and/or leadership role in the misconduct;
- Based upon length of service, experience, policy directives, inherent nature of the act, the employee knew or should have known that his/her actions were inappropriate;
- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;
- The misconduct resulted in serious injury;
- More than one act of misconduct forms the basis for the disciplinary action being taken;
- The employee was evasive, dishonest, or intentionally misleading during the investigation;
- The employee does not accept responsibility for his/her actions;
- The employee did not report the harm caused and/or attempted to conceal the harm through action or inaction;
- The employee has sustained other related adverse action(s).

33030.19 Employee Disciplinary Matrix

The following list of charges and causes for disciplinary action is representative only and is not all inclusive.

The base penalty is bolded and underlined.	
A. ATTENDANCE	PENALTY
1) Excessive tardiness. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty)	<u>1</u> 2 3
2) Unauthorized absence. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 j, Inexcusable Absence without Leave)	<u>1</u> 2 3
3) Abuse of sick leave. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty)	<u>1</u> 2 3

B. CODE OF SILENCE or RETALIATION	PENALTY
1) Intentional failure to report misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
2) Intimidation, threats, or coercion that could interfere with an employee's right to report misconduct or an act of retaliation for reporting misconduct. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 x, Retaliation)	4 5 <u>6</u> 7 8 9
3) Making false or intentionally misleading statements during a criminal or administrative investigation or inquiry by any agency. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
4) Any independent act(s) which prevents or interferes with the reporting of misconduct. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
5) Any involvement in a coordinated effort with other employees to prohibit the reporting of misconduct. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
C. CONTROLLED SUBSTANCES	PENALTY
1) Use or possession of controlled substances on or off duty, unless medically prescribed. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>

C. CONTROLLED SUBSTANCES (CONTINUED)	PENALTY
2) Sale of illegal drugs or narcotics. (Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2
D. CONDUCT or INEFFICIENCY	PENALTY
1) Discourtesy toward inmates, other employees, or the public. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
2) Endangering self, fellow employees, inmates, or the public by violation of Departmental training, laws, or ordinances. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
3) Leaving assigned post without supervisor approval. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)	1 2 3
4) Distraction from duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
5) Participating in illegal gambling on duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
6) Unauthorized use of position in the Department, uniform, or equipment on behalf of a political candidate or issue. (Gov. Code § 19572 n, Improper Political Activity) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
7) Inappropriate involvement in a law enforcement matter. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
8) Improper access to confidential information. (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3 4

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
9) Improper transmittal of confidential information with malicious intent or for personal gain. (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8 9
10) Disruptive, offensive, or vulgar conduct which causes embarrassment to the Department. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 <u>3</u> 4
11) Asleep while on duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)	2 <u>3</u> 4
12) Use or abuse of over-the-counter or prescription drugs while on duty which impairs an employee's ability to discharge his/her duties. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>3</u> 4 5 6
13) Intimidation, threats, or assault (without the intent to inflict serious injury) toward a member of the Department. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	3 <u>4</u> 5 6
14) Battery against a member of the Department with the intent to inflict injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	7 8 <u>9</u>

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
<p>15) Making insults to anyone pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)</p>	3 <u>4</u> 5 6
<p>16) Harassing anyone based upon race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)</p>	4 5 <u>6</u> 7 8 9
<p>17) Sexual misconduct involving staff, up to and including harassment. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	4 5 <u>6</u> 7 8 9
<p>18) Over-familiarity with an inmate(s)/parolee(s). (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	4 <u>5</u> 6 7 8 9
<p>19) Sexual misconduct with an inmate(s)/parolee(s). (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	<u>9</u>
<p>20) Solicitation of prostitution. (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)</p>	6 <u>7</u> 8 9

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
21) Drunkenness on duty. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior) CCR, title 15, §3410	4 5 <u>6</u> 7 8 9
22) Use of identification or position in the Department to solicit a gratuity or privilege. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6 7
23) Operating the employee's personal vehicle, state vehicle, or state equipment for state business while under the influence of alcohol or illegal prescription drugs. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
24) Bringing contraband into a security area for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 <u>4</u> 5 6
25) Bringing contraband into a security area for an inmate and/or for personal gain. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
26) Failure to observe and perform within the scope of training. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 <u>3</u> 4 5 6

D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
27) Intentional failure to intervene or attempt to stop misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
28) Felony criminal conviction. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
E. INTEGRITY	PENALTY
1) Petty theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 - 6 Penalty shall be relative to value and circumstances.
2) Grand theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 - 9 Penalty shall be relative to value and circumstances.
3) Making false or intentionally misleading statements to a supervisor. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
4) Making false or intentionally misleading statements to a public safety officer on or off duty. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>

E. INTEGRITY (CONTINUED)	PENALTY
5) Any form of cheating on a civil service examination, including but not limited to unauthorized possession, use, or distribution of examination material or participating in an examination for another person. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
6) Falsification of time records or financial record for fraudulent purposes. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
7) Falsification or making intentionally misleading statements in official reports or records. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
8) Falsification of application or omission of information for employment or promotion when it materially affects acceptance or rejection for employment or promotion. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
9) Falsification, alteration, or planting of evidence. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
10) False testimony under oath. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
F. FAILURE TO COMPLY	PENALTY
1) Failure to report employment outside the Department. (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	<u>1</u> 2 3
2) Failure to attend required training. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	<u>1</u> 2 3

F. FAILURE TO COMPLY (CONTINUED)	PENALTY
3) Accepting employment outside the Department which imposes a conflict of interest or having financial interest in any contract made by an employee in their official capacity or by any body or board of which the employee is a member. (Gov. Code § 1090) (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	3 <u>4</u> 5 6
4) Failure to follow lawful instructions or refusal to act as lawfully directed by a supervisor or higher ranking official. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	3 <u>4</u> 5 6
5) Refusal to submit to or take any oath or affirmation required by law or ordinances. (Gov. Code § 19572 s, Refusal to Take an Oath)	<u>9</u>
6) Refusal to take a medical examination or to submit to chemical testing, as required by civil service rules, ordinances, or lawful order. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	<u>9</u>
G. MISUSE OF STATE EQUIPMENT or PROPERTY	PENALTY
1) Unauthorized use of state telephones or photocopy equipment for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
2) Failure to carry required equipment. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
3) Misuse or non-use of issued equipment. (Gov. Code § 19572 p, Misuse of State Property)	<u>1</u> 2 3
4) Misappropriation of state equipment, property, supplies, or funds. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 - 9 Penalty shall be relative to value of misappropriation and circumstances.
H. OFF DUTY INCIDENTS	PENALTY
1) Failure to report off duty arrest to the Hiring Authority. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Drunk or disorderly conduct in public. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3

H. OFF DUTY INCIDENTS (CONTINUED)	PENALTY
3) Off duty drunk driving. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
4) Off duty drunk driving with collision. (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
5) Carrying an unauthorized weapon off duty. (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
6) Domestic violence. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
7) Intimidation, threats, or assault of a private citizen without intent to inflict serious injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 <u>4</u> 5 6
8) Battery of a private citizen with intent to commit injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
I. TRAFFIC RELATED INCIDENTS WHILE ON DUTY	PENALTY
1) Dangerous or negligent driving. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Dangerous or negligent driving with collision. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
3) Dangerous or negligent driving with collision and injuries. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8
J. USE of FORCE	PENALTY
1) Unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
2) Significant unreasonable use of force likely to cause injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6

J. USE of FORCE (CONTINUED)	PENALTY
3) Significant unreasonable use of force likely to cause serious injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 9
4) Employee's failure to report his/her own use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 4 5 6
5) Employee's failure to report his/her own unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 9
6) Employee's failure to report use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 4 5 6
7) Employee's failure to report unreasonable use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 9
K. WEAPONS – LETHAL & LESS-LETHAL WHILE ON DUTY	PENALTY
1) Misuse or non-use of available weapon(s). (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 v, Inappropriate Target Practice)	1 2 3
2) Careless handling of duty weapon(s) resulting in discharge of weapon(s). (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 3
3) Inappropriate display of weapon(s). (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6
4) Gross negligence in handling of duty weapon(s). (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 9

33030.20 Imposition of Penalty and Consultation

After determining the investigative findings, or in cases where direct adverse action is taken without an investigation, the Hiring Authority shall consult with the Vertical Advocate, for all designated cases, and the SAIG, for all cases monitored by the BIR when determining a penalty. The following shall be considered:

- The seriousness of the misconduct;
- Harm or potential harm to the public service;
- The circumstances surrounding the misconduct;
- The likelihood of recurrence;
- Whether or not progressive discipline has been taken in the past;
- Other mitigating or aggravating circumstances.

The Hiring Authority shall justify and document each penalty on the CDCR Form 403. The completed CDCR Form 403 shall be signed by the Hiring Authority at least fourteen (14) calendar days before service of the Notice of Adverse Action and shall be forwarded to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall retain the original CDCR Form 403 in the Adverse Action file and shall forward a copy to the Vertical Advocate for designated cases and to the SAIG for cases monitored by the BIR. For designated cases, the Vertical Advocate shall provide to the Hiring Authority, SAIG, and AGC a written confirmation (i.e. memorandum or e-mail) of penalty discussions with the SAIG. The Vertical Advocate shall also document all communications related to penalty imposition in the legal database.

For all cases for which the penalty is dismissal, the ERO/Disciplinary Officer or Vertical Advocate shall provide to the AGC and the Hiring Authority shall provide to his/her immediate supervisor the following: written notification (i.e. memorandum or e-mail) regarding the proposed penalty; a copy of the CDCR Form 403; and any other requested documentation. The Hiring Authority shall delay service of the Final Notice of Adverse Action for three (3) business days following transmittal of the written notification, so there is time for Executive Review to be requested. At this time, the AGC, or designee, shall make a determination whether the non-designated dismissal case will be assigned to a Vertical Advocate for prosecution before the SPB. This determination shall be based upon factors including the complexity of the case and whether the actual behavior prior to the investigation warrants a dismissal. The AGC shall notify the Vertical Advocate and the Hiring Authority of the case assignment and the reasons for the determination.

33030.21 Setting the Effective Date of the Action

After consulting with the employee's personnel/payroll office, the Hiring Authority shall determine the effective date(s) of the adverse action after allowance for the *Skelly* period [minimum of five (5) working days or twenty (20) calendar days for managers]. For cases the BIR is monitoring, the effective date shall be at least twenty-one (21) calendar days following the date of service of the Notice of Adverse Action. Consideration shall be given to the following:

- Suspensions shall be computed on a 24-hour work day basis, excluding legal holidays and regular days off. Holidays are not considered working days for suspension. There is no pay for a holiday occurring during a period of suspension. Holidays occurring during a period of suspension in effect increase the penalty by one day and such scheduling shall be avoided whenever possible. (Example: Four working days suspension for the period of July 1, ____, 0800 hours, through July 6, ____, 0759 hours; employee loses five (5) days pay).

- Time absent on suspension may delay the employee's next merit salary adjustment and may affect the earnings of vacation and sick leave credits (refer to DOM or a personnel specialist).
- In computing reductions in salary, the effective date of reduction shall coincide with the beginning of a pay period and amounts shall coincide with the existing salary range.
- Effective dates for all actions involving pay issues shall be coordinated with the employee's personnel/payroll office to avoid overpayment situations.
- The effective date of the adverse action may only be modified if the Hiring Authority serves to the affected employee a written amendment to the Notice of Adverse Action.

33030.22 Adverse Action Documentation

Adverse action documentation shall be completed, in all cases, prior to the statute of limitations expiration date. The Vertical Advocate shall monitor due dates and provide legal advice to the Hiring Authority and the ERO/Disciplinary Officer for all cases. The Vertical Advocate shall draft the Notice of Adverse Action for all designated cases and shall forward a draft Notice of Adverse Action to the SAIG for cases monitored by the BIR. For all other cases, the Vertical Advocate shall consult with the ERO/Disciplinary Officer upon request regarding other Notices of Adverse Action drafted by the ERO/Disciplinary Officer.

When drafting a Notice of Adverse Action the ERO/Disciplinary Officer, in consultation with the Vertical Advocate, shall ensure the following:

1. Each cause(s) for discipline supported by the facts is included.
2. At least one Government Code section is cited as a cause for each act of misconduct.
3. All the facts in support of the causes for discipline are included.
4. All facts fall within the statute of limitations.
5. All facts are alleged with sufficient specificity to meet the requirements of SPB Precedential Decision No. 91-04, In re: Korman.
6. When required under the Bodiford Settlement, the employee was served with a Preliminary Notice of Adverse Action and all supporting documentation, at least 24-hours prior to service of the Notice of Adverse Action.
7. If the subject employee is a peace officer, he or she is being served with the Notice of Adverse Action within thirty (30) calendar days of the decision to take disciplinary action.
8. The employee's rights and entitlements are included, as follows:
 - a. *Skelly* Rights:
 - i. Notice of the proposed action.
 - ii. Notice of the reasons for the proposed action in writing at least five (5) working days before the adverse action becomes effective [twenty (20) calendar days for managers].
 - iii. A copy of the charges on which the action is based in sufficient detail for the employee to prepare a defense.
 - iv. A copy of all materials upon which the action is based, including any documents, photographs, tape recordings, video tapes, complete investigative reports (e.g., reports and other materials that the Hiring Authority relied upon in forming the decision to take the action).

- v. The right to respond to a manager who was not involved in the investigation of the action currently being taken against the employee.
 - vi. The right to be represented when responding to the Hiring Authority imposing the discipline.
 - b. Right to appeal to the SPB.
9. The notice includes other appropriate considerations, such as:
- a. Training received;
 - b. Prior counseling received;
 - c. Prior discipline;
 - d. A statement that peace officers are held to a higher standard with regard to honesty and integrity and that his or her actions have not met this standard.

33030.23 Adverse Action Documentation - Summary of Adverse Action

The Summary of Adverse Action shall be completed for non-designated cases by the ERO/Disciplinary Officer as follows:

1. Work History: A biographical summary of the employee's employment history:
 - a. Location and dates of assignment.
 - b. Prior adverse actions with causes and dates listed.
 - c. Special commendations (restricted to departmental commendations or commendations from other agencies). Do not include routine letters of thanks or routine training certificates of accomplishment.
 - d. Incident reports-commendable and censurable. (Include any current Letters of Instruction.)
2. Chronological Summary of the Investigation: Write the summary as briefly and concisely as possible. Supporting reports, documents, and complete statements should be included as exhibits and referenced in the chronological summary.
 - a. The summary shall be in chronological sequence based on the steps taken by the investigator beginning with receipt of the information that precipitated the investigation.
 - b. Briefly describe each act of misconduct that supports the allegation.
 - c. Obtain dates, times, and the names of supervisors conducting corrective interviews. Copies or corrective memorandums, incident reports, etc., shall be included as exhibits.
3. Summary of Witnesses Statements : Prepare a list of witnesses as follows:
 - a. Include the witness' full name and, if the witness is a State employee, his/her civil service classification title.
 - b. Below each name, identify the facts of the case for which the witness shall testify.
 - c. Briefly summarize witness' statements in the sequence they were developed. The summary should contain all pertinent points contained in the statement.
4. Attachments: All documents gathered during the investigation including signed statements, transcripts, vouchers, receipts, performance reports, incident reports, photographs, and CDC Form 602 (Inmate/Parolee Appeal Form).

33030.23.1 Documentation Format

Clerical support staff, under the supervision of the ERO/Disciplinary Officer, shall compile adverse action documentation as follows:

1. Type the Preliminary Notice of Action on the departmental form memorandum.
2. Type Notice of Adverse Action on Department letterhead as follows:
 - a. The type of notice shall appear in capital letters and shall be centered four spaces below the letterhead.
 - b. The employee's name, civil service classification, worksite name and location (including institution or parole region, if applicable) are typed in block style at the left-hand margin, four spaces below the title. A Confidential Department Employee Information Sheet shall be attached and contain current home address and social security number.
 - c. Divide the body of the formal notice into sections indicated by Roman numerals as identified below:
 - I. Statement of the Nature of the Adverse Action.
 - II. Effective Date of This Adverse Action.
 - III. Statement of Causes.
 - IV. Statement of Facts.
 - V. Notice and Progressive Discipline
 - VI. Statement as to Right to Answer and Appeal.
 - VII. Statement as to Right to Respond to Your Appointing Power.
3. Include notations explaining the meaning of abbreviations used in supporting documentation and, in the signature block of the notice, the typed name, work location, business address and telephone number of the Hiring Authority.

33030.23.2 Declaration of Service

The ERO/Disciplinary Officer, or his/her assistant, shall be responsible for completion of Declaration of Service for the following documents provided to an employee either by mail or in person:

- Preliminary Notice of Adverse Action;
- Notice of Adverse Action;
- Notice of Automatic Resignation (AWOL separation);
- Response to resignation;
- Stipulation for resignation in lieu of adverse action;
- "Notice of Leave of Absence Pending Investigation (ATO)";
- Notice of Rejection During Probationary Period.

Notices of Adverse Action and Preliminary Notices of Adverse Action shall be sent via United States Postal Service (USPS) as registered mail with return receipt requested. Clerical support staff shall coordinate the adverse action documentation as follows:

1. Address an envelope to the employee's current home address and type in capital letters in the lower left corner of the envelope the words, "Return Receipt Requested."
2. Attach to each notice a barcoded red Label 200 (available for registered mail from an

USPS office). The label shall be placed above the delivery address and to the right of the return address (or to the left of the delivery address on parcels).

3. Type the information required on the PS Form 3811, Domestic Return Receipt, and affix the PS Form 3811 to the back of the sealed envelope/parcel. The name and address of the Hiring Authority is typed on the front in the space under "Return to."
4. When returned, the PS Form 3811 shall be filed with the copy of the Notice of Adverse Action or Preliminary Notice of Adverse Action.

33030.24 *Skelly* Hearing Process

All department employees shall be offered a *Skelly* Hearing prior to imposition of any adverse action, including disciplinary transfers, so the affected employee may respond to the charges contained in the Notice of Adverse Action. Employees waive his/her right to a *Skelly* Hearing by not formally requesting a *Skelly* Hearing.

33030.24.1 Notice and Request for *Skelly* Hearing

Notice of the right to a *Skelly* Hearing prior to the effective date of the action shall be provided at least five (5) working days prior to the effective date of the action and twenty (20) calendar days for managers that are being disciplined (pursuant to Government Code section 19590). This period of time is known as the "*Skelly* Period." If any provision of the policy is inconsistent with a bargaining unit Memorandum of Understanding (MOU), the MOU prevails.

33030.24.2 *Skelly* Hearing

The *Skelly* Hearing is attended by the following: *Skelly* Officer; affected employee; employee's representative if the employee requests a representative; the ERO/Disciplinary Officer, or other designee representing the Hiring Authority; the ERO/Disciplinary Officer's assistant or other person designated to take notes; the Vertical Advocate for all designated cases; and the SAIG for cases the BIR is monitoring.

The ERO/Disciplinary Officer shall coordinate all *Skelly* Hearings and shall ensure the comprehensive taking of minutes. The minutes from each *Skelly* Hearing shall remain in the ERO/Disciplinary Officer's file. Tape recordings of the *Skelly* Hearing shall not be permitted.

Affected employees who request a *Skelly* Hearing shall be notified of the identity of the *Skelly* Officer. The *Skelly* Officer shall review the Notice of Adverse Action or other charging document and all supporting materials prior to the *Skelly* Hearing. The *Skelly* Officer shall listen to and review the affected employee's side of the story and shall allow the affected employee the opportunity to present arguments that the adverse action should not be sustained or should be reduced in some way.

If an affected employee chooses to waive the right to a noninvolved manager acting as the *Skelly* Officer and requests that the Hiring Authority that took the action act as the *Skelly* Officer, the employee may do so within the *Skelly* period by signing a CDCR Form 3028, Waiver of Non-Involved *Skelly* Officer.

When reviewing the imposition of discipline, the *Skelly* Officer shall consider whether the action is as follows:

- Timely;
- Based on the proper statutory cause;
- Supported by the facts.

The affected employee shall be allowed representation during the *Skelly* Hearing. The affected employee and/or the employee's representative may present to the *Skelly* Officer either in writing or orally or both. The employee also may submit affidavits. However, the *Skelly* Officer has the right to restrict any oral presentation that is argumentative or repetitive.

The *Skelly* Hearing is not an evidentiary proceeding; therefore, the affected employee does not have the right to confront the Department's witnesses or call witnesses on the employee's behalf. The *Skelly* Officer may ask clarifying questions, as are appropriate. The *Skelly* Officer is not subject to examination by either the affected employee or the employee's representative, and is not required to provide any response to the information submitted by the affected employee or the employee's representative except to acknowledge receipt.

The Vertical Advocate, unless precluded by a scheduling conflict, shall attend the *Skelly* Hearing for all designated cases. During the *Skelly* Hearing, the Vertical Advocate shall observe the proceedings but not give legal advice to the *Skelly* Officer. The ERO/Disciplinary Officer shall be available to provide technical assistance to the *Skelly* Officer, if needed. The SAIG may also attend the *Skelly* Hearing for cases that the BIR is monitoring. The *Skelly* Officer shall remain objective and make an independent recommendation to the Hiring Authority. The Vertical Advocate shall remain available to participate in any settlement discussions as the department's representative. The Vertical Advocate shall consult with the SAIG present at the *Skelly* Hearing, and provide legal advice to the Hiring Authority regarding any new information and legal arguments that emanated from the *Skelly* process.

33030.24.3 *Skelly* Officer's Recommendations

The affected employee shall not be informed of the *Skelly* Officer's recommendation to the Hiring Authority. The affected employee shall be advised at the *Skelly* Hearing that the final recommendation will not be announced at the *Skelly* Hearing but shall be conveyed to the Hiring Authority. The *Skelly* Officer's recommendation shall be conveyed to the Hiring Authority as soon as possible but no more than two (2) business days following the *Skelly* Hearing.

The *Skelly* Officer may make one of the following recommendations to the Hiring Authority:

- The action should proceed without modification;
- The action should be amended, modified, or reduced;
- The action should be withdrawn in its entirety.

After the initial *Skelly* Hearing and before making one of the above recommendations, the *Skelly* Officer may also request one/both of the following from the Hiring Authority:

- A response from the Hiring Authority with regard to any issue raised by the employee;
- That additional investigation be conducted.

If the *Skelly* Officer makes a recommendation other than that the action proceed without modification, the *Skelly* Officer must clearly state in writing each mitigating or aggravating fact or factor that the *Skelly* Officer considered relevant to his/her decision. The *Skelly* Officer's

recommendation should be based on the employee's/representative's presentation and response to the charges, and the Hiring Authority's response, if any.

The affected employee will be advised if the Hiring Authority undertakes further investigation at the request of the *Skelly* Officer. If the *Skelly* Officer requests a response from the Hiring Authority and/or additional investigation, the Hiring Authority shall make every effort to complete any further investigation and to respond to the *Skelly* Officer within five (5) business days. The *Skelly* Hearing will not be considered concluded until the response from the Hiring Authority and/or additional investigation is provided to the *Skelly* Officer. The effective date of the adverse action originally served shall not change unless the Hiring Authority serves a written amendment to the Notice of Adverse Action.

33030.24.4 Settlement Discussions at the *Skelly* Hearing

During the *Skelly* Hearing, the affected employee may discuss his/her willingness to accept some discipline or other action at a level different than that imposed by the Hiring Authority or may communicate his/her willingness to resolve the adverse action directly with the Hiring Authority. The *Skelly* Officer shall not discuss these matters with the affected employee. Instead, the *Skelly* Officer shall excuse him/herself or shall suggest that the affected employee, the employee's representative, and the Department's representative(s) privately discuss the possibility of settlement. These discussions shall not be used as evidence by either side if the matter does not end in settlement.

When a *Skelly* Hearing is suspended pending settlement negotiations, the parties should complete and sign the CDCR Form 3029, Suspension of *Skelly* Hearing. If discussions result in a settlement and the affected employee waives any right to appeal the matter further (including to the SPB and Superior Court), no further *Skelly* Hearing is required and the *Skelly* Officer's obligations are concluded. If the discussions do not result in settlement, the *Skelly* Officer shall return and complete the *Skelly* Hearing.

33030.25 Hiring Authority's Final Decision Regarding Imposition of Penalty

If the Hiring Authority proposes any post-*Skelly* penalty modification for a designated case, the Hiring Authority shall provide to the Vertical Advocate, SAIG, and AGC the following: (1) a written confirmation of penalty discussions (i.e. memorandum or e-mail) with the SAIG, including the Hiring Authority's proposed penalty modification and (2) a copy of the *Skelly* Officer's written recommendation. The Hiring Authority shall delay service of the *Skelly* Letter for three (3) business days following transmittal of the written notification, so there is time for Executive Review to be requested. The Vertical Advocate shall document all communications related to penalty imposition in the legal database.

For a post-*Skelly* action to completely withdraw any penalty or to modify any dismissal penalty, the Vertical Advocate shall provide to the AGC and the Hiring Authority shall provide to his/her immediate supervisor the following: written notification (i.e. memorandum or e-mail) regarding the proposed penalty; a copy of the CDCR Form 403; and any other requested documentation.

Unless further investigation is needed or Executive Review is requested, the *Skelly* Letter indicating the final decision of the Hiring Authority regarding disciplinary penalty shall be

served to the affected employee within five (5) working days of the Hiring Authority's receipt of the *Skelly* Officer's recommendation.

33030.26 Settlement Agreements

The Hiring Authority or designee has the authority to settle all cases. However, prior to approving a settlement of a designated case the Hiring Authority shall consult with the assigned Vertical Advocate and the SAIG, for cases the BIR is monitoring, regarding both the form and substance of settlement agreements. If a settlement agreement is proposed during a hearing, the terms of the settlement shall be approved by the Hiring Authority, following consultation with the Vertical Advocate for designated cases and the SAIG for cases the BIR is monitoring. The Vertical Advocate also shall consult with and obtain approval from his/her EAPT supervisor to settle any case. If the Vertical Advocate has obtained pre-hearing approval of settlement parameters, and the proposed settlement is within those parameters, the Vertical Advocate does not need to contact a supervisor for settlement authority at the time of the hearing.

The Vertical Advocate shall draft settlement agreements for all designated cases and cases assigned by the AGC and shall assist the Hiring Authority and ERO/Disciplinary Officer with drafting settlement agreements when requested. Settlement agreements may also be prepared by the employee's representative, with the approval and assistance of the Vertical Advocate in designated cases. All settlement agreements signed by CDCR representatives shall include the relevant clauses set forth in section 33030.26.2 below and require signature approval of all parties concerned.

The Vertical Advocate shall have a proactive role during settlement negotiations, shall review each term of a proposed settlement, and shall be available to advise the Hiring Authority on the appropriateness of all settlement agreements. Terms that are contrary to accepted Department policies and procedures shall not be incorporated into any settlement agreement. The Vertical Advocate shall research the existence of any other pending cases that involve the appellant (e.g., workers' compensation claims, civil lawsuits, whistleblower protection actions) and shall recommend global settlement of any or all cases as appropriate. The Vertical Advocate shall document all communications related to settlement agreements/penalty imposition in the legal database.

If the Hiring Authority proposes a settlement agreement for a designated case, or a case the BIR is monitoring, that includes withdrawal of any penalty or modification of any dismissal, the Hiring Authority shall provide to the Vertical Advocate, his/her immediate supervisor, the AGC, and the SAIG the following: written notification (i.e. memorandum or e-mail) regarding the proposed settlement; a copy of the CDCR Form 403; a copy of the proposed settlement; and any other requested documentation. Approval of the settlement agreement by the Hiring Authority shall be delayed for three (3) business days following transmittal of the notification, so that there is time for Executive Review to occur.

33030.26.1 Factors to Consider Prior to Agreeing to Settle

When a Hiring Authority considers whether or not settlement is warranted, the following factors shall be considered:

- The gravity of the conduct that brought about disciplinary action;

- The risk of harm to the public service if such misconduct recurs;
- Whether any court orders or corrective action plans have an impact on the decision to settle the disciplinary action;
- Whether, in accordance with the principle of progressive discipline, the settlement continues to have the effect of preventing future misconduct;
- Whether mitigating factors or other evidence, including evidence of remorse, were already considered at the *Skelly* Hearing, or as part of the underlying investigation;
- The length of the State service of the employee;
- Whether or not the employee has a record of prior discipline;
- Whether conditions can be obtained through settlement (i.e., drug and alcohol testing and counseling, anger management counseling, etc.) that cannot be obtained solely through continued prosecution of the adverse action;
- Flaws and risks in the case (including evidentiary problems, problems with witness availability, questions of law, etc.) not considered or known at the time of the preparation of the adverse action, or which have been exacerbated since the filing of the Notice of Adverse Action;
- The finality that settlement brings to a case.

33030.26.2 Essential Settlement Language

In addition to a recitation of the unique terms for any particular agreement, the settlement agreement documentation shall include the following key clauses:

Standard clauses:

APPELLANT, by his/her signature on this document, agrees to withdraw his/her Appeal to the NOTICE OF ADVERSE ACTION effective [insert date] and to waive any right he/she may have to appeal the NOTICE OF ADVERSE ACTION either before the State Personnel Board or any court of law which might have jurisdiction over the matter. Specifically, APPELLANT waives any rights he/she may have as set forth in sections “[insert number]” and “[insert number]” of the NOTICE OF ADVERSE ACTION; and, Code of Civil Procedure, Part 3, title 1, section 1067 through 1110 b, inclusive.

APPELLANT, by his/her signature on this document, and in exchange for such consideration as is set forth in this STIPULATION AND RELEASE, releases, acquits and forever discharges the State of California, the California Department of Corrections and Rehabilitation, and its agents, representatives, employees, successors and assigns, of and from any and all demands, actions, causes of action, claims of any kind or nature whatsoever, known and unknown, anticipated or unanticipated, past or present, and any claim under state or federal law including, but not limited to, claims under the Fair Employment and Housing Act, Title VII of the 1964 Civil Rights Act, and/or the Age Discrimination in Employment Act, which may exist as of the date hereof in connection with or arising out of the actions taken by the Department regarding this NOTICE OF ADVERSE ACTION.

APPELLANT is familiar with and has read the provisions of California Civil Code section 1542, and expressly waives to the fullest extent of the law any and all rights he/she may otherwise have under the terms of that Code section which reads as follows:

“A general release does not extend to claims which the creditor does not know of or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

APPELLANT executes this release without reliance upon any statement or representation by the DEPARTMENT, or its representatives except as set forth in this document. APPELLANT is of legal age and is legally competent to execute this release. APPELLANT accepts fully the responsibility therefore, and executes this release after having read the STIPULATION AND RELEASE. After having been advised and having the opportunity to discuss it thoroughly with APPELLANT’S representative, [insert name], APPELLANT understands its provisions and enters into this STIPULATION AND RELEASE voluntarily.

This STIPULATION AND RELEASE is freely and voluntarily entered into, and APPELLANT hereby authorizes and orders his/her representatives of record to withdraw his/her appeal of the NOTICE OF ADVERSE ACTION, effective [insert date], currently pending before the State Personnel Board (Case No. [insert number].), as agreed in paragraph “(insert paragraph number)” of STIPULATION AND RELEASE.

If the Appellant is age forty years or older:

APPELLANT represents that he/she has been notified that he/she has the right to consider this STIPULATION AND RELEASE for at least twenty-one (21) calendar days before its execution. APPELLANT expressly waives this right.

APPELLANT shall have the right to revoke this STIPULATION AND RELEASE for seven (7) calendar days after its execution, and understands that this STIPULATION AND RELEASE does not become effective or enforceable until that revocation period has expired.

If an agreement includes a removal of an action at a specified time in the future:

Even though RESPONDENT agrees to remove the adverse personnel action from APPELLANT’S personnel file in accordance with the terms and conditions set forth in paragraph [insert number] of this agreement, APPELLANT is aware and understands that RESPONDENT can, at its option, use this adverse action for purposes of progressive discipline if APPELLANT receives an adverse action in the future.

If the Appellant has agreed to resign:

On [insert date], APPELLANT agrees that he/she will be deemed to have resigned. This resignation is irrevocable and is not contingent on the action of any other State agency, or in the future. Appellant further agrees, as part of the consideration and inducement for execution of the STIPULATION AND RELEASE, to never apply for or accept employment with the California Department of Corrections and Rehabilitation (CDCR), or any entity providing services to inmates or wards within the CDCR. If the Department inadvertently offers appellant a position, appellant breaches this agreement by accepting a position with the Department. APPELLANT shall be terminated at such time as is

convenient to the Department and excluded from all institutions, and APPELLANT hereby waives any right APPELLANT may have to appeal that termination and/or exclusion in any forum.

33030.26.3 Documenting the Settlement Process

When a settlement is read into the record at a hearing, the above required language shall be read into the record accurately and shall include appropriate modifications as specified in the settlement agreement. The Vertical Advocate or ERO/Disciplinary Officer shall indicate on the record the names of the representatives who have agreed to this settlement.

Anytime a settlement agreement is reached, the Vertical Advocate or the ERO/Disciplinary Officer shall complete a CDC Form 3021, SPB Case Settlement Report, and shall forward the CDC Form 3021 to the AGC and to the SAIG for all cases monitored by the BIR. The CDC Form 3021 shall be utilized for audit purposes. The name of the manager providing settlement authority shall be reported under the "Name of Final Decision Maker" heading of the CDC Form 3021.

33030.27 Use of ATO

An employee shall only be placed on ATO as follows:

- He/she has been charged with a felony;
- He/she is suspected of smuggling contraband;
- He/she has shown unacceptable familiarity with inmates or parolees;
- He/she has seriously jeopardized the security of the institution;
- He/she has committed any other serious infraction of the CCR;
- The proposed discipline is dismissal.

Use of ATO should be considered when the employee's continued presence at the work site will adversely affect the security or management of the facility. However, when possible, an alternative assignment should be considered rather than placement on ATO.

33030.27.1 Request for ATO

The Hiring Authority shall request to place an employee on ATO as follows:

- All requests for placing an employee on ATO shall be approved through the Hiring Authority's supervisor, by telephone or in person.
- Initial approval for ATO by the Hiring Authority's supervisor shall be granted for a period not to exceed five (5) working days.
- The requesting unit shall notify the Office of Personnel Services Employee Discipline Unit immediately and the ERO/Disciplinary Officer shall initiate a written request.

In order to place an employee on ATO, the Hiring Authority shall provide a "Notice of Leave of Absence Pending Investigation (ATO)" to the affected employee.

The Hiring Authority shall contact his/her supervisor prior to the employee's fifth (5th) working day on ATO to request to continue an employee on ATO beyond five (5) working days. For requests to continue an employee on ATO beyond ten (10) working days, the Hiring Authority

shall contact his/her supervisor prior to the employee's tenth (10th) working day on ATO. If the Hiring Authority's supervisor approved the request to continue an employee on ATO beyond ten (10) working days, the Hiring Authority's supervisor shall notify the appropriate Deputy Director/Director that an employee is to be continued on ATO beyond ten (10) working days.

If it is determined that an employee should be continued on ATO beyond fifteen (15th) working days, the Deputy Director/Director shall notify the appropriate Chief Deputy Secretary prior to the employee's fifteenth (15th) business day on ATO. The Deputy Director/Director shall instruct the Office of Personnel Services Employee Discipline Unit to request approval from the Department of Personnel Administration (DPA), in writing, prior to the fifteenth (15th) working day.

33030.27.2 Calculation of ATO Period

The ATO period shall commence when the Hiring Authority has obtained approval from his/her supervisor, and the employee has been effectively notified of his/her placement on ATO status. If an employee on ATO is to return to work, he/she shall be contacted and ordered to do so. There should be no confusion regarding either the expectation that the employee return to work or the reporting date and time. The Hiring Authority shall confirm the order in writing.

33030.27.3 ATO Notices and Employee Responsibilities

When placed on ATO, an employee shall be given a written notice that contains the following:

- The employee is still an employee of the Department and shall be available during the normal business hours of the Department (i.e., Monday through Friday, 8:00 a.m. 12:00 p.m. and 1:00 p.m. to 5:00 p.m.). The employee's lunch hour shall be from 12:00 p.m. to 1:00 p.m. Any state holidays observed during the work week shall be excepted.
- The employee shall be available by telephone.
- The employee may leave the immediate area to complete necessary errands (i.e., medical appointments or other necessary business that normally can only be completed during the business day). However, the employee must respond to the Department's attempt to contact him/her within a reasonable period of time. The reasonableness of the employee's response shall be determined by the type of errand, distance traveled and any other factors peculiar to the area which might affect the employee's ability to return the telephone call.
- The expectation is that, generally, the response time of the employee shall be less than two (2) hours.
- Emergency situations may affect this timeframe and are subject to Hiring Authority approval.

33030.27.4 State Property

When an employee is placed on ATO, the Hiring Authority shall require that the employee surrender all state-issued property including weapons, state identification, badge(s), keys, vests, and any other items related to employment.

33030.27.5 Peace Officer Authorization

If a peace officer is placed on ATO, the Hiring Authority may, based on the circumstances, rescind the peace officer authorization to carry a concealed weapon off duty. The rescission notice shall be in writing and given to the employee.

33030.28 Vertical Advocate's Preparation for the SPB Hearing

Upon notification from the SPB that an appeal has been filed, the ERO/Disciplinary Officer and/or the Vertical Advocate shall notify the Hiring Authority and shall prepare for the SPB Hearing. The Vertical Advocate shall represent the Department at SPB Hearings for all designated cases. In all cases presented by the Vertical Advocate, the ERO/Disciplinary Officer shall provide administrative support to the Vertical Advocate including, but not limited to, service of witness subpoenas.

The Vertical Advocate shall prepare for the SPB Hearing, including the following, as appropriate:

1. Prepare the defense by confirming:
 - a. Due process compliance, including notice, documentation, *Skelly* Hearing (if requested) and proper service.
 - b. Deadlines, statutes of limitations, and other critical time requirements.
2. Contact the appellant's representative to discuss relevant issues, including defenses, potential for settlement, etc.
3. Make discovery requests.
4. Respond to discovery requests.
5. Draft pre-hearing motions (e.g., motion to dismiss for failure to file a timely appeal).
6. Respond to pre-hearing motions.
7. Identify witnesses, including experts, and assess what testimony they can provide.
8. Request that the witnesses review any transcripts of their interviews to ensure their accuracy.
9. Contact the ERO/Disciplinary Officer for the issuance of subpoenas to witnesses and experts.
10. Interview witnesses, as necessary (i.e., if the Vertical Advocate has not participated in the investigative interview).
11. Select witnesses to testify.
12. Prepare witnesses in person, including the assigned investigator, for testimony at the SPB Hearing.
13. Visit the location of the incident leading to the disciplinary action.
14. Identify exhibits to be introduced at the SPB Hearing and request reproduction of the exhibits by the ERO/Disciplinary Officer.
15. Assess the current strengths and weaknesses of the Department's case, whether and how the weaknesses can be overcome, and develop a strategy for the case.
16. Assess the current strengths and weaknesses of the appellant's case, including what his or her defenses are likely to be and how to counter them. For example, consider the following:
 - a. What were the appellant's defenses during the *Skelly* Hearing?
 - b. Who did the appellant subpoena?

- c. To what can the appellant's witnesses testify?
- d. Other possible defenses, including:
 - i. Statute of limitations violations.
 - ii. No nexus between wrongful act and employment with the Department.
 - iii. No progressive discipline.
 - iv. The appellant is the subject of disparate treatment, retaliation, or discrimination.
 - v. The appellant previously has been disciplined for the same incident(s).
- 17. Prepare a hearing binder, including the following:
 - a. Exhibit list and a copy of each exhibit.
 - b. Witness list in the order in which they will testify.
 - c. List of witness contact numbers.
 - d. Opening Statement Outline.
 - e. Direct and cross-examination questions and, when appropriate, the anticipated answers.
 - f. Closing Argument Outline.
 - g. Applicable precedential decisions, statutes, regulations, etc.
- 18. Research potential legal issues.
- 19. Draft briefs, when necessary, utilizing and augmenting where appropriate the EAPT brief bank.
- 20. Communicate with the SAIG, for cases the BIR is monitoring, including whether the SAIG will attend the SPB Hearing.
- 21. Consult with the assigned SAIG regarding SPB Hearing strategy.

33030.28.1 Role of the Vertical Advocate at the SPB Hearing

At the SPB Hearing, the Vertical Advocate shall prosecute the adverse actions as follows:

- 1. Present the evidence through witness testimony, stipulating only when the facts are not in dispute and there is no possibility of weakening the case to be presented.
- 2. Within ethical limits, present evidence in the best light possible for the Department.
- 3. Challenge testimony presented by the appellant, including challenges to "expert" testimony by assessing the following:
 - a. If the witness is an "expert" as defined by statute and case law.
 - b. If the "expert's" testimony is incompatible with his or her employment.
 - c. Whether the "expert's" testimony should be challenged on the basis that it is irrelevant, calls for speculation, or calls for an opinion on the truth or falsity of certain statements.

If required by the SPB or the circumstances, the Vertical Advocate shall do the following:

- 1. Prepare a written closing argument;
- 2. Brief legal issues that arose during the SPB Hearing and require a decision. To ensure consistency in briefing, the Vertical Advocate shall review and update any briefs available in the EAPT brief bank;
- 3. Present briefing and oral argument to the members of the SPB.

Following the SPB Hearing, the Vertical Advocate shall do the following:

1. Maintain contact with the Hiring Authority until the case is closed;
2. Confer with the SAIG for cases the BIR is monitoring;
3. File a petition for rehearing, as appropriate;
4. When the SPB sustains the action or the merit appeal is denied, prepare the file for archiving as follows:
 - a. Organize the file so that information is readily available should the appellant petition for a rehearing or petition for a writ of mandate;
 - b. Close the file only after the petition for rehearing has been resolved or the 30-day filing period for the petition for rehearing has expired.
5. Consult with the Hiring Authority's Personnel Office regarding all back pay issues, including the following:
 - a. Obtaining calculations of back pay due to the employee.
 - b. Challenging overpayments.
 - c. Defending the Department's position at SPB back pay hearings.
6. Refer the case to the EAPT Appeals Committee when appropriate under the EAPT Post SPB Hearing Writs and Appeals Policy.

33030.28.2 Review of the SPB Decision

A committee comprised of the AGC, an EAPT Supervisor, and an attorney specializing in writs and appeals shall convene to review all SPB decisions that modified or revoked the adverse action. The assigned Vertical Advocate shall present the case to the EAPT Appeals Committee for discussion, and the BIR shall be invited to all committee meetings. In cases presented to the SPB by contract counsel, a Vertical Advocate shall be assigned to present the case to the EAPT Appeals Committee.

The EAPT Appeals Committee shall do the following:

1. Meet monthly, unless there are no cases to consider. Additional meetings will be scheduled, as needed.
2. Notify the BIR regarding all committee meetings.
3. Determine whether to seek review of the SPB decision.
4. In making its decision to seek review of the SPB decisions, the committee will consider:
 - a. The recommendation of the Vertical Advocate assigned to the case and the SAIG, for cases the BIR is monitoring.
 - b. The likelihood of prevailing on appeal.
 - c. The egregiousness of the SPB's decision on legal or factual issues.
 - d. Whether the case has a potential collateral estoppel impact on other litigation.
 - e. Whether other departmental concerns are implicated.
 - f. The fiscal risks implicated in the pursuit of an appeal.
 - g. The potential precedential impact of the decision to appeal or not to appeal.
 - h. Unit workload and the availability of external resources.
 - i. Such other facts as may be present in the particular case under consideration.
5. Solicit and discuss strategies to shape the decisional law governing the SPB.
6. Identify legal and procedural issues encountered at administrative hearings (i.e., SPB, DPA, Unemployment Insurance Appeals Board, Workers' Compensation Appeals Board, etc.) that are in need of resolution.

7. The committee's decision to seek or not to seek permission to file a writ petition shall be communicated to the Hiring Authority and the CAIG for cases the BIR is monitoring. A decision to seek permission to file a writ petition requires that the communication include advice that the SPB decision being appealed is not final until the appeal has been resolved. Also, in appropriate cases, a stay shall be sought from the appellate court.

The assigned writs and appeals attorney is responsible for preparation of any Governor's Office Action Request (GOAR) and the writ petition. Workload considerations may require the Vertical Advocate to accept this responsibility, under the direction of the writs and appeals attorney.

1. The GOAR shall be prepared, and its circulation for approval commenced, within five (5) business days of the assignment.
2. When the GOAR is approved, the writs and appeals attorney (or assigned Vertical Advocate) shall, within fifteen (15) business days:
 - a. Order the SPB Hearing transcript.
 - b. Prepare and serve the petition for a writ.
3. As appropriate, at the time of the filing of the writ petition, the writs and appeals attorney (or assigned Vertical Advocate) will file an *ex parte* application for a stay of the SPB decision.
4. The writs and appeals attorney (or assigned Vertical Advocate), in consultation with the BIR attorney for cases the BIR is monitoring, shall prepare a memorandum to the Hiring Authority, as soon as the matter is final (either by acquiescence to the decision, settlement, or completion of any appeal). The memorandum shall include specific guidance of what steps must be taken, if any, to satisfy the final decision or settlement.

33030.29 Testimony by Department Employees

Any employee of the Department who is contacted by any person regarding his/her potential testimony or who is subpoenaed as a witness in any matter shall notify, in writing and within one (1) business day of being contacted, the Litigation Coordinator and the ERO/Disciplinary Officer at his/her worksite. The employee also shall provide a copy of the subpoena to the Litigation Coordinator and the ERO/Disciplinary Officer immediately upon receipt.

The ERO/Disciplinary Officer shall maintain a log of these contacts and shall determine immediately whether there is a pending disciplinary matter for which this subpoena was issued. The ERO/Disciplinary Officer shall notify the employee of the requirements of California Code of Regulations, title 15, section 3413. If a disciplinary matter is pending, the ERO/Disciplinary Officer shall immediately send, via facsimile, a copy of the subpoena to the appropriate Vertical Advocate. The Litigation Coordinator shall determine immediately whether there is a civil or criminal action pending and shall notify and forward a copy of the subpoena to the assigned Deputy Attorney General or contract counsel and to the Office of Legal Affairs attorney monitoring the matter.

33030.30 Duress or Undue Influence

No one shall exert undue influence or subject employees to duress in order to obtain a resignation. Care must be taken to avoid making statements that could be the basis for an appeal

by the employee to have a resignation set aside on grounds it was obtained by duress, undue influence, or excessive persuasion.

The following elements are characterized as excessive persuasion:

- Discussion of the resignation at an unusual or inappropriate time.
- Consummation of the resignation in an unusual place.
- Insistent demand that the transaction be completed at once.
- Extreme emphasis on unfavorable consequences of a delay.
- The use of multiple persuaders by the Department against the employee standing alone.
- Denial of the time or the opportunity for the employee to consult an advisor.

33030.31 EAPT Reporting

On a quarterly basis and commencing March 1, 2006, the EAPT shall prepare and submit to the appointing power a report that includes the following information:

- Number of adverse actions by type of discipline;
- Number of direct (without an investigation) adverse action by type;
- Number of adverse actions with an investigation by type;
- Number of actions where the discipline was sustained by the *Skelly* Officer;
- Number of actions where the *Skelly* Officer recommended modification of the discipline;
 - Number that the Hiring Authority accepted the recommendation.
 - Number that the Hiring Authority rejected the recommendation.
- Number of settlements reached prior to the SPB decision;
- SPB decisions;
 - Number of cases where SPB upheld the original discipline.
 - Number of cases where SPB modified the original discipline.
 - Number of cases where SPB revoked the discipline.

33030.32 Disciplinary Audits

The effectiveness of the Department's disciplinary process shall be reviewed in an annual audit prepared by the Office of Legal Affairs, in conjunction with the OIA. The audit shall assess the adequacy of the monitoring of the statute of limitations and shall assess training needs by evaluating the following: the effectiveness of each Vertical Advocate; the appropriateness and thoroughness of the investigation, report, penalty, Notice of Adverse Action, and settlement; and the policy issues involved and/or at stake.