

# **OFFICE OF THE INSPECTOR GENERAL**

**MATTHEW L. CATE, INSPECTOR GENERAL**



## **ACCOUNTABILITY AUDIT**

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### **REVIEW OF AUDITS OF THE BOARD OF PRISON TERMS 2002-2003**

**TO DETERMINE COMPLIANCE WITH PREVIOUS  
RECOMMENDATIONS OF THE OFFICE OF THE INSPECTOR  
GENERAL**

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**JULY 2005**

**STATE OF CALIFORNIA**



July 21, 2005

Roderick Q. Hickman, Secretary  
Department of Corrections and Rehabilitation  
P.O. Box 13908  
Sacramento, California 95853

Dear Secretary Hickman:

Enclosed is the final report of the Office of the Inspector General's 2005 Accountability Audit of the Board of Prison Terms, which became part of the Board of Parole Hearings effective July 1, 2005.

The 2005 Accountability Audit of the Board of Prison Terms found that the board has made progress in correcting deficiencies identified in 2002 and 2003 by the Office of the Inspector General, but that a number of problems remain and some deficiencies threaten to become worse. Of the 26 recommendations from the original reviews, the board has fully or substantially implemented fewer than half, indicating there is still work to do.

This report makes 12 additional recommendations to remedy the remaining problems and deficiencies. My office will continue to monitor the board's progress in implementing all recommendations.

Thank you for the cooperation extended to my staff during the course of the audit.

Sincerely,

A handwritten signature in cursive script that reads "Matthew L. Cate".

MATTHEW L. CATE  
Inspector General

MC:SC:lr



*Arnold Schwarzenegger, Governor*

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## EXECUTIVE SUMMARY

This report presents an assessment of the progress made by the Board of Prison Terms in implementing recommendations from reviews conducted by the Office of the Inspector General in 2002 and 2003. The report is the second of three comprehensive follow-up reviews comprising the Office of the Inspector General's 2005 Accountability Audit, the purpose of which is to examine the progress of the Youth and Adult Correctional Agency and its subordinate entities in implementing recommendations from 32 reviews and management review audits conducted by the Office of the Inspector General since April 2000. In addition to the two reviews covered here, the original 32 reviews and audits included nine management review audits and reviews of the California Youth Authority and 21 management review audits and reviews of Department of Corrections institutions and programs. The first report in the 2005 Accountability Audit — a comprehensive follow-up review of the California Youth Authority — was released in January 2005. The comprehensive follow-up review of the Department of Corrections will constitute the third report in the 2005 Accountability Audit series.

The 2005 Accountability Audit of the Board of Prison Terms determined that the board has made progress in correcting deficiencies identified in 2002 and 2003 by the Office of the Inspector General, but that a number of problems remain and some deficiencies threaten to become worse. On the positive side, the Youth and Adult Correctional Agency has exerted leadership to change the parole revocation process to eliminate delays and address problems of coordination between the Board of Prison Terms and the Department of Corrections. These changes are contained in the remedial plan pursuant to the *Valdivia v. Schwarzenegger* class action lawsuit, which is in the final stages of implementation. As part of this effort, the board has improved its ability to track and schedule parole revocation cases to ensure that alleged parole violators receive timely hearings. The board has also improved its supervision of deputy commissioners by increasing its supervisory staff and scheduling deputy commissioners for a larger number of hearings each day.

The Office of the Inspector General found the following continuing deficiencies, however:

- For inmates serving life terms with the possibility of parole (indeterminate sentences), the board still lacks the information technology to accurately identify the statutory due dates for inmates' indeterminate sentence hearings. The board continues to use the same manual process it used at the time of the Office of the Inspector General's initial review. As a result the board has no way to ensure that hearings are held within the time frames required by law.
- The board's official reports indicate that the board has greatly increased the number of indeterminate sentence hearings it holds each year and that it averaged more than 4,600 hearings a year for the years 2002 through 2004. But the Office of the Inspector General found that the reported figures represent hearings *scheduled*, rather than hearings *conducted*. The number of hearings actually *conducted* was nearly 4,000 fewer than the figures reported by the board.

- The board's reported backlog of overdue hearings for inmates sentenced to indeterminate prison terms has increased 15 percent, from 1,400 in December 2001 to 1,607 as of March 31, 2005.
- The ability of the Board of Prison Terms to accurately project the number of deputy commissioners it needs to fulfill its responsibilities continues to be hindered by the board's failure to implement a time-management system for deputy commissioners.
- The board continues to hold automatic 60-day placement hearings for mentally disordered offenders placed into the custody of the Department of Mental Health even though the hearings are unnecessary and inefficient.

The Office of the Inspector General has made 12 additional recommendations as a result of the 2005 Board of Prison Terms Accountability Audit. Those recommendations are listed in the following summary.

### SUMMARY OF FINDINGS

In the original reviews that are the subject of this follow-up Accountability Audit, the Office of the Inspector General made 26 specific recommendations to improve the Board of Prison Terms programs and functions. Of those 26 recommendations, the Board of Prison Terms has fully implemented nine (35 percent), has substantially implemented three (12 percent), and has partially implemented six (23 percent). Four of the 26 original recommendations (15 percent) have not been implemented and another four (15 percent) are no longer applicable. In some instances, the board has successfully addressed the problems by implementing alternative solutions, and wherever that has occurred, those achievements are acknowledged in the body of this report.

Following is a summary of the findings and follow-up recommendations from the 2005 Accountability Audit of the Board of Prison Terms.

### INDETERMINATE SENTENCE HEARINGS AND APPEALS

**Of the ten recommendations issued by the Office of the Inspector General as a result of an April 2002 follow-up review of indeterminate sentencing and appeals procedures, none (0 percent) have been fully implemented; two (20 percent) have been substantially implemented; three (30 percent) have been partially implemented; two (20 percent) have not been implemented; and three (30 percent) are no longer applicable.**

In a review released in March 2000, the Office of the Inspector General examined the procedures used by the Board of Prison Terms in conducting parole consideration hearings for inmates sentenced under indeterminate sentencing laws. The review found that the board had a large backlog of parole consideration hearings, most of which were more than six months delinquent, and that the board's procedures were inadequate to ensure timely hearings.

In a follow-up review released in April 2002, the Office of the Inspector General found that the procedures used by the board to identify and schedule parole consideration hearings continued to be incapable of ensuring that the hearings were held on time. That review found that the Board of Prison Terms had not taken effective measures to reduce the backlog of parole consideration hearings; that the board's schedule for eliminating the hearing backlog was unrealistic; and that the board's process for responding to appeals filed by inmates and parolees challenging board decisions was inadequate to provide for timely disposition.

### **SUMMARY OF THE 2005 FOLLOW-UP RESULTS**

As a result of the 2005 follow-up review, the Office of the Inspector General found that while the Board of Prison Terms database captures extensive amounts of detail for lifer hearings, the board still has not developed information technology that allows it to obtain information from the Department of Corrections necessary to identify inmates needing hearings. The board continues to use the same process it used at the time of the Office of the Inspector General's initial review. In scheduling lifer hearings, the board uses primarily manual methods involving a monthly exchange of faxes between board staff and a coordinator at each of the 31 Department of Corrections institutions housing lifer inmates. As a result, the board has no way to ensure that hearings are held within the time frames required by law. Further, the backlog of initial parole consideration hearings has increased since the 2002 review. Moreover, the board has experienced a significant increase in hearing postponements, resulting in inefficient scheduling and failure to reduce the backlog. An agency task force created in response to the *Rutherford v. Margarita Perez, et al.* lawsuit is working toward developing improvements to the parole consideration process. Finally, the backlog of appeals has been largely eliminated because of a rule change that allows appellants to bring challenges of board decisions directly to the courts.

### **FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions to address the remaining deficiencies:**

- **Develop an information system in cooperation with the Department of Corrections that will result in the board having access to the most current, accurate, and relevant information necessary to manage its lifer hearing responsibilities. Such information should include, for example, minimum eligible parole dates and details of inmates' status that may affect legally mandated subsequent hearing dates.**
- **Further develop regular monthly reports for use by board management in forecasting, scheduling, and managing the lifer hearing workload.**
- **Develop a system of quality control over data entry and compilation to ensure the quality of management reports.**
- **Move the board's regular monthly meeting to Monday to increase the number of hearings held during that week. In the alternative, the board should conduct a**

**half day of hearings at local prisons beginning at 1:30 p.m. on the Monday preceding the regular Tuesday meeting.**

- **Develop policies, procedures, and regulations to minimize the number of hearing postponements, both inmate-initiated and board-initiated.**
- **For official reports, discontinue the current method of calculating the backlog of hearings and replace it with a method that reports an actual count of hearings that have passed their statutory due dates.**
- **Work with the Legislature to reconsider how the hearing “backlog” is defined in Penal Code section 3041(d), as revised by passage of S.B. 737. Additionally, consider the impact of the requirement to have hearing panels consist of at least two commissioners when the backlog reaches zero.**

## PAROLE REVOCATION

**Of the six recommendations from the January 2003 review of the Board of Prison Terms pertaining to parole revocation, five (83 percent) have been fully implemented and one (17 percent) is no longer applicable.**

The Office of the Inspector General’s January 2003 review of the Board of Prison Terms identified significant deficiencies in the state’s parole revocation process. The review determined that the state lacked an effective means of tracking to ensure that parolees detained for violating parole received a hearing within the 45-days specified in state regulations or within a “reasonable time period,” as specified in federal law. The Office of the Inspector General found that the deficiencies stemmed in part from the overlapping responsibilities for parole revocation between the Board of Prison Terms and the Department of Corrections and in part from the board’s failure to manage the revocation process and to adequately supervise its deputy commissioners.

## SUMMARY OF THE 2005 FOLLOW-UP RESULTS

The 2005 follow-up review determined that the Board of Prison Terms has made significant progress in tracking the thousands of revocation cases processed annually to help ensure that suspected parole violators receive timely hearings. The revocation scheduling and tracking system implemented pursuant to the *Valdivia v. Schwarzenegger* remedial plan now tracks the status of parolees from the day of arrest to the day the parole revocation hearing is held. The system also provides management with both summary reports and access to more detailed information. Responsibility for parole revocation has been consolidated in the Board of Prison Terms. The board also reported that it has identified all parolees eligible for treatment under Proposition 36 who had been placed in custody before October 1, 2002 and released them to drug treatment programs.

**FOLLOW-UP RECOMMENDATIONS****None****SUPERVISION OF DEPUTY COMMISSIONERS**

**Of the six recommendations from the January 2003 review of the Board of Prison Terms concerning supervision of deputy commissioners, two (33 percent) have been fully implemented; one (17 percent) has been substantially implemented; two (33 percent) have been partially implemented; and one (17 percent) has not been implemented.**

The Office of the Inspector General's January 2003 review of the Board of Prison Terms was prompted in part by the board's proposal to fill 24 of its vacant deputy commissioner positions. The review was conducted to determine whether the board had a legitimate need to fill the positions in light of the state budget crisis. As a result of the review, the Office of the Inspector General found that the board did not need additional deputy commissioners, and that, in fact, with more efficient use of its resources could fulfill its responsibilities with slightly more than half its then-existing staff. The Office of the Inspector General also found that deficiencies in the parole revocation process stemmed partly from the board's failure to adequately supervise the deputy commissioners.

**SUMMARY OF THE 2005 FOLLOW-UP RESULTS**

The 2005 follow-up review determined that the Board of Prison Terms has improved the supervision and productivity of deputy commissioners by increasing both the number of supervisors relative to deputy commissioners and the number of hearings scheduled for deputy commissioners each day. The board also has made progress in evaluating the number of deputy commissioner positions it needs to fulfill its responsibilities, but its ability to more accurately make that evaluation is hampered by its failure to implement a time-management system to accurately record the time deputy commissioners spend on various activities. The implementation of a new parole revocation process pursuant to the *Valdivia v. Schwarzenegger* litigation has also affected the board's ability to determine how many deputy commissioners it needs because of the lack of historical information for projecting time required for the new process.

**FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop and implement a time-management system for deputy commissioners.**
- **Use information from the time-management system to support future workload analyses. The two critical factors in the workload analysis report – total hours required to complete hearings and the total number of hours each deputy**



**commissioner can work in one year – should be updated to accurately reflect current capabilities.**

- **Continue efforts to increase the number of associate chief deputy commissioner positions relative to the number of deputy commissioners they supervise and to make the compensation of the associate chief deputy commissioner position commensurate with the responsibility of the position for supervising deputy commissioners.**

## HEARINGS FOR MENTALLY DISORDERED OFFENDERS

**Of the two recommendations from the January 2003 review of the Board of Prison Terms concerning hearings for mentally disordered offenders, one has been fully implemented and one has not been implemented.**

The Office of the Inspector General's January 2003 review of the Board of Prison Terms found that the board was automatically holding placement hearings for mentally disordered offenders 60 days after the inmate was placed into the custody of the Department of Mental Health, even though state regulations require a hearing only if the inmate requests that a hearing be held. An inmate may request a hearing 60 days after arriving in custody to determine whether he or she is to be treated as an inpatient or an outpatient. But because 60 days does not allow enough time for the medical treatment team to assess the patient's suitability for outpatient treatment, 99 percent of the 60-day placement hearings result in an order that the patient remain in a Department of Mental Health hospital for continued inpatient treatment. At the time of the Office of the Inspector General's January 2003 review, the 60-day hearings required a significant commitment of resources because state regulations require that hearings for mentally disordered offenders be conducted by not just one, but two Board of Prison Terms deputy commissioners.

## SUMMARY OF THE 2005 FOLLOW-UP RESULTS

As a result of the 2005 Accountability Audit, the Office of the Inspector General found that the Board of Prison Terms continues to hold automatic placement hearings for all mentally disordered offenders 60 days after the patient is placed in the custody of the Department of Mental Health, even though the hearings are unnecessary and inefficient. Regulations effective July 1, 2003, however, allow hearings for mentally disordered offenders to be conducted by one deputy commissioner instead of two.

## FOLLOW-UP RECOMMENDATION

**The Office of the Inspector General recommends that the Board of Prison Terms discontinue the practice of automatically conducting placement hearings for mentally disordered offenders 60 days after the patient is placed into the custody of**

**the Department of Mental Health. Instead, the board should conduct mentally disordered offender placement hearings only at the request of the parolee or of the Department of Mental Health.**

**Depending on the timing of other reforms planned by the Board of Prison Terms, it may be beneficial for the board to implement this recommendation immediately. If the Board of Prison Terms deems it necessary to amend the California Penal Code to implement this recommendation, it should amend section 2964(b) rather than section 2966(b).**

## REVIEW OF BOARD OF PRISON TERMS DECISIONS

**Of the two recommendations from the January 2003 review of the Board of Prison Terms concerning review of board decisions, one has been fully implemented and one has been partially implemented.**

The Office of the Inspector General's January 2003 review determined that the Board of Prison Terms was not complying with state regulations requiring that board decisions undergo systematic review before taking effect to ensure that they are complete, accurate, and consistent and that they promote public safety. Decisions subject to review include those resulting from mentally disordered offender hearings, parole revocation hearings, indeterminate sentence hearings, sexually violent predator probable cause hearings, and serious offender hearings. The Office of the Inspector General found that the board's parole revocation decisions lacked consistency and that deputy commissioners who reviewed decisions involving mentally disordered offenders had not been trained in conducting mentally disordered offender hearings. The Office of the Inspector General recommended that the Board of Prison Terms establish formalized training for deputy commissioners and associate chief deputy commissioners and establish a systematic decision review process.

## SUMMARY OF THE 2005 FOLLOW-UP RESULTS

The Office of the Inspector General found that the Board of Prison Terms is still not complying with state regulations that require board decisions to be systematically reviewed to ensure that they are valid and consistent and that they further public safety. However, the Office of the Inspector General questions the practicality and necessity of reviewing all proposed decisions and notes that the requirement appears to be overly burdensome. The purpose of the regulations could be accomplished by using sampling techniques to complete the review process, as originally recommended by the Office of the Inspector General. Reviewing a sample of proposed decisions instead of all proposed decisions requires changes to *California Code of Regulations*, Title 15, section 2041.

## FOLLOW-UP RECOMMENDATION

**The Office of the Inspector General recommends that the Board of Prison Terms modify *California Code of Regulations*, Title 15, section 2041 to allow for review of a portion of proposed decisions rather than all decisions.**

## INTRODUCTION

This report presents the results of a comprehensive follow-up audit of two previous reviews of the Board of Prison Terms conducted by the Office of the Inspector General in 2002 and 2003. The purpose of the audit was to assess the progress of the Board of Prison Terms in implementing the Office of the Inspector General's previous recommendations. The audit was performed pursuant to California Penal Code section 6126, which assigns the Office of the Inspector General responsibility for oversight of the Youth and Adult Correctional Agency and its subordinate departments.

### BACKGROUND

The Board of Prison Terms conducts hearings in order to grant, deny, revoke, or suspend the parole of inmates, and makes decisions on parole consideration hearings for inmates sentenced under indeterminate sentencing laws. Indeterminate sentencing applies to a prison term that, instead of being fixed in advance by the court, is set by the court for an "indeterminate period" such as 25 years to life. Offenders are eligible for parole consideration after serving the minimum prison term specified by state law for the particular crime committed. The board also conducts parole revocation hearings for parolees who have violated the conditions of their parole. In addition, the board advises the governor on applications for clemency and helps screen inmates scheduled for parole to determine whether they should be classified as mentally disordered offenders to be confined to state hospitals for treatment, or classified as sexually violent predators subject to civil confinement.

Pursuant to California Penal Code section 5075, et. seq., the governor is authorized to appoint nine commissioners to the Board of Prison Terms for four-year staggered terms, subject to Senate confirmation. At the time of the Office of the Inspector General's fieldwork, there were three vacant commissioner positions.

In addition to the commissioners, the Board of Prison Terms has 72 approved deputy commissioner positions. The deputy commissioners conduct parole revocation hearings, serve as panelists in parole consideration hearings, and conduct other hearings and functions under the board's jurisdiction. The deputy commissioners are supervised by seven associate chief deputy commissioners. For fiscal year 2005-06, the board has a proposed operating budget of \$72,852,000.

### OBJECTIVES, SCOPE AND METHODOLOGY

To conduct this follow-up audit, the Office of the Inspector General performed the following procedures:

- Reviewed the two special reviews and one follow-up review conducted by the Office of the Inspector General of the Board of Prison Terms.
- Contacted the Board of Prison Terms and requested information and documentation concerning the board's progress in implementing the Office of the Inspector General's recommendations.

- Examined reports and documents produced by the board's information storage and retrieval systems.
- Conducted site visits to the board's executive offices to interview key employees.
- Observed parole consideration hearings.
- Evaluated the information developed from the audit procedures and classified the progress of the board in implementing each recommendation into one of the following five categories:
  - ▶ **Fully implemented:** The recommendation has been implemented and no further corrective action is necessary.
  - ▶ **Substantially implemented:** More than half of the corrective actions necessary to fulfill the recommendation have been implemented.
  - ▶ **Partially implemented:** Half or less than half of the corrective actions necessary to fulfill the recommendation have been implemented.
  - ▶ **Not implemented:** The recommendation has not been implemented.
  - ▶ **Not applicable:** The recommendation no longer applies because the program or function audited has changed.

The following chapters present the results of the 2005 Accountability Audit of the Board of Prison Terms. Each chapter describes the findings and recommendations of the original special review and follow-up review and includes a table reporting the Board of Prison Terms' progress in implementing the recommendations. Where appropriate, the Office of the Inspector General has provided additional recommendations to correct deficiencies.

## INDETERMINATE SENTENCE HEARINGS AND APPEALS

**Previous reviews found that the Board of Prison Terms had a large backlog of overdue parole consideration hearings for “lifer” inmates — those sentenced to indeterminate sentences — and that many of the hearings were as much as six months delinquent. The follow-up review determined that despite upgrading from an outdated manual process to an automated tracking system for hearings, the board has not succeeded in shrinking the hearing backlog. Instead, the number of overdue hearings reported by the board has actually grown 15 percent since December 2001, from 1,400 to 1,607. The Office of the Inspector General also found that the statistics reported by the board are misleading. In reporting the number of hearings “conducted,” for example, the board includes hearings that were merely scheduled, whether or not the hearing actually took place — a collective over statement of almost 4,000 hearings for the years 2002, 2003 and 2004. And in reporting the backlog of overdue hearings, the board relies on a formula that excludes hearings that were not held because they were postponed by the inmate.**

### IMPLEMENTATION REPORT CARD

**Previous recommendations: 10**

**Fully implemented: 0 (0%)**

**Substantially implemented: 2 (20%)**

**Partially implemented: 3 (30%)**

**Not implemented: 2 (20%)**

**Not applicable: 3 (30%)**

In a review released in March 2000, the Office of the Inspector General examined the procedures used by the Board of Prison Terms to schedule and manage parole consideration hearings for inmates sentenced to indeterminate prison terms. The review found that the board had a large backlog of parole consideration hearings, most of which were more than six months delinquent, and that the board’s process for identifying and scheduling the hearings failed to ensure that hearings were held within required time limits.

In a follow-up review released in April 2002, the Office of the Inspector General found that the board’s system for identifying and scheduling parole consideration hearings continued to be incapable of ensuring that the hearings were held on time. That review found that the Board of Prison Terms had not taken effective measures to reduce the backlog of parole consideration hearings; that the board’s schedule for eliminating the hearing backlog was unrealistic; and that the board’s process for responding to appeals filed by inmates and parolees challenging board decisions was inadequate to provide for timely disposition.

### BACKGROUND

Conducting parole consideration hearings for inmates sentenced to indeterminate prison terms — so-called “lifer” inmates — is one of the core responsibilities of the Board of Prison Terms. Under California Penal Code section 3041(a), the board must meet with lifer inmates for the purpose of setting a parole release date one year before the inmate’s minimum eligible parole date. Accordingly, Department of Corrections Operations

Manual, section 62090.5.1.2 requires the initial parole consideration hearing to be scheduled 13 months before the inmate's minimum eligible parole date.

The parole consideration hearing panel may set a parole date at the initial parole consideration hearing unless it determines after considering the timing and gravity of the inmate's conviction offense and past offenses that public safety requires a longer period of incarceration. In such cases, the panel may set a subsequent hearing for a date up to five years in the future for inmates convicted of murder and for up to two years in the future for all other inmates. In practice, it is rare for an indeterminate sentence inmate to be granted a parole date at the initial hearing. Often, an indeterminate sentence inmate will undergo 10 to 15 subsequent hearings before being granted a parole date, or dying in custody. Some inmates have undergone as many as 20 subsequent hearings.

Overall, initial parole consideration hearings make up approximately 15 percent of scheduled hearings for indeterminate sentence inmates, while subsequent hearings make up approximately 84 percent, and the remaining 1 percent of indeterminate sentence hearings are taken up by miscellaneous proceedings, such as recission hearings.

Proposed decisions by board hearing panels to grant parole are subject to review by the board's legal staff and to additional review by the governor. Parole consideration hearings are held at state prisons and other locations, which requires commissioners and deputy commissioners to travel to hearing sites. In addition to the inmates and board panelists, hearing participants may include inmate legal counsel, representatives from the district attorney's office, and crime victims or their survivors.

The board has attributed its persistent hearing backlog to a variety of factors, including vacancies in board commissioner positions and the inability of inmates to receive timely psychiatric evaluations because of a shortage of psychiatrists at the institutions. To address the backlog, in 2001, the Legislature enacted S.B. 778 (Chapter 131, Statutes of 2001) — a bill that temporarily amended California Penal Code section 5076.1, which requires parole consideration hearing panels to include at least two Board of Prison Terms commissioners. The bill instead allowed parole consideration hearings to be conducted by two-person panels that include only one commissioner. (The other person is a deputy commissioner.)

The measure, which effectively doubled the number of panels available for hearings, was scheduled to expire on December 31, 2005, but the passage of S.B. 737 (Chapter 10, Statutes of 2005) in May 2005 made permanent the board's ability to convene two-person panels with only one commissioner. In addition, S.B. 737 defines for the first time in statute what items are to be considered part of the "backlog" of lifer hearings and provides that when the backlog reaches zero, the board's hearing panels are to be composed of three or more members, the majority of whom are commissioners.

The Board of Prison Terms reports that it has held an average of more than 4,600 parole consideration hearings over the past three years. Meanwhile, however, the population of lifer inmates in the state's prisons has continued to grow. Between 1990 and 2004, the

number of lifer inmates more than tripled, increasing from 8,153 to 27,375, presenting an even greater challenge to the board's ability to handle its hearing workload.

Other events affecting the Board of Prison Terms have occurred since the Office of the Inspector General's previous reviews. At the time of the Office of the Inspector General's 2002 follow-up review, the Board of Prison Terms also provided inmates and parolees with an appeals process by which to challenge board decisions, and the board had a backlog of more than 2,200 appeals pending. Since that time, rules requiring inmates and parolees to exhaust administrative remedies through the board's appeals system before presenting cases to the courts have been repealed. Under rules effective May 1, 2004, inmates and parolees may now take appeals directly to the courts. As a result, the backlog of appeals has been virtually eliminated.

In still another development, Jerry Rutherford, an inmate at California State Prison, San Quentin, filed a petition for a writ of *habeas corpus* in Marin County Superior Court in May 2004, alleging the state has failed to "hold a timely lifer parole hearing." His court-appointed attorney filed a motion for class certification, which was granted by the court in November 2004. The order defined the affected class as "all prisoners serving indeterminate terms of life with the possibility of parole dates without receiving parole hearings within the time required" by Penal Code section 3041(a).

The resultant class action became the basis for the "Rutherford Task Force," which was established by the Youth and Adult Correctional Agency. The task force, comprised of members from the Board of Prison Terms, the Department of Corrections, and the Youth and Adult Correctional Agency, began meeting in February 2005 to discuss the backlog of hearings, commissioner vacancies, hearing postponements, and other issues affecting the parole consideration hearing process.

#### **SUMMARY OF PREVIOUS FINDINGS AND RECOMMENDATIONS**

The Office of the Inspector General made the following specific findings as a result of the April 2002 follow-up to the March 2000 review:

- The system used by the Board of Prison Terms to identify and schedule indeterminate sentence hearings continued to be antiquated and did not ensure that the hearings were properly managed and were held with reasonable promptness.
- Management reports generated by the Board of Prison Terms contained inaccurate information.
- The Board of Prison Terms had not taken proactive measures to reduce the backlog of indeterminate sentence hearings and the backlog had continued to grow until the implementation of S.B. 778, which temporarily increased the number of available hearing panels. Reductions in the backlog resulted entirely from the enactment and implementation of the provisions of S.B. 778.

- By holding monthly board meetings on Tuesdays instead of Mondays, the board was not maximizing the number of hearings its commissioners could hold. This is because commissioners frequently took the entire Monday before the meeting to travel to the site of the board meeting.
- The board's estimated schedule for eliminating the indeterminate sentence hearing backlog by May 2002 was unrealistic.
- The board's appeals process was inadequate for handling appeals in a timely manner. As a result, there was a backlog of more than 2,200 appeals from inmates and parolees, but the board had taken no action to address the backlog.

The Office of the Inspector General made 10 recommendations to address the deficiencies.

### SUMMARY OF THE 2005 FOLLOW-UP RESULTS

The Office of the Inspector General found that of the 10 recommendations issued by the Office of the Inspector General in April 2002, none has been fully implemented; two have been substantially implemented; three have been partially implemented; two have not been implemented; and three are no longer applicable. In summary, the Office of the Inspector General found the following:

- ***The lifer database still cannot identify accurate statutory due dates for inmates' initial and subsequent hearings.*** The Office of the Inspector General reviewed the improvements to the database described by the board and found that while the board captures extensive amounts of detail for lifer hearings, it has not developed information technology that allows it to obtain information from the Department of Corrections necessary to identify inmates needing hearings. The board continues to use the same process it used at the time of the Office of the Inspector General's initial review. In scheduling lifer hearings, the board uses primarily manual methods involving a monthly exchange of faxes between board staff and a coordinator at each of the 31 Department of Corrections institutions housing lifer inmates. After interviewing board staff and evaluating both the "initial hearing report" and the "subsequent hearing report," the Office of the Inspector General found these reports to be of limited value in identifying statutorily mandated hearing dates or in scheduling future hearings. As a result, the board has no way to ensure that hearings are held within the time frames required by law.
- ***The statistics the board reports on lifer hearings are misleading.*** The way the board reports the number of hearings it conducted each year inflates the total. The board reported that it conducted 4,826 hearings in 2002; 4,498 in 2003; and 4,550 in 2004. But the Office of the Inspector General determined that those figures actually represent hearings *scheduled*. Hearings actually *conducted* in each of those years totaled 3,926; 3,138; and 2,844, respectively — a collective overstatement of nearly 4,000 hearings for the three-year period. The decrease in hearings actually held during each of the three years in that period coincides with a dramatic increase in



hearing postponements. Hearing postponement rates went from 18 percent in 2002 to 30 percent in 2003, and reached 37 percent in 2004 after the board adopted a regulation allowing inmates to request a hearing postponement “for any reason” no fewer than 10 working days before the scheduled hearing. During the period from August 2004 through April 2005, the postponement rate rose to 44 percent. Rescheduled hearings add to the board’s future workload and could ultimately affect the backlog.

The way the board determines the number of overdue hearings comprising the hearing backlog is similarly flawed. Instead of actually counting the number of overdue hearings, the board relies on a formula-driven calculation that excludes hearings that were postponed by the inmate, but never actually held. For purposes of the board’s official reports, the calculation counts inmate-initiated hearing postponements as “hearings conducted.”

- ***The reported backlog of parole consideration hearings has increased.*** As noted in the Office of the Inspector General’s April 2002 report, in early December 2001, the board reported a backlog of 1,400 hearings. Since that time, the backlog has grown. As of March 31, 2005, the board reported a backlog of 1,607 hearings—a 15 percent increase over 2001. According to the board, vacancies in appointed commissioner positions contribute to the backlog. The Office of the Inspector General confirmed that only six of the nine commissioner posts provided by statute were filled at the time of the most recent fieldwork, and the board has not had a full complement of commissioners since December 2002.
- ***S.B. 737 allows hearings up to 30 days overdue to be excluded from the “backlog.”*** S.B. 737 defines backlog as those hearings held *more than 30 days past the statutory due dates* for reporting purposes [emphasis added]. As a result, hearings overdue by 30 days or less are not counted in the backlog. Therefore, it is theoretically possible for the board to hold all of the hearings past the statutory due dates, yet still report a backlog of zero.

Furthermore, according to S.B. 737, when the backlog reaches zero, the board’s hearing panels are to consist of at least two commissioners. This has the effect of reducing by half the number of hearings that can be held even though hearings are as much as 30 days past due.

- ***Task force created to address indeterminate sentence hearing process.*** In response to class action litigation (*Rutherford v. Margarita Perez, et al.*) the Youth and Adult Correctional Agency formed a task force in February 2005 made up of representatives from the Department of Corrections and the Board of Prison Terms to address issues affecting indeterminate sentence inmates, including hearing postponements, vacancies in commissioner positions, and hearing workload. The task force is working toward developing remedies and toward identifying resources needed to implement necessary change.

- ***Appeals backlog has been largely eliminated.*** In contrast to the backlog of mandated parole consideration hearings, the backlog of appeals of board decisions by inmates and parolees has been nearly eliminated because regulations that formerly required inmates and parolees to exhaust administrative remedies before bringing grievances before the courts have been repealed. Inmates and parolees may now appeal the board's decisions directly to the courts, leaving the board to handle only complaints regarding clerical or procedural errors.

#### **FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop an information system in cooperation with the Department of Corrections that will result in the board having access to the most current, accurate, and relevant information necessary to manage its lifer hearing responsibilities. Such information should include, for example, minimum eligible parole dates and details of inmate status that may affect legally mandated subsequent hearing dates.**
- **Further develop regular monthly reports for use by board management in forecasting, scheduling, and managing the lifer hearing workload.**
- **Develop a system of quality control over data entry and compilation to ensure the quality of management reports.**
- **Move the regular monthly board meeting to Monday to increase the number of hearings held during that week. In the alternative, the Office of the Inspector General recommends that the board conduct a half day of hearings at local prisons beginning at 1:30 p.m. on the Monday preceding the regular Tuesday meeting.**
- **Develop policies, procedures, and regulations to minimize the number of hearing postponements, both inmate-initiated and board-initiated.**
- **For official reports, discontinue the current method of calculating the backlog of hearings and replace it with a method that reports an actual count of hearings that have passed their statutory due dates.**
- **Work with the Legislature to reconsider how the hearing "backlog" is defined in Penal Code section 3041(d), as revised by passage of S.B. 737. Additionally, consider the impact of the requirement to have hearing panels consist of at least two commissioners when the backlog reaches zero.**

The following table summarizes the results of the follow-up review.

**2002 FOLLOW-UP FINDING NUMBER 1**

**The Office of the Inspector General found that the Board of Prison Terms system for identifying and scheduling indeterminate sentence hearings continued to be antiquated and could not ensure that the hearings were properly managed and conducted with reasonable promptness.**

2002 FOLLOW- UP RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended that the Board of Prison Terms implement new technologies and systems to develop an efficient and effective hearing and appeals operation that includes the following elements:</p> <ul style="list-style-type: none"> <li>The Board of Prison Terms should identify specific information that would help to effectively manage various activities and develop new systems for compiling, processing, and analyzing that information. The information processed should address and support each unit’s objectives, track hearings, and appeals in the system, and document the outcomes.</li> </ul>	<p><b>PARTIALLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that the board has developed and implemented a lifer database from which it can extract information to produce various reports. For example, the board can use the database to produce an “initial hearing report” identifying an inmate’s mandated initial hearing date based on the minimum eligible parole date recorded in the Department of Corrections Offender-Based Information System. Similarly, the board can produce a “subsequent hearing report” identifying an inmate’s subsequent mandated hearing date.</p> <p>The board also reported that it has developed and implemented the following:</p> <ul style="list-style-type: none"> <li>Daily, weekly, and monthly reports of hearing decisions. The reports, which are compiled from hearing decisions faxed daily from hearing officers in the field and entered into the lifer database, facilitate accurate reporting of proposed subsequent hearing dates.</li> <li>A report identifying all lifer hearings requiring a rehearing. The reports identify the reason for the rehearing and assist staff in addressing patterns or trends.</li> </ul>

	<ul style="list-style-type: none"> <li>• An enhancement to the existing lifer database documenting conflicts of interest involving panel members. The database alerts users to any conflict and identifies the reason to ensure that the issue is addressed when the hearing is rescheduled.</li> </ul> <p>The Office of the Inspector General reviewed the improvements to the lifer database described by the board and found that while the board captures extensive amounts of detail for lifer hearings, it has not developed information technology that allows it to obtain critical information from the Department of Corrections to identify and schedule inmates needing hearings. The board continues to use the same process it used at the time of the Office of the Inspector General’s initial review. In scheduling lifer hearings, the board uses primarily manual methods involving a monthly exchange of faxes between board staff and a coordinator at each of the 31 Department of Corrections institutions housing lifer inmates.</p> <p>After interviewing board staff and evaluating both the “initial hearing report” and the “subsequent hearing report,” the Office of the Inspector General found these reports to be of limited value in identifying statutorily mandated hearing dates or in scheduling future hearings. A critical element driving each inmate’s initial hearing date is his or her “minimum eligible parole date,” which is subject to revision based upon the inmate’s in-custody behavior. The minimum eligible parole dates recorded in the Department of Corrections Offender Based Information System, which form the basis for the board’s reports, are not updated to reflect such revisions frequently enough to be reliable. Consequently, the board must rely on Department of Corrections staff at each of the prisons to place inmates on the schedule for their initial hearings based upon the most accurate minimum eligible parole date for individual inmates.</p> <p>The board’s subsequent hearing report is similarly unreliable. While it lists the most recent “next hearing date” for each lifer inmate anticipating a subsequent hearing, those dates may not reflect the next statutory due date. A typical report of subsequent hearing dates may list several inmates whose next hearing dates are several months or even years in the past, but only</p>
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<ul style="list-style-type: none"> <li>In cases where the Board of Prison Terms already produces management reports, the board should evaluate whether the reports contain accurate information, and if necessary, correct internal errors. Further, the Board of Prison Terms should implement quality control procedures relative to data entry and compilation, which would improve the overall accuracy of reports.</li> </ul>	<p><b>NOT IMPLEMENTED</b></p>	<p>manual research in conjunction with the Department of Corrections records can disclose whether the reason for such apparent lateness is because the inmate in question earned a new prison term, is temporarily housed outside the prison, or has escaped the notice of those responsible for scheduling his hearing. The next hearing dates for other inmates listed on the report may appear to be several months in the future, but could be revised dates assigned to them as the result of board-initiated postponements and not the actual statutory due dates. In either case the report does not contain adequate supplementary information, and further manual research of the Department of Corrections records by board staff is required to discover the underlying history of each item. As a result of the lack of information, the board again relies on the Department of Corrections to schedule the inmates for subsequent hearings.</p> <p>The board reported that these reports collectively identify which inmates should be scheduled for a hearing and are used as a mechanism to alert the board’s scheduling staff if an inmate is not placed on a hearing calendar by staff at the inmate’s institution.</p> <p>The Office of the Inspector General found, however, that whatever value these reports might have had as a mechanism for cross-checking the hearing schedules submitted by individual institutions is negated by the fact that the board’s scheduling staff does not perform such cross-checks, citing a lack of resources to do so.</p> <p>This recommendation was directed toward enhancing internal quality control procedures to improve the accuracy of the various management reports produced by the board. The response from the board, however, addressed only the expanded capability of the existing system to provide a broader spectrum of information to users and to provide management with more data with which to make decisions.</p> <p>For example, the board reported that it now provides the Department of Corrections with a monthly list by institution of postponed hearings, which identifies the reasons for postponement and allows the department to address issues underlying postponements at specific institutions. The report</p>
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<ul style="list-style-type: none"> <li>The Board of Prison Terms should assign a specific staff member the responsibility for data collection and analysis. In addition, it should maintain data for a sufficient period of time to permit identification of trends and to establish baseline standards and expectations.</li> </ul>	<p><b>PARTIALLY IMPLEMENTED</b></p>	<p>also identifies whether the postponement was at the request of the inmate (or his attorney), or the board.</p> <p>Other enhancements to the lifer database have eliminated duplicative efforts by allowing hearing documentation to be entered and processed into one comprehensive record containing information such as the following:</p> <ul style="list-style-type: none"> <li>Hearing decisions by individual panel members to aid in analysis of hearing results.</li> <li>Dates of critical events, such as receipt of tapes and transcripts.</li> <li>Electronically scanned hearing transcripts, eliminating the need for microfilm and providing a more efficient means of conducting research.</li> <li>Scheduled hearings requiring video conferencing equipment or any special accommodations needed to meet Americans with Disability Act mandates.</li> </ul> <p>The board’s response did not address its quality control process over reports it produces for management. As the Office of the Inspector General noted above, the accuracy of key board reports is heavily dependent upon information from individual Department of Corrections employees at each of the prisons in the state correctional system, and the reports currently produced by the board are unreliable.</p> <p>The board has identified its management information systems manager as the individual with overall responsibility for data collection and analysis. Data entry in the lifer database is limited to specifically trained staff; access by other users is permitted on a read-only basis.</p> <p>While the board’s response identifies an individual responsible for data collection, it does not address data analysis. The Office of the Inspector General found that while the board’s data system collects and stores a</p>
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		<p>variety of information, its systems and processes have not developed to allow for meaningful and routine analysis of the information it collects. For example, the board has not developed an analysis of its projected future workload that would allow its management to plan for personnel and material resources, nor has it developed reports that would permit management to identify and analyze the barriers to completing lifer hearings by their statutory due dates.</p>
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**FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop an information system in cooperation with the Department of Corrections that will result in the board having access to the most current, accurate, and relevant information necessary to manage its lifer hearing responsibilities. Such information should include, for example, minimum eligible parole dates and details of inmate status that may affect legally mandated subsequent hearing dates.**
- **Further develop regular monthly reports for use by board management in forecasting, scheduling, and managing the lifer hearing workload.**
- **Develop a system of quality control over data entry and compilation to ensure the quality of management reports.**

**2002 FOLLOW-UP FINDING NUMBER 2**

**The Office of the Inspector General found that the Board of Prison Terms had not taken proactive measures to reduce the backlog of indeterminate sentence hearings, which continued to grow until the implementation of S.B. 778. Reductions in the backlog had resulted entirely from the enactment and implementation of S.B. 778 (Chapter 131, Statutes of 2001).**

<b>2002 FOLLOW-UP RECOMMENDATIONS</b>	<b>STATUS</b>	<b>COMMENTS</b>
<p>To ensure that Board of Prison Terms commissioners and deputy commissioners work at least an average of 40 hours a week, the Office of the Inspector General</p>	<p><b>SUBSTANTIALLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that it has developed and administered a plan to reduce the backlog of lifer hearings in conjunction with the passage of S.B. 778, which temporarily enabled the board to conduct hearings using two-person panels consisting of at least one commissioner,</p>





<p>In addition, the board should conduct an internal review of the indeterminate sentence hearing process to identify measures to achieve greater efficiency.</p>	<p><b>PARTIALLY IMPLEMENTED</b></p>	<p>The board did not conduct an internal review, but responded that it conducts hearings as efficiently as possible in an environment in which many intangible, dynamic factors significantly influence the process and determine whether a hearing begins on time, is completed, or is postponed.</p> <p>The board noted that the quasi-judicial nature of the hearings necessitates placing a high priority on protecting the due process rights of all parties rather than on allocating a specific period of time to deliberate a decision. Commissioners often manage highly emotional situations involving the interests of victims and inmates, whose personal freedom is at stake. Decisions are deliberated with all pertinent factors unique to each hearing weighed and thoughtfully considered.</p> <p>The board said that successful completion of a parole consideration hearing is also influenced by logistical factors beyond the board’s control, such as the need for videoconferencing equipment, the ability to complete timely psychological evaluations, and the availability of attorneys who represent inmates.</p> <p>The Office of the Inspector General notes that these critical issues became the subject of study and discussion by the Rutherford Task Force, formed by the Youth and Adult Correctional Agency in response to class-action litigation initiated by a San Quentin inmate alleging that the state failed “to hold a timely lifer parole hearing” in his case. The task force began meeting in February 2005 to discuss issues such as the backlog of hearings, commissioner vacancies, and hearing postponements only after the Marin County Superior Court granted class certification in the case on November 29, 2004.</p>
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**FOLLOW-UP RECOMMENDATION**

**The Office of the Inspector General recommends that the board move its regular monthly meeting to Monday to increase the number of hearings held during that week. In the alternative, the Office of the Inspector General recommends that the board conduct a half day of hearings at local prisons beginning at 1:30 p.m. on the Monday preceding the regular Tuesday meeting.**

**2002 FOLLOW-UP FINDING NUMBER 3**

**The Office of the Inspector General found that the estimated schedule of the Board of Prison Terms for eliminating the hearing backlog by May 2002 was unrealistic.**

<b>2002 FOLLOW-UP RECOMMENDATIONS</b>	<b>STATUS</b>	<b>COMMENTS</b>
<p>The Office of the Inspector General recommended that the Board of Prison Terms take measures to ensure a consistent, adequate delivery process for indeterminate sentence hearings. To improve its efficiency, the Office of the Inspector General recommended that the board restructure its scheduling system by increasing the number of scheduled hearings for each of the four hearing panels to offset the 12 percent of hearings postponed. That measure would also alleviate the workload in the event of short-term commissioner vacancies.</p>	<p><b>SUBSTANTIALLY IMPLEMENTED</b></p>	<p>The board did not directly respond to the Office of the Inspector General’s recommendation to increase the number of scheduled hearings to offset anticipated postponements. As discussed in Finding 2, however, the board has increased the number of hearings from 18 to an average of 21 hearings per week per commissioner. That action substantially addresses the intent of the Office of the Inspector General’s recommendation.</p> <p>The board reported in its response that in the last three years, it has conducted a record number of hearings, holding 4,826 in 2002, 4,498 in 2003, and 4,550 in 2004. The totals are reportedly more than twice the number of annual hearings conducted in any year before 2001. At one point, according to the board, the hearing backlog fell by approximately 1,700 cases, from an initial total of 2,000 to 300. On March 31, 2005, the board reported a backlog of 1,607 hearings.</p> <p>While the board’s response cites an increase in the number of hearings it conducted, the figures it cites — 4,826 for 2002; 4,498 for 2003; and 4,550 in 2004 — are actually the number of hearings <i>scheduled</i>, not the number of hearings <i>conducted</i>. The Office of the Inspector General found, based on reports prepared by the board, that actual hearings conducted are 3,926 for 2002; 3,138 for 2003; and 2,844 for 2004. The Office of the Inspector General notes that there are fewer annual hearings conducted for each</p>

	<p>successive year during that time owing to a dramatic increase in the number of postponements throughout that period. Statistics provided by the board indicate that 12 percent of scheduled hearings in calendar year 2001 were postponed. This figure has increased steadily in recent years, rising to 18 percent in 2002, 30 percent in 2003 and 37 percent in 2004.</p> <p>The dramatic increase in postponements is exacerbated by the board’s adoption in June 2004 of rule changes to Section 2253(b) of Title 15, which now states that “a prisoner may request a postponement for any reason” no fewer than 10 working days prior to the scheduled hearing. Immediately after adoption of this change, the overall postponement rate for hearings scheduled for August 2004 through April 2005 rose to 44 percent. Rescheduled hearings add to the board’s future workload and could ultimately affect the backlog.</p> <p>In addition to the extra expenses associated with the need to re-schedule postponed hearings, the openings left in the hearing schedule by last-minute inmate postponements further contribute to the backlog. The growing trend in postponements results in fewer hearings conducted and more hearings becoming backlogged. In March 2005 for example, 313 (86 percent) of the 362 lifer hearings conducted were held after their recorded “next hearing” dates and were late by an average of more than three months. As a result, the efforts of the hearing panels are consumed primarily with late hearings, leaving little time and resources available for hearings that are currently due.</p> <p>According to the board, vacancies in appointed commissioner positions contribute to the backlog. The Office of the Inspector General confirmed that only six of the nine commissioner posts provided by statute were filled at the time of the most recent fieldwork, and that the board has not had a full complement of nine commissioners since December 2002.</p> <p>The board further reported that, as an unintended consequence of S.B. 778, the board’s ability to convene more panels has placed added stress on its limited support resources and clerical staff.</p>
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	<p>In addition, the board reported that as the number of hearings conducted reaches historically high levels, the related number of postponements increases, contributing to the backlog. The board takes the position that postponements requested by an inmate or his/her attorney, in contrast to postponements initiated by the board, result in a change to the hearing due date and should not be included in the backlog of hearings. The board demonstrated to the Office of the Inspector General its new ability to differentiate between postponements requested by inmates and postponements caused by the board and has documented that inmate-requested postponements are in the majority. For example, the board's statistics for postponements occurring from August through April 2005 show that inmates or their attorneys requested 1,001 (62 percent) of the 1,623 postponements. Consequently, future reports of backlogged hearings will be adjusted to not include postponements requested by inmates.</p> <p>The Office of the Inspector General found that the "backlog" figure used in the board's official report is not an actual count, but is a figure calculated by subtracting the number of board-postponed hearings (as opposed to those initiated by inmates) from the number of "scheduled hearings" each month. The net figure is considered the number of "hearings conducted," which is then compared to the number of "hearings needed" for the period. If "hearings conducted" exceed "hearings needed," the backlog is reduced by the difference; if the opposite is true, the backlog is increased by that difference.</p> <p>The principal in omitting inmate-initiated postponements from the calculation is to include in the backlog only those postponements for which the board is responsible. While there is merit to this approach, the calculation method described above causes inmate-initiated postponements to be counted as "hearings conducted" in the board's official "Report of Lifer Parole Hearings," thus overstating the number of conducted hearings and causing the report to be misleading.</p> <p>S.B. 737 (Chapter 10, Statutes of 2005) defines the "backlog" of lifer hearings for reporting purposes as the number of cases in which an inmate has not received a completed initial or subsequent parole consideration</p>
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		<p>hearing within 30 days of the hearing date required by statute, unless the inmate has waived the right to those timeframes. The Office of the Inspector General notes that under this definition, it is hypothetically possible for the board to report a “backlog” of zero while still holding hearings up to 30 days after their statutory due dates—and providing a continued target for additional litigation. Furthermore, according to S.B. 737, when the backlog reaches zero, the board’s hearing panels are to consist of at least two commissioners. This has the effect of reducing by half the number of hearings that can be held even though hearings are as much as 30 days past due.</p> <p>The evaluation of the backlog is among the issues being addressed by the Rutherford Task Force that convened in February 2005.</p>
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**FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop policies, procedures, and regulations to minimize the number of hearing postponements, both inmate-initiated and board-initiated.**
- **For official reports, discontinue the current method of calculating the backlog of hearings and replace it with a method that reports an actual count of hearings that have passed their statutory due dates.**
- **Work with the Legislature to reconsider how the hearing “backlog” is defined in Penal Code section 3041(d), as revised by passage of S.B. 737. Additionally, consider the impact of the requirement to have hearing panels consist of at least two commissioners when the backlog reaches zero.**

**2002 FOLLOW-UP FINDING NUMBER 4**

**The Office of the Inspector General found that the Board of Prison Terms processes were not adequate to handle appeals in a timely manner and had resulted in a backlog of more than 2,200 appeals from inmates and parolees, but the Board of Prison Terms had taken no action to address the backlog.**

2002 FOLLOW-UP RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended that the Board of Prison Terms take the following corrective actions to clear the excessive backlog of appeals:</p> <ul style="list-style-type: none"> <li>Consider transferring responsibility for reviewing and completing indeterminate sentence appeals from the deputy commissioners to the board’s legal section to eliminate a duplication of effort and potential conflict.</li> </ul>	<p style="text-align: center;">NOT APPLICABLE</p>	<p>The board reported that after it conducted a thorough review of the appeals process in conjunction with other affected agencies and citizen groups, it abolished the appeals process that existed at the time of the Office of the Inspector General’s April 2002 audit.</p> <p>According to the board, its review revealed that historically, approximately 97 percent of prisoner appeals were denied, and that all denied appeals concerned challenges to the discretionary actions of the board’s hearing panels. In contrast, the majority of appeals granted concerned clerical or ministerial errors easily identifiable and quickly remedied. The board concluded that the appeals process was cumbersome, resource-intensive, and did not satisfy a legitimate need.</p> <p>The board further determined that the legal doctrine requiring prisoners to exhaust administrative remedies before taking cases to court was a time-wasting impediment. As a result, the board proposed to eliminate as much of the administrative appeals process as possible and adopted regulations in accordance with the Administrative Procedures Act, effective May 1, 2004.</p> <p>According to the board, the new regulations and procedures reduce the appeals backlog and create a more streamlined process that allows the board to address and correct obvious errors rapidly. An inmate or parolee need only send a letter to the new Quality Control Unit. The reforms also provide speedier access to the courts for prisoners and counsel who believe they have meritorious claims.</p>



## PAROLE REVOCATION

**The Office of the Inspector General found that the Board of Prison Terms has improved its parole revocation hearing tracking system since a January 2003 review and is implementing a new parole revocation process pursuant to the *Valdivia v. Schwarzenegger* class action lawsuit.**

The Office of the Inspector General's January 2003 review of the Board of Prison Terms identified significant deficiencies in the state's parole revocation process. The deficiencies stemmed partly from poor coordination between the Board of Prison Terms and the Department of Corrections, and partly from the board's failure to properly manage the revocation process and to adequately supervise its deputy commissioners.

### BACKGROUND

The Board of Prison Terms conducts parole revocation hearings for parolees who have violated parole conditions. In carrying out its duties for the parole revocation process, the board shares responsibility with the Department of Corrections. At the time of the Office of the Inspector General's January 2003 review, more than 7,000 incarcerated parolees were awaiting parole revocation hearings to determine whether they should be returned to prison. State and federal law has established that alleged parole violators have a due process right to a hearing within 45 days of incarceration, or within a "reasonable time period." Yet, in the 2003 review, the Office of the Inspector General found that 81 percent of a sample of parole violators had been incarcerated longer than 45 days and that 7 percent had been held more than 100 days. In many instances, by the time parolees received hearings to determine whether parole should be revoked, they had already served at least as much time as the parole revocation sentences they would have received for the violations of which they were accused.

The class action lawsuit *Valdivia v. Davis* (now *Valdivia v. Schwarzenegger*) was pending in U.S. District Court at the time of the January 2003 review. The court had granted partial summary judgment in favor of the plaintiffs, holding that California's parole revocation system violated plaintiffs' due process rights under the 14<sup>th</sup> Amendment by "allowing a delay of up to forty-five days or more before providing the parolee an opportunity to be heard regarding the reliability of the probable cause determination." In November 2003, the Board of Prison Terms and the Department of Corrections reached a court-approved settlement to resolve the lawsuit.

The remedial plan developed in response to the *Valdivia v. Schwarzenegger* litigation has resulted in broad changes to the revocation process. The defendants are now required by court order to fully implement the revocation process described in the *Valdivia* remedial

### IMPLEMENTATION REPORT CARD

**Previous recommendations: 6**

**Fully implemented: 5 (83%)**

**Substantially implemented: 0 (0%)**

**Partially implemented: 0 (0%)**

**Not implemented: 0 (0%)**

**Not applicable: 1 (17%)**



plan by July 1, 2005. Among the most significant changes to the parole revocation process are the following:

- All alleged parole violators will be assigned an attorney at the beginning of the process.
- All alleged parole violators will be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct and written notice of the parolee's rights regarding the revocation process and timeframes.
- To determine whether there is sufficient justification to proceed to a hearing, all alleged parole violators who do not waive or seek a continuance of a probable cause hearing will have a probable cause hearing within 10 business days after the parolee has been served with notice of charges and rights.
- All persons subject to parole revocation who do not waive or seek a continuance of a final revocation hearing will be provided with a parole revocation hearing within 35 calendar days, unless the parolee requests a continuance.

The Board of Prison Terms projects that it will receive approximately 85,000 referrals of parole violations from the Department of Corrections in fiscal year 2005-06. The board estimates that approximately 66 percent of the cases referred are resolved before hearing and that it will conduct approximately 28,900 parole revocation hearings in fiscal year 2005-06.

#### **SUMMARY OF PREVIOUS FINDINGS AND RECOMMENDATIONS**

The Office of the Inspector General made the following specific findings as a result of the January 2003 review:

- The state did not have an effective means of tracking to ensure that parolees detained for violating parole received a hearing within the 45-day time-frame specified in state regulations or within a "reasonable time period," as specified under federal law.
- The parole revocation process was unnecessarily burdensome and prevented the state from affording inmates and parolees their due process rights to a timely hearing.

As a result of the January 2003 review, the Office of the Inspector General made the following recommendations to the Board of Prison Terms:

- Refine the revocation scheduling and tracking system to ensure that it provides the information needed to efficiently administer the parole revocation process. The system should be able to accomplish the following:
- Track the status of parolees from the day of arrest to the day the parole revocation hearing is held.

- Provide current information regarding the length of time parolees have been awaiting hearings.
- Provide complete information about the revocation hearing proceedings, including the number of elapsed days between each phase of the hearing process, the decision reached during the hearing, and the basis for the decision.
- Explore the feasibility of consolidating responsibility for the parole revocation process in one department, with the Department of Corrections the most logical choice for that function.
- Eliminate the parole revocation screening process and instead proceed directly to the parole revocation hearing. The State should conduct all such hearings within 30 days unless the parolee requests an extension.
- Identify Proposition 36-eligible parolees who were placed into custody prior to October 1, 2002 and who remain in custody, and release them to a drug-treatment program.

#### **SUMMARY OF THE 2005 FOLLOW-UP RESULTS**

Of the six recommendations issued by the Office of the Inspector General in January 2003 concerning the parole revocation process, five have been fully implemented; and one is no longer applicable.

In summary, the Office of the Inspector General found that the Board of Prison Terms has made significant progress in tracking the thousands of revocation cases processed annually to help ensure that suspected parole violators receive timely hearings. The revocation scheduling and tracking system implemented pursuant to the *Valdivia v. Schwarzenegger* remedial plan now tracks the status of parolees from the day of arrest to the day the parole revocation hearing is held. The system also provides management with both summary reports and access to more detailed information. The board also reported that it has identified all parolees eligible for treatment under Proposition 36 who had been placed in custody before October 1, 2002 and released them to drug treatment programs.

#### **FOLLOW-UP RECOMMENDATIONS**

**None**

The following table summarizes the results of the follow-up review.

**ORIGINAL FINDING NUMBER 3<sup>1</sup>**

**The Office of the Inspector General found that at the time of the review the state had only recently developed a means of tracking to ensure that parolees detained for violating parole received a hearing within the 45-day guideline specified in state regulations or within a “reasonable time period,” as specified under federal law.**

ORIGINAL RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended that the Board of Prison Terms refine the revocation scheduling and tracking system to ensure that it provides the information needed to efficiently administer the parole revocation process. The system should be able to accomplish the following:</p>		<p>The Board of Prison Terms reported that version 2.5 of the revocation scheduling and tracking system was implemented in October 2002, soon after the Office of the Inspector General completed fieldwork for the January 2003 report.</p> <p>At the time of the Office of the Inspector General’s 2005 fieldwork, version 2.5 of the revocation scheduling and tracking system was still in operation and until February 1, 2005 was used for tracking parolees placed on hold. On February 1, 2005, the Board of Prison Terms implemented an updated version of the tracking system specifically designed to accommodate the new revocation process pursuant to the <i>Valdivia</i> remedial plan. That new version of the revocation scheduling system, which is known as RSTS 3.0, is used to track parolees placed on hold since February 1, 2005, while the older version continues to be used for parolees placed on hold before that date.</p> <p>The Office of the Inspector General found that the Board of Prison Terms has made significant progress in tracking the thousands of parole revocation cases processed annually. The RSTS 3.0 system provides management with summary information about the status of cases in process statewide at any point in time or over a period of time, such as a month or year. The system also allows management to obtain more detailed summary information, such as cases in process in a particular region, or cases assigned to a particular person, so that problems can be identified and corrected.</p>

<sup>1</sup> Numbering of findings coincides with the Office of the Inspector General’s January 2003 report and therefore is not sequential in this report.

<ul style="list-style-type: none"> <li>Track the status of parolees from the day of arrest to the day the parole revocation hearing is held.</li> </ul>	<p><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that this recommendation was satisfied with the release and implementation of RSTS 2.5 in October 2002.</p> <p>The Office of the Inspector General reviewed the revocation scheduling and tracking system versions 2.5 and 3.0, and found that the system can create a case status record for tracking the status of parolees facing parole violation charges, whether in custody or not, from the date of hold or discovery to the completion of the case, including the hearing results.</p>
<ul style="list-style-type: none"> <li>Provide current information regarding the length of time parolees have been awaiting hearings.</li> </ul>	<p><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that this was accomplished with RSTS 2.5, which was released and implemented October 2002.</p> <p>The Office of the Inspector General found that the revocation scheduling and tracking system versions 2.5 and 3.0 report the length of time parolees have been awaiting hearings.</p>
<ul style="list-style-type: none"> <li>Provide complete information about the revocation hearing proceedings, including the number of elapsed days between each phase of the hearing process, the decision reached during the hearing, and the basis for the decision.</li> </ul>	<p><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that the revocation scheduling and tracking system will be modified to include the dates of key events in the new revocation process outlined in the <i>Valdivia</i> remedial plan.</p> <p>The Office of the Inspector General found that the summary of the revocation hearing and decision (form BPT 1103) is entered into the tracking system for all cases. For hearing locations with access to the tracking system, the entering is done online by the deputy commissioners at the actual hearing, making the information immediately available in the tracking system.</p>

**FOLLOW-UP RECOMMENDATIONS**

**None**

**ORIGINAL FINDING NUMBER 6**

**The Office of the Inspector General found that the state’s parole revocation process was unnecessarily burdensome and prevented it from affording inmates and parolees their due process rights to a timely hearing.**

ORIGINAL RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended the following actions:</p> <ul style="list-style-type: none"> <li>• The state should explore the feasibility of consolidating responsibility for the parole revocation process in one department, with the Department of Corrections the most logical choice for that function.</li> </ul>	<p style="text-align: center;"><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported to the Office of the Inspector General that the federal court order (<i>Valdivia v. Schwarzenegger</i>) and settlement agreement under the <i>Valdivia</i> remedial plan provides for consolidating responsibility for the parole revocation process in the Board of Prison Terms.</p> <p>The Office of the Inspector General reviewed the stipulated order for permanent injunctive relief in the matter of <i>Valdivia v. Schwarzenegger</i> and found that the revocation process has changed significantly. The Department of Corrections continues to have responsibility for custody of parolees suspected of violating parole. Department employees are responsible for making a probable cause determination and, if appropriate, recommending alternative sanctions to parole revocation. If alternative sanctions are not appropriate, the department is responsible for notifying the parolee of charges and for preparing a revocation packet that serves as the referral to the Board of Prison Terms for possible parole revocation. The Board of Prison Terms handles all aspects of the revocation process from the point of referral, except for parolee custody, which is handled by the Department of Corrections.</p> <p>The Office of the Inspector General found that the Youth and Adult Correctional Agency has assumed responsibility for developing and implementing the new parole revocation process, thereby providing the necessary coordination between the Board of Prison Terms and the Department of Corrections. Also, on May 10, 2005, the governor signed Senate Bill 737, which abolishes several departments and boards within the Youth and Adult Correctional Agency and creates instead the Department of Corrections and Rehabilitation. Under the provisions of the new law, the</p>

<ul style="list-style-type: none"> <li>• The Board of Prison Terms should eliminate the parole revocation screening process and instead proceed directly to the parole revocation hearing. The State should conduct all such hearings within 30 days unless the parolee requests an extension.</li> <li>• Identify Proposition 36-eligible parolees who were placed into custody prior to October 1, 2002 and who remain in custody, and release them to a drug-treatment program.</li> </ul>	<p><b>NOT APPLICABLE</b></p>	<p>Department of Corrections will be known as the Division of Adult Operations and the Board of Prison Terms will be known as the Board of Parole Hearings. These changes become operative July 1, 2005.</p> <p>This recommendation is no longer applicable. The <i>Valdivia</i> remedial plan provides for screening offers to be made to each parolee before proceeding to the hearing. According to the court order, all hearings must be conducted on or before the 35<sup>th</sup> calendar day after placement of the parole hold.</p>
	<p><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms informed the Office of the Inspector General that this task was completed by December 31, 2002.</p> <p>The Office of the Inspector General found that the new revocation process pursuant to the <i>Valdivia</i> remedial plan provides opportunities for remedial sanctions at many steps in the process. The remedial sanctions include placement in drug-treatment programs as an alternative to parole revocation.</p>

**FOLLOW-UP RECOMMENDATIONS**

None

## SUPERVISION OF DEPUTY COMMISSIONERS

**The Office of the Inspector General found that the Board of Prison Terms has increased supervision of its deputy commissioners since the January 2003 review, but has still not implemented a time-management system, hindering its ability to project the number of deputy commissioners it needs to fulfill its responsibilities.**

The Office of the Inspector General's January 2003 review of the Board of Prison Terms was prompted in part by the board's proposal to fill 24 of its vacant deputy commissioner positions. The review was conducted to determine whether the board had a legitimate need to fill the positions in light of the state budget crisis. As a result of the review, the Office of the Inspector General found that the board did not need additional deputy commissioners, and that, in fact, with more efficient use of its resources, could fulfill its responsibilities with slightly more than half its then-existing staff. The Office of the Inspector General also found that deficiencies in the parole revocation process stemmed partly from the board's failure to adequately supervise the deputy commissioners.

### BACKGROUND

Deputy commissioners are central to the mission and functions of the Board of Prison Terms. The deputy commissioners conduct parole revocation hearings; participate with Board of Prison Terms commissioners in indeterminate sentence hearings; conduct hearings for mentally disordered offenders and sexually violent predators; and develop "screening offers" for parole violators— proposed parole revocation prison terms — which parolees may either accept or reject, with the latter triggering a revocation hearing.

The board has 72 authorized deputy commissioner positions for fiscal year 2004-05, representing 31 percent of its personnel costs. To justify the positions, the board uses a "workload analysis," a calculation that incorporates the number of hearings and other functions conducted by the board each year, the time required to complete each function, and the number of hours each deputy commissioner is available to work.

### SUMMARY OF PREVIOUS FINDINGS AND RECOMMENDATIONS

The Office of the Inspector General made the following specific findings as a result of the January 2003 review:

- The Board of Prison Terms had significantly overstated the number of deputy commissioner positions it needed to fulfill its responsibilities and actually needed only about 39 positions — slightly more than half its existing deputy commissioner staff.

### IMPLEMENTATION REPORT CARD

**Previous recommendations: 6**

**Fully implemented: 2 (33 %)**

**Substantially implemented: 1 (17%)**

**Partially implemented: 2 (33%)**

**Not implemented: 1 (17%)**

**Not applicable: 0 (0%)**

- Board of Prison Terms deputy commissioners, who carry out most of the board's functions, received little supervision and the board had no means of accounting for how they spent their time.

The Office of the Inspector General made the following six recommendations to the Board of Prison Terms concerning supervision of the deputy commissioner staff as a result of the January 2003 review:

- Develop and implement a time-management system for deputy commissioners. The system should require that deputy commissioners accurately record the amount of time spent on daily board activities, including hearings and other tasks, and should ensure that the deputy commissioners account for their time on a daily, weekly, and monthly basis. The system should contain enough detail to allow management to analyze the typical daily activities of a deputy commissioner.
- Use information from the time-management system to support the workload analysis. The two critical factors in the workload analysis –total hours required to complete hearings and the total number of hours each deputy commissioner can work in one year – should be updated to accurately reflect current capabilities.
- Establish more associate chief deputy commissioner positions based on a ratio of eight deputy commissioners to one associate chief deputy commissioner, with compensation commensurate with the responsibility of the position to supervise deputy commissioners.
- Associate chief deputy commissioners who are responsible for supervising deputy commissioners should do the following:
  - Ensure that the deputy commissioners work an average of 40 hours per week as specified in the collective bargaining agreement.
  - Systematically review hearing proceedings and decisions reached to ensure that deputy commissioners conduct hearings properly and consistently. Reviews should be coordinated with similar reviews completed by other staff members.
  - Require deputy commissioners to use the revocation scheduling and tracking system.

### **SUMMARY OF THE 2005 FOLLOW-UP RESULTS**

Of the six recommendations issued by the Office of the Inspector General in January 2003 concerning the board's supervision of the deputy commissioners, two recommendations have been fully implemented; one has been substantially implemented; two have been partially implemented; and one has not been implemented.



The Office of the Inspector General found that the Board of Prison Terms has improved the supervision and productivity of deputy commissioners by increasing both the number of supervisors relative to deputy commissioners and the number of parole revocation hearings scheduled for deputy commissioners each day. The board also has made progress in evaluating the number of deputy commissioner positions it needs to fulfill its responsibilities, but its ability to more accurately make that evaluation is hampered by its failure to implement a time-management system to accurately record the time deputy commissioners spend on various activities. The implementation of a new parole revocation process pursuant to the *Valdivia v. Schwarzenegger* litigation has also affected the board's ability to determine how many deputy commissioners it needs because of the lack of historical information for projecting time required by the new process.

#### **FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop and implement a time-management system for deputy commissioners.**
- **Use information from the time-management system to support future workload analyses. The two critical factors in the workload analysis report – total hours required to complete hearings and the total number of hours each deputy commissioner can work in one year – should be updated to accurately reflect current capabilities.**
- **Continue efforts to increase the number of associate chief deputy commissioner positions relative to the number of deputy commissioners they supervise and to make the compensation of the associate chief deputy commissioner position commensurate with the responsibility of the position for supervising deputy commissioners.**

The following table summarizes the results of the follow-up review.

**ORIGINAL FINDING NUMBER 1**

**The Office of the Inspector General found that the Board of Prison Terms had significantly overstated the number of deputy commissioner positions it required to fulfill its responsibilities and that the actual number of deputy commissioner positions it needed was only about 39 – slightly more than half its deputy commissioner staff.**

ORIGINAL RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended that the Board of Prison Terms use information from the time-management system proposed in Finding 2 to support its workload analysis. The recommendation noted that the two critical factors in the workload analysis –total hours required to complete hearings and the total number of hours each deputy commissioner can work in one year – should be updated to accurately reflect current capabilities.</p>	<p><b>PARTIALLY IMPLEMENTED</b></p>	<p>The board reported that it has updated both the number of hours required to complete hearings and the number of hours each deputy commissioner can work in one year to accurately reflect current capabilities and has adjusted workload formulas accordingly.</p> <p>The Office of the Inspector General reviewed the board’s workload analysis for fiscal year 2005-06 and found that in most cases, minutes per activity were updated based on the results of a deputy commissioner workload study issued by the board in January 2004. The Board of Prison Terms noted, however, that the January 2004 workload study was completed before implementation of the new revocation process developed pursuant to the <i>Valdivia</i> remedial plan. The number of hours required to complete the steps in the new process, therefore, is only an estimate.</p> <p>The board calculated the number of hours each deputy commissioner can work in one year at 1,290 hours. That number is a critical element in the workload analysis; yet, the time needed for training and travel again are only estimates, because the board lacks a time-management system that provides accurate data on those activities, and because travel is expected to increase as a result of the new revocation process.</p> <p>In reviewing the workload analysis, the Office of the Inspector General noted that the board did not account for administrative tasks, special assignments, or wait time. The board’s January 2004 workload study found that deputy commissioners spent an average of 10 hours per week on those activities during the study period. The board maintains that 10 hours per week would overstate the time spent if applied to the full year. Nonetheless, some amount of time</p>

		<p>must be allocated to those areas. Even five hours per week per deputy commissioner spent in those activities would require an additional 15 deputy commissioner positions a year, while two hours per week per commissioner spent on administrative activities alone would require five additional deputy commissioner positions. Without a time management system to capture the time deputy commissioners spend on tasks, another workload study will be necessary to compile accurate data for the new revocation process.</p>
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**FOLLOW-UP RECOMMENDATION**

**The Office of the Inspector General recommends that the Board of Prison Terms use information from the time-management system (proposed in Finding 2) to support future workload analyses. The two critical factors in the workload analysis report – total hours required to complete hearings and the total number of hours each deputy commissioner can work in one year – should be updated to accurately reflect current capabilities.**

**ORIGINAL FINDING NUMBER 2**

**The Office of the Inspector General found that the deputy commissioners of the Board of Prison Terms, who carry out most of the board’s functions, received little supervision and the board had no means of accounting for how they spent their time.**

<b>ORIGINAL RECOMMENDATIONS</b>	<b>STATUS</b>	<b>COMMENTS</b>
<p>The Office of the Inspector General recommended that the Board of Prison Terms take the following actions:</p> <p>Develop and implement a time-management system for deputy commissioners. The system should require that deputy commissioners accurately record the amount of time spent on daily board activities, including hearings and other tasks, and should ensure that the deputy</p>	<p><b>NOT IMPLEMENTED</b></p>	<p>The Board of Prison Terms reported that, as an alternative to a time-management system, it completed a 13-week deputy commissioner workload study in 2003 using a time-reporting instrument. The board asserted that a time-management system for deputy commissioners is not feasible because the labor agreement governing deputy commissioners specifically limits recording work time to client billing, budgeting, and case or project tracking.</p>

<p>commissioners account for their time on a daily, weekly, and monthly basis. The system should contain enough detail to allow management to analyze the typical daily activities of a deputy commissioner.</p>		<p>The board also noted that changes in deputy commissioner duties under the <i>Valdivia</i> remedial plan will necessitate further analysis of actual work and the time required to conduct parole revocation hearings.</p> <p>The Office of the Inspector General reviewed the labor agreement governing deputy commissioners and found that the contract does not prohibit the Board of Prison Terms from requiring deputy commissioners to provide detailed time recording. The confusion arises because deputy commissioners are in Work Week Group “E” (formerly 4C) and are therefore exempt from the Fair Labor Standards Act. Exempt employees are not hourly workers, but rather, receive compensation based on the premise that they are expected to work as many hours as necessary to provide the public services for which they were hired. These employees are not required to report hourly time for payroll purposes, and in fact are not required to report less than full-day absences for purposes of salary or leave adjustments. However, exempt status does not prohibit management from tracking deputy commissioners’ time for budgeting purposes.</p> <p>Bargaining Unit 2 (attorneys and hearing officers) represents the deputy commissioners of the Board of Prison Terms. The most recent Bargaining Unit 2 labor agreement, covering July 1, 2001 through July 2, 2003, which is still in effect, states in paragraph 6.3 C, “Employees <i>may</i> be required to record time for purposes such as client billing, budgeting, case or project tracking” [emphasis added]. This section therefore permits the board to implement the time-management system recommended by the Office of the Inspector General.</p> <p>The Office of the Inspector General also reviewed the board’s deputy commissioner workload study of January 2004. The study, which included data gathered over a 13-week period in the latter half of 2003, describes the critical tasks performed by deputy commissioners and records the time required to accomplish those tasks. The Office of the Inspector General found that the usefulness of the study is limited in two ways. First, the study covers only a 13-week period, which is too short to accumulate accurate annual averages for some activities, such as training, travel, and</p>
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<p>Establish more associate chief deputy commissioner positions based on a ratio of eight deputy commissioners to one associate chief deputy commissioner, with compensation commensurate with the responsibility of the position to supervise deputy commissioners.</p>	<p><b>PARTIALLY IMPLEMENTED</b></p>	<p>administrative time. Second, the daily activities of the deputy commissioners are changing with the implementation of the <i>Valdivia</i> remedial plan, meaning that yet another workload study will be needed to determine the changes to activities and the average time needed to complete each activity. These limitations further illustrate the need for a current time management system.</p> <p>The Board of Prison Terms reported that there continues to be an inadequate number of associate chief deputy commissioners, and that due to budgetary constraints the ratio of eight deputy commissioners to one associate chief deputy commissioner has not been realized. The board noted that the associate chief deputy commissioners are also required to supervise correctional counselor I and correctional counselor II positions assigned to them.</p> <p>The Office of the Inspector General found that the Board of Prison Terms has 72 deputy commissioner positions and seven associate chief deputy commissioner positions authorized for the 2004-05 fiscal year. This represents a ratio of approximately ten deputy commissioners to one associate chief deputy commissioner, a significant improvement over the 16-to-1 ratio reported in the Office of the Inspector General’s January 2003 report. The audit team noted that 64 of the 72 deputy commissioner positions were filled at the time of the follow-up fieldwork and the board is attempting to fill the remaining eight vacancies.</p> <p>The Board of Prison Terms also reported that the compensation package for associate chief deputy commissioners lacks safety retirement, although this supervisory position continues to supervise peace officers who do have safety retirement. According to the board, there is insufficient external support for a compensation adjustment for the associate chief deputy commissioner classification.</p> <p>The January 2003 report issued by the Office of the Inspector General found that the lack of safety retirement creates a disincentive for deputy commissioners who might otherwise seek promotion to associate chief</p>
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<p>Associate chief deputy commissioners who are responsible for supervising deputy commissioners should do the following:</p> <ul style="list-style-type: none"> <li>• Ensure that the deputy commissioners work an average of 40 hours per week as specified in the collective bargaining agreement.</li> </ul>	<p><b>SUBSTANTIALLY IMPLEMENTED</b></p>	<p>deputy commissioner. As a result, the board sometimes places deputy commissioners into acting associate chief deputy commissioner positions on a 12-month temporary basis while holding the resulting deputy commissioner vacancies open for the deputy commissioners' eventual return. The follow-up audit team found that four of the seven associate chief deputy commissioner positions currently filled at the Board of Prison Terms are deputy commissioners in acting positions. As a consequence, the board is unable to fill the deputy commissioner vacancies being held for the four acting associate deputy commissioners.</p> <p>The Board of Prison Terms reported that the workday of deputy commissioners has been more carefully detailed based upon the workload study. The board reported that it implemented increases in the number of assigned hearings in 2003 wherever possible; trained supervisors; and empowered them with clear expectations to monitor staff work hours and work product.</p> <p>The Office of the Inspector General found that effective February 3, 2003, the board increased the number of parole revocation hearings scheduled per day from six to seven at hearing locations where seven hearings a day are possible. According to the board's workload study, each hearing takes an average of 64 minutes, resulting in approximately 7.5 hours per day of hearing time and leaving only 30 minutes for miscellaneous administrative or other duties. Starting January 1, 2005, however, the board again decreased the number of hearings per day to accommodate the <i>Valdivia</i> agreement to provide an attorney to each parolee because hearings with an attorney generally take longer to complete than those without.</p> <p>To address findings reported by the Office of the Inspector General, the Board of Prison Terms issued a hearing directive effective August 11, 2003, that provided the daily start time for deputy commissioners would be</p>
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<ul style="list-style-type: none"> <li>Systematically review hearing proceedings and decisions reached to ensure that deputy commissioners conduct hearings properly and consistently. Reviews should be coordinated with similar reviews completed by other staff members.</li> </ul>	<p style="text-align: center;"><b>FULLY IMPLEMENTED</b></p>	<p>8 a.m. at non-hearing sites. The directive also cited Hearing Directive 02-15, issued September 6, 2002, which requires that deputy commissioners who complete a scheduled assignment before 3 p.m. must contact the nearest Central Office Calendar, Discharge Review or Revocation Screening Calendar to determine whether additional assistance is required. When distance or time prevents the deputy commissioner from providing effective assistance, the deputy commissioner is required to contact his or her supervisor for guidance and direction.</p> <p>The Office of the Inspector General confirmed that the Board of Prison Terms provided a comprehensive training course to managers and supervisors in July 2004.</p> <p>The board told the Office of the Inspector General that changes planned with the new revocation process resulting from the <i>Valdivia</i> litigation will improve the ability of associate chief deputy commissioners to directly supervise and monitor the work schedules of deputy commissioners. According to the board, approximately 70 percent of revocation hearings will be held at 13 new decentralized revocation units and these units are expected to become the designated headquarters for deputy commissioners. The new arrangement is expected to eliminate the travel time presently incurred from the deputy commissioners' home headquarters to hearing locations. These and other issues are currently being negotiated with the bargaining unit.</p> <p>The Board of Prison Terms reported that reviews of hearing proceedings are done by on-site associate chief deputy commissioners and the chief deputy commissioner. Other reviews of proceedings and decisions are performed for a variety of reasons, including the following:</p> <ul style="list-style-type: none"> <li>The Board of Prison Terms legal staff and Prison Law Office attorneys perform reviews during visits to monitor compliance with the Americans with Disabilities Act.</li> </ul>
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<ul style="list-style-type: none"> <li>Require deputy commissioners to use the revocation scheduling and tracking system.</li> </ul>	<p style="text-align: center;"><b>FULLY IMPLEMENTED</b></p>	<ul style="list-style-type: none"> <li>Associate chief deputy commissioners and other board staff perform reviews as a result of appeals and grievances.</li> <li>Associate chief deputy commissioners and the chief deputy commissioner review decisions in response to complaints and feedback from Department of Corrections staff and the public.</li> <li>Deputy commissioners perform reviews while assigned to Central Office Calendar when discrepancies referred by Department of Corrections records staff need to be analyzed and amended.</li> </ul> <p>The Office of the Inspector General interviewed one of the board’s associate chief deputy commissioners and found that the number of decisions reviewed is left to the discretion of the associate chief deputy commissioners and depends on the level of concern the supervisor has about the work of a particular deputy commissioner. The Office of the Inspector General concluded that the increase in the number of filled associate chief deputy commissioner positions provides for more direct supervision of deputy commissioners. The requirement for a systematic review of Board of Prison Terms decisions is provided by <i>California Code of Regulations</i>, sections 2041 and 2042, and the anticipated implementation of a review process is discussed in the last chapter of this report.</p> <p>The Board of Prison Terms reported that it implemented statewide use of the revocation scheduling and tracking system by deputy commissioners at major parole revocation hearing sites in October 2002. The board also reported that screened cases are recorded electronically in the system.</p> <p>Asked about deputy commissioners who have previously refused to enter information into the revocation scheduling and tracking system, an associate chief deputy commissioner told the Office of the Inspector General that all deputy commissioners are directly updating the tracking system with hearing and other information at locations that have access to the tracking system.</p>
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**FOLLOW-UP RECOMMENDATIONS**

**The Office of the Inspector General recommends that the Board of Prison Terms take the following additional actions:**

- **Develop and implement a time-management system for deputy commissioners.**
- **Continue efforts to increase the number of associate chief deputy commissioner positions relative to the number of deputy commissioners they supervise and to make the compensation of the associate chief deputy commissioner position commensurate with the responsibility of the position for supervising deputy commissioners.**

**HEARINGS FOR MENTALLY DISORDERED OFFENDERS**

**The Office of the Inspector General found that the Board of Prison Terms has not revised its practice of holding automatic 60-day placement hearings for mentally disordered offenders even though the hearings are inefficient and unnecessary. A change in state regulations has improved the resources needed for mentally disordered offender hearings, however, by allowing the hearings to be conducted by only one deputy commissioner instead of two.**

The Office of the Inspector General's January 2003 review of the Board of Prison Terms found that the board was automatically holding placement hearings for mentally disordered offenders 60 days after the inmate was placed into the custody of the Department of Mental Health, even though state regulations require a hearing only if the inmate requests that a hearing be held. An inmate may request a hearing 60 days after arriving in custody to determine whether he or she is to be treated as an inpatient or an outpatient. But because 60 days does not allow enough time for the medical treatment team to assess the patient's suitability for outpatient treatment, 99 percent of the 60-day placement hearings result in an order that the patient remain in a Department of Mental Health hospital for continued inpatient treatment. At the time of the Office of the Inspector General's January 2003 review, the 60-day hearings required a significant commitment of resources because state regulations require that hearings for mentally disordered offenders be conducted by not just one, but two Board of Prison Terms deputy commissioners.

**BACKGROUND**

The Board of Prison Terms may require inmates to be placed in a Department of Mental Health treatment program as a condition of parole. That condition is imposed when clinical evaluations and a review of court documents show that the parolee will pose a substantial danger to others due to a severe mental disorder. Parolees are given several opportunities to be evaluated to ensure they meet criteria established in the law defining mentally disordered offenders. The first is a "certification hearing" immediately following a Board of Prison Terms order and transfer to a state hospital for treatment. If the Department of Mental Health has not placed the parolee into outpatient treatment within 60 days, the board automatically holds a "placement hearing" to determine whether the parolee can be released to the community. Mentally disordered offenders also have the right to request an annual review hearing to determine whether they should be treated in a state hospital or in a community treatment outpatient facility. The Board of Prison Terms projects that it will conduct approximately 900 hearings for mentally disordered offenders in fiscal year 2005-06.

**IMPLEMENTATION REPORT CARD****Previous recommendations: 2****Fully implemented: 1 (50%)****Substantially implemented: 0 (0%)****Partially implemented: 0 (0%)****Not implemented: 1 (50 %)****Not applicable: 0 (0 %)**

## SUMMARY OF PREVIOUS FINDINGS AND RECOMMENDATIONS

As a result of the January 2003 review, the Office of the Inspector General found that the board's practice of automatically scheduling mentally disordered offender placement hearings 60 days after the inmate's arrival in the custody of the Department of Mental Health was inefficient and unnecessary. The Office of the Inspector General found that the requirement that two deputy commissioners conduct the mentally disordered offender hearings was similarly unnecessary.

The Office of the Inspector General made the following two recommendations to the Board of Prison Terms concerning hearings for mentally disordered offenders as a result of the January 2003 review.

- Revise procedures to conduct mentally disordered offender placement hearings at the request of the Department of Mental Health, rather than within 60 days of the date the patient is placed into the custody of the Department of Mental Health.
- Seek modification of state regulations to allow the Board of Prison Terms mentally disordered offender hearings to be conducted by one deputy commissioner with the expertise needed for the hearings.

## SUMMARY OF THE 2005 FOLLOW-UP RESULTS

The Office of the Inspector General found that of the two recommendations resulting from the January 2003 review concerning hearings for mentally disordered offenders, one recommendation has been fully implemented and one has not been implemented. The Office of the Inspector General found the following:

- The Board of Prison Terms continues to hold automatic placement hearings for all mentally disordered offenders 60 days after the patient is placed into the custody of the Department of Mental Health, even though the hearings are unnecessary and inefficient. The board concurred with the recommendation, but reported that implementation requires modification of California Penal Code, section 2966(b). It therefore intends to propose modifying the section as part of a legislative reform package.
- Regulations effective July 1, 2003 allow hearings for mentally disordered offenders to be conducted by one deputy commissioner instead of two.

## FOLLOW-UP RECOMMENDATION

**The Office of the Inspector General recommends that the Board of Prison Terms discontinue the practice of automatically conducting placement hearings for mentally disordered offenders 60 days after the patient is placed into the custody of the Department of Mental Health. Instead, the board should conduct mentally disordered offender placement hearings only at the request of the parolee or of the Department of Mental Health.**

**Depending on the timing of other reforms planned by the Board of Prison Terms, it may be beneficial for the board to implement this recommendation immediately. If the Board of Prison Terms deems it necessary to amend the California Penal Code to implement this recommendation, it should amend section 2964(b) rather than section 2966(b).**

The following table summarizes the results of the follow-up review.

**ORIGINAL FINDING NUMBER 5<sup>1</sup>**

**The Office of the Inspector General found that the board’s practice of automatically scheduling mentally disordered offender placement hearings 60 days after the inmate’s arrival in custody was unnecessary and inefficient and that the requirement that two deputy commissioners conduct the mentally disordered offender hearings was similarly unnecessary.**

ORIGINAL RECOMMENDATIONS	STATUS	COMMENTS
<p>The Office of the Inspector General recommended that the Board of Prison Terms take the following actions:</p> <ul style="list-style-type: none"> <li>Revise procedures to conduct mentally disordered offender placement hearings at the request of the Department of Mental Health, rather than within 60 days of the date the patient is placed into the custody of the Department of Mental Health.</li> </ul>	<p style="text-align: center;"><b>NOT IMPLEMENTED</b></p>	<p>The board responded that it agrees with this recommendation, but reported that implementation requires modification of California Penal Code section 2966(b). The board told the Office of the Inspector General it will propose legislation for the next legislative session to modify the statute to allow the placement hearing to be postponed until either requested by the Department of Mental Health or nine months after the parolee’s admission to the state hospital, whichever occurs first.</p> <p>The Office of the Inspector General found that California Penal Code section 2964(b), rather than Penal Code section 2966(b), is the relevant section to be modified if a statutory change is necessary. The Office of the Inspector General also noted, however, that section 2964(b) does not appear to limit the board’s ability to change its policy of automatically holding a hearing for all parolee patients within 60 days of placement. The statute provides as follows: “If the State Department of Mental Health has not placed a parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to Section 3001, the parolee may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing to determine whether the prisoner shall be treated as an inpatient or an outpatient.”</p>

<sup>1</sup> Numbering of findings coincides with the Office of the Inspector General’s January 2003 report and therefore is not sequential in this report.

<ul style="list-style-type: none"> <li>• Seek modification of state regulations to allow the Board of Prison Terms mentally disordered offender hearings to be conducted by one deputy commissioner with the expertise needed for the hearings.</li> </ul>	<p><b>FULLY IMPLEMENTED</b></p>	<p>The Board of Prison Terms also reported that implementation of this recommendation has been delayed because the issue is part of a larger legislative reform package. The board is developing broad reform of its practices concerning both placement hearings and commitment hearings for mentally ill offenders that will eventually address this recommendation, as well as other issues. The purpose of the reforms is to make placement and commitment hearings more timely and relevant to the real-world circumstances of the inmate. Development of the proposal is continuing, but final decisions and a course of action, which will require legislative approval, are pending.</p> <p>The Office of the Inspector General confirmed that regulations that took effect on July 1, 2003 allow the board to use one deputy commissioner instead of two to conduct mentally disordered offender hearings.</p> <p>The board also reported that it has provided comprehensive training in conducting mentally disordered offender hearings to a total of 42 deputy commissioners and that the most recent training was provided on June 19, 2003. The Office of the Inspector General confirmed that 25 deputy commissioners attended a seven-hour training course on hearings for mentally disordered offenders on June 19, 2003.</p>
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**FOLLOW-UP RECOMMENDATION**

**The Office of the Inspector General recommends that the Board of Prison Terms discontinue the practice of automatically conducting placement hearings for mentally disordered offenders 60 days after the patient is placed in the custody of the Department of Mental Health. Instead, the board should conduct mentally disordered offender placement hearings only at the request of the parolee or of the Department of Mental Health. Depending on the timing of other reforms planned by the Board of Prison Terms, it may be beneficial for the board to immediately implement this recommendation. If the Board of Prison Terms deems it necessary to amend the California Penal Code to implement this recommendation, it should amend section 2964(b) rather than section 2966(b).**

## REVIEW OF BOARD OF PRISON TERMS DECISIONS

**The Office of the Inspector General found that the Board of Prison Terms has not implemented a systematic process for reviewing its decisions as required by state regulations.**

The Office of the Inspector General's January 2003 review found that the Board of Prison Terms was not complying with state regulations requiring that board decisions undergo review before taking effect.

### BACKGROUND

*California Code of Regulations*, Title 15, sections 2041 and 2042, require decisions rendered by the Board of Prison Terms to undergo review before they take effect to ensure that they are complete, accurate, consistent, and uniform and that they promote public safety. Decisions subject to review include those resulting from mentally disordered offender hearings, parole revocation hearings, indeterminate sentence hearings, sexually violent predator probable cause hearings, and serious offender hearings.

### SUMMARY OF PREVIOUS FINDINGS AND RECOMMENDATIONS

The Office of the Inspector General found that the Board of Prison Terms was not complying with decision review requirements. Decisions in indeterminate sentencing cases were undergoing review by the board's legal department only if parole was granted. If parole was denied in an indeterminate sentencing case, the decision underwent only a superficial review intended to verify the clerical accuracy of the hearing documents. Only a small fraction of mentally disordered offender hearings—those in which the inmate was to be released from inpatient treatment or from the mentally disordered offender classification — underwent meaningful review. The other hearings for mentally disordered offenders were reviewed by a second deputy commissioner who might lack training in the medical complexities of the case. And the board was providing no review at all of the 38,000 parole revocation hearing decisions issued each year, which constitute the bulk of the deputy commissioners' workload. The Office of the Inspector General also found that a high percentage of decisions resulting from the mentally disordered offender hearings were later overturned by the board's offender screening analysts, again indicating possible lack of expertise by deputy commissioners.

As a result of the January 2003 review, the Office of the Inspector General made the following two recommendations to ensure that hearing decisions of the Board of Prison Terms are proper, consistent, and fully documented:

- Establish formalized training for deputy commissioners and associate chief deputy commissioners.

### IMPLEMENTATION REPORT CARD

**Previous recommendations: 2**

**Fully implemented: 1 (50%)**

**Substantially implemented: 0 (0%)**

**Partially implemented: 1 (50%)**

**Not implemented: 0 (0%)**

**Not applicable: 0 (0%)**

- Institute a systematic review process that fulfills the requirements in *California Code of Regulations* Title 15, sections 2041 and 2042 related to a decision review process. Ideally, such a process would use sampling techniques to minimize the resources needed to complete the review process.

#### **SUMMARY OF THE 2005 FOLLOW-UP RESULTS**

Of the two recommendations issued by the Office of the Inspector General in January 2003 concerning review of Board of Prison Terms decisions, one has been fully implemented and one has been partially implemented.

In summary, the Office of the Inspector General found that the Board of Prison Terms is still not complying with state regulations that require the board decisions to be reviewed to ensure that they are valid and consistent and that they further public safety. However, the Office of the Inspector General questions the practicality and necessity of reviewing all proposed decisions and notes that the requirement appears to be overly burdensome. The purpose of the regulations could be accomplished by using sampling techniques to complete the review process, as originally recommended by the Office of the Inspector General. Reviewing a sample of proposed decisions instead of all proposed decisions requires changes to *California Code of Regulations*, Title 15, section 2041.

#### **FOLLOW-UP RECOMMENDATION**

**The Office of the Inspector General recommends that the Board of Prison Terms modify *California Code of Regulations*, Title 15, section 2041 to allow for review of a portion of proposed decisions rather than all decisions.**

The following table summarizes the results of the follow-up review





<p>Ideally, such a process would use sampling techniques to minimize the resources needed to complete the review process.</p>	<p>following:</p> <ul style="list-style-type: none"> <li>• The Board of Prison Terms legal staff and Prison Law Office attorneys perform reviews during visits to monitor compliance with the Americans with Disabilities Act.</li> <li>• Associate chief deputy commissioners and other board staff perform reviews due to appeals and grievances.</li> <li>• Associate chief deputy commissioners and the chief deputy commissioner review decisions in response to complaints and feedback from Department of Corrections staff and the public.</li> <li>• Deputy commissioners assigned to Central Office Calendar perform reviews when discrepancies referred by Department of Corrections records staff need to be analyzed and amended.</li> </ul> <p><i>California Code of Regulations</i>, Title 15, sections 2041 and 2042 require that Board of Prison Terms decisions be reviewed to ensure that they are complete, accurate, consistent, and uniform and that they further public safety. The Office of the Inspector General found that the reviews described above do not meet the requirements of <i>California Code of Regulations</i>, Title 15, sections 2041 and 2042 because they do not cover all proposed decisions.</p> <p>At the same time, the Office of the Inspector General questions the practicality and necessity of reviewing all proposed decisions and notes that the requirement appears to be overly burdensome. The purpose of the regulations could be accomplished by using sampling techniques to complete the review process, as originally recommended by the Office of the Inspector General. Reviewing a sample of proposed decisions instead of all proposed decisions requires changes to <i>California Code of Regulations</i>, Title 15, section 2041.</p> <p>During the course of the follow-up review fieldwork, the Board of Prison Terms</p>
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		<p>management reported that it established a quality control unit in approximately September 2004 and that review of parole revocation decisions is among the responsibilities of the quality control unit. The Board of Prison Terms told the Office of the Inspector General that those reviews began in May 2005. According to the board, the quality control unit reviews approximately 250 randomly selected parole revocation decisions per month. The board also reported that it is considering changes to the Title 15 requirement that all proposed decisions be reviewed, but has taken no action to date.</p>
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**FOLLOW-UP RECOMMENDATION**

**The Office of the Inspector General recommends that the Board of Prison Terms modify *California Code of Regulations, Title 15, section 2041* to allow for review of a portion of proposed decisions rather than all decisions.**

ATTACHMENT

**RESPONSE FROM THE BOARD OF PRISON TERMS**

# Memorandum

Date : July 11, 2005

To : Matthew Cate  
Inspector General  
Office of the Inspector General  
PO Box 38780  
Sacramento, CA 95834

Subject: **RESPONSE TO THE ACCOUNTABILITY AUDIT OF THE BOARD OF PRISON TERMS**

The California Department of Corrections and Rehabilitation (CDCR) appreciates the opportunity to respond to the draft report of the Office of Inspector General's June 28, 2005, Accountability Audit of the Board of Prison Terms. This audit was performed to assess the Board's progress in implementing recommendations from two previous audits reported in 2002 and 2003.

As you know, on July 1, 2005, the departments, boards and commissions that formerly comprised the Youth and Adult Correctional Agency, became the CDCR. Included within the reorganization, the Board of Prison Terms merged with the Youthful Offender Parole Board and the Narcotic Addict Evaluation Board and became the Board of Parole Hearings (BPH) reporting directly to the Secretary of the CDCR. With the consolidation of the Boards, new leadership was appointed.

The accountability audit is deemed a high priority for the Department. The draft report has been reviewed by BPH staff. They are in general agreement with the findings and recommendations. To afford the new leadership time to fully review and understand the findings and recommendations contained within the report, we respectfully request an additional 60 days to respond. We will submit a comprehensive plan, including specific timelines for implementation to you by September 12, 2005.

Please call me at 916.323.6001, if you have questions.

*Original signed by*

J. S. WOODFORD  
Undersecretary  
California Department of Corrections and Rehabilitation