OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

• *PROMOTING INTEGRITY* •

REVIEW OF THE

BOARD OF PRISON TERMS

JANUARY 2003

GRAY DAVIS, GOVERNOR

STATE OF CALIFORNIA

OFFICE OF THE INSPECTOR GENERAL
P.O. BOX 1498
SACRAMENTO, CA 95812-1498
(916) 930-7100 FAX (916) 930-7119

Memorandum

Date: January 21, 2003

To: CAROL A. DALY, Chairperson
Board of Prison Terms

From: STEVE WHITE
Inspector General

Subject: REVIEW OF THE BOARD OF PRISON TERMS

Enclosed is the final report of the review conducted by the Office of the Inspector General of the Board of Prison Terms. The review was conducted pursuant to the authority assigned to the Inspector General under Section 6126 of the *California Penal Code.*

The review was prompted by the board's request to fill 24 of its vacant deputy commissioner positions and was conducted to determine whether the board has a legitimate need to fill the positions in light of the present state budget crisis. The Office of the Inspector General found that the board does not need an increase in its staff of deputy commissioners, and, in fact, with better use of its resources, could fulfill all of its responsibilities with 39 deputy commissioners—about half its present staff.

More important, the Office of the Inspector General found significant deficiencies in the state's parole revocation process, stemming in part from system dysfunction between the Board of Prison Terms and the Department of Corrections and in part from the board's failure to properly manage the process or to provide adequate supervision of the deputy commissioners. At this writing, more than 7,000 parolees are locked in California jails and prisons awaiting parole revocation hearings. State and federal law has established the due process right of these parolees to a hearing within 45 days of incarceration, or within a "reasonable time period." Yet, the Office of the Inspector General found from reviewing a sample of cases that 81 percent had been incarcerated longer than 45 days and that 7 percent had been held more than 100 days. In many cases, by the time parolees are given a hearing to determine whether parole should be revoked, they have already served as much or more time than the parole revocation sentence they would have received. Until a few months ago, the State was not even attempting to track how long they had been incarcerated and still has no means of determining how long those locked up before October 2002 have been held. The State also has no effective way of determining whether parolees who have been jailed are eligible for drug treatment instead of incarceration under Proposition 36, which was approved by the voters more than two years ago, in November 2000.

While these 7,000 parolees wait for parole revocation hearings, the Office of the Inspector General found that the Board of Prison Terms deputy commissioners, who earn annual salaries of between $75,732 and $91,512, and whose responsibility it is to conduct the hearings, are

assigned workloads that typically require less than five hours a day to complete. The board provides them with virtually no supervision and has no meaningful way of accounting for how they spend their time. Instead of providing the needed supervision or conducting an accurate workload assessment to determine how much time deputy commissioners need to carry out their duties, the board has simply concluded from its hearing backlog that it needs more deputy commissioner positions. And even though the deputy commissioners make more than 130,000 parole revocation decisions a year that vitally affect public safety and the lives of inmates and parolees, the board is not complying with state regulations requiring that the decisions undergo substantive review.

The Office of the Inspector General furnished a draft version of the report to the Board of Prison Terms and held an exit conference on December 9, 2002 at which the board management expressed general agreement with the findings. The board subsequently submitted a 30-page written response to the report, which is included here as Attachment A. Unfortunately, the response is riddled with errors and contradictions. For example, in one section the board asserts that the deputy commissioners' workday begins when they leave home because they are covered by the Fair Labor Standards Act, but in another section of the response, declares that deputy commissioners are "Workgroup E" employees and therefore are exempt from the Fair Labor Standards Act.

In still another section of the response, the board rejects a recommendation by the Office of the Inspector General that mentally disordered offender hearings be held only upon request, asserting that *California Penal Code* Section 9267(b) requires the hearings to be held 60 days after the inmate's arrival in custody. But no such section exists in the *California Penal Code* and the code contains no such provision. The board also contends in its response that deputy commissioners work more than seven hours a day — in direct contradiction of the fact that the workload analysis the board uses to justify its personnel needs *assumes* that the deputy commissioners work only a seven-hour day. Instead of accepting responsibility for using an inaccurate and outdated workload assessment for the past 15 years, the board attempts to pass the blame to the Department of Finance, which it says has "agreed to" the incorrect figures it has been supplying. And instead of aggressively seeking to remedy the problems in the parole revocation process, the board points to the pending *Valdivia v. Davis* class action lawsuit—brought because of the failure of the State to provide due process in parole revocation — as reason to wait for "further analysis." It may be useful to point out that if the board had addressed these matters, the lawsuit might not have been filed.

The Office of the Inspector General's specific comments in answer to the board's response to the draft report are included in the report as Attachment B. The Office of the Inspector General also provided copies of Findings 3 and 6 of the draft report to the Department of Corrections. The department's response is included as Attachment C.

The Office of the Inspector General's recommendations appear in the body of the report.

SW/dj

cc: Robert Presley, Secretary, Youth and Correctional Agency
Edward S. Alameida, Jr., Director, California Department of Corrections

OFFICE OF THE INSPECTOR GENERAL

REVIEW OF THE
BOARD OF PRISON TERMS

REPORT

JANUARY 2003

● PROMOTING INTEGRITY ●

CONTENTS

EXECUTIVE SUMMARY

This report presents the results of a review conducted by the Office of the Inspector General of the operations of the Board of Prison Terms. The review centered on the workload of the deputy commissioners, whose principal responsibility is to conduct parole revocation hearings. The hearings determine whether parolees have violated parole conditions and should be returned to prison; and, if so, for what period of time. The review was initiated in response to a plan by the board to fill 24 of its vacant deputy commissioner positions and was conducted to determine whether the board has a legitimate need to fill the positions in light of the current state budget crisis.

The Office of the Inspector General found that the Board of Prison Terms does not need an increase in its staff of deputy commissioners and that, in fact, with better use of its resources, could fulfill all of its current responsibilities with 39 deputy commissioner positions—slightly more than half its present deputy commissioner staff.

The Office of the Inspector General found that the board has overestimated the number of deputy commissioners it needs because it has both underestimated the amount of time deputy commissioners are available to work each year and overestimated the amount of time they need to carry out their functions. Even though the deputy commissioners account for nearly 40 percent of the board's personnel costs, the review revealed that the Board of Prison Terms does not adequately supervise the deputy commissioners and is largely unaware of how they spend their time. The review also revealed that deputy commissioners routinely work less than seven hours a day while earning annual salaries of $75,732 to $91,512. The Office of the Inspector General found in addition that even though the deputy commissioners conduct more than 130,000 parole revocation screenings and hearings each year, the board is not complying with state regulations requiring that the decisions issued by the deputy commissioners undergo systematic review.

The review also revealed that even though more than 7,000 California parolees are presently incarcerated awaiting parole revocation hearings to determine whether they should be returned to prison, the State has no means of tracking how long most of them have been held; and therefore, cannot ensure that they receive a hearing within a reasonable time period. The present parole revocation process is also not in compliance with due process requirements for disabled parolees or with legal requirements for parole violators who may be eligible under Proposition 36 for drug treatment instead of incarceration. The Office of the Inspector General also found that the overlapping responsibilities between the Board of Prison Terms and the Department of Corrections make the State's present parole revocation process cumbersome and inefficient.

The Office of the Inspector General recommends that the State consider consolidating the parole revocation process into one agency—either the Board of Prison Terms or the Department of Corrections—with the Department of Corrections the most logical choice. If the Board of Prison Terms retains responsibility for conducting parole revocation hearings, the Office of the Inspector General recommends that it take steps to provide adequate supervision of the deputy commissioners. To streamline the parole revocation process and address the due process rights of parolees to timely hearings, the Office of the Inspector General also recommends that the State discontinue parole revocation screenings. Doing away with the screenings and proceeding

directly to parole revocation hearings for all parolees will shorten the process and enable the State to conduct hearings within a reasonable time period. Because parole revocation hearings require more time than revocation screenings, that change will increase the number of deputy commissioners needed to meet the board's responsibilities from 39 to 58— but that total is still 31 percent less than the 84 deputy commissioners presently budgeted. Moreover, if the revocation screening process is eliminated, the board can also eliminate 29 board coordinating parole agent positions, for an annual savings of more than $2.5 million. The workload of the Department of Corrections district hearing agents will decline by an undeterminable amount.

Following is a summary of the findings:

FINDING 1

The Office of the Inspector General found that the Board of Prison Terms has significantly overstated the number of deputy commissioner positions it requires to fulfill its responsibilities and that the actual number of deputy commissioner positions it needs is only about 39—slightly more than half of the present deputy commissioner staff.

The Office of the Inspector General found that the Board of Prison Terms has both underestimated the available work time of its existing deputy commissioners and overstated the time needed for deputy commissioners to complete the activities that make up the bulk of the board's responsibilities. As a result, the board has significantly overestimated the number of deputy commissioners it needs. The board has requested an increase of 24 to its present staff of approximately 65 deputy commissioners and 20 retired annuitants, maintaining that it needs the additional deputy commissioners to adequately fulfill its responsibilities. The board uses a budget worksheet called the "workload analysis" to justify the number of deputy commissioners it needs in order to complete the hearings and other functions the board performs. The workload analysis is based on a formula that takes into account 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. But the management of the Board of Prison Terms acknowledged to the Office of the Inspector General that it has not established the validity of the workload analysis by conducting a workload study or any other performance measure of the deputy commissioners for at least 15 years. The board's chief deputy commissioner, who is supposed to administer and oversee all duties and functions related to the deputy commissioners, told the Office of the Inspector General that he has never seen the workload analysis and does not know how it was compiled.

The Office of the Inspector General found from this review that in fact the assumptions used to develop the workload analysis are flawed. Not only are the lengths of time given as necessary to complete specific tasks not reflective of the actual practices of the deputy commissioners, the assumptions also underestimate the amount of time available for the deputy commissioners to work each year. The review also revealed that when deputy commissioners fill out the forms reporting the time they spent conducting each hearing, they regularly misstate how long the hearing process took, sometimes by as much as 150 percent. The Office of the Inspector General found from the review that deputy commissioners actually are assigned workloads that typically require less than five hours a day to complete, while earning annual salaries of between $75,732 and $91,512.

Using more valid estimates of the time needed for deputy commissioners to conduct hearings and perform other functions, and the amount of work time available each year, the Office of the Inspector General found that the Board of Prison Terms could actually fulfill its responsibilities with slightly more than half the number of deputy commissioners presently on its staff. According to the analysis by the Office of the Inspector General (Appendix A), the maximum number of deputy commissioner positions needed to fulfill all of the board's responsibilities comes to about 39.

FINDING 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, receive little supervision and the board has no means of accounting for how they spend their time.

The deputy commissioners conduct more than 130,000 Board of Prison Terms parole revocation screenings and hearings each year and account for nearly 40 percent of the board's total personnel costs. The decisions made by the deputy commissioners vitally affect the lives of inmates and parolees and public safety. Yet the board lacks critical information about the deputy commissioners' performance and provides them with almost no direct supervision. Most of the deputy commissioners work from home, but the board has no timekeeping system to monitor how they spend their time and cannot determine whether they work the 40 hours a week required by the Bargaining Unit 2 agreement. As noted in Finding 1, the Office of the Inspector General in fact found wide variation among the deputy commissioners in the amount of time spent on various functions. The lack of information prevents the board from knowing how much time is actually required for the deputy commissioners to conduct hearings and carry out other responsibilities or how many deputy commissioners the board needs to handle its workload. Nor is the board able to monitor the overall productivity of the organization, make improvements to the system, or measure the performance of individual deputy commissioners. And although the Department of Corrections has been working to implement a new computerized tracking system to help ensure that parolees on hold receive a hearing within specified time limits, the deputy commissioners have refused to cooperate by entering information directly into the computerized system because they regard the work as "clerical." Instead, the deputy commissioners continue to fill out forms by hand and mail them to Sacramento headquarters to be entered into the system by the board staff—an unnecessarily duplicative process that has resulted in a backlog of unprocessed data.

FINDING 3

The Office of the Inspector General found that until recently the State has had no means of tracking to ensure that parolees detained for violating parole receive a hearing within the 45-day time-frame specified in state regulations or within a "reasonable time period," as specified under federal law.

More than 7,000 California parolees are presently in jail awaiting Board of Prison Terms parole revocation hearings and screenings, which will determine whether they have violated parole conditions and should be returned to prison, and, if so for what period of time. Although *California Code of Regulations,* Title 15, Section 2640 specifies that parole revocation hearings

should be held within 45 days of the date the parole hold was placed, and federal law requires that a hearing be held within a "reasonable time period," neither the Board of Prison Terms nor the Department of Corrections has a means of tracking how long parolees incarcerated before October 1, 2002 have been held to ensure that time limits are met. In reviewing a sample of 171 parole revocation hearing cases, the Office of the Inspector General found that 81 percent had exceeded the 45-day timeframe and that 12 of the parolees had been held without hearings for more than 100 days. In many cases, by the time parolees are given a hearing to determine whether parole should be revoked, they have already served as much or more time than the parole revocation sentence they would have received.

FINDING 4

The Office of the Inspector General found that the Board of Prison Terms is not complying with state regulations requiring that board decisions undergo systematic review to ensure that they are valid and consistent and that they further public safety.

California Code of Regulations, Title 15, Sections 2041 and 2042 require that decisions rendered by the Board of Prison Terms in parole revocation, indeterminate sentencing, and mentally disordered offender hearings undergo review before they take effect. The purpose of the review is to ensure that results are consistent, that the findings are supported by the evidence, and that the law has been correctly applied. The review is also meant to ensure that the decisions further public safety. The Office of the Inspector General found that the Board of Prison Terms is not complying with these requirements. Decisions in indeterminate sentencing cases undergo review by the board's legal department only if parole is granted. If parole is denied in an indeterminate sentencing case, the decision undergoes only a superficial review intended just to verify the clerical accuracy of the hearing documents. Of the mentally disordered offender hearings, only a small fraction—those in which the inmate is proposed to be released from inpatient treatment or from the mentally disordered offender classification — undergo a meaningful review. The others are reviewed by a second deputy commissioner who may lack training in the medical complexities of the case. And the board provides no review at all of the 38,000 parole revocation hearing decisions issued each year by its deputy commissioners, which constitute the bulk of the deputy commissioners' workload.

FINDING 5

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 is unnecessary and inefficient. The requirement that two deputy commissioners conduct the mentally disordered offender hearings is similarly unnecessary.

The workload analysis of the Board of Prison Terms budgets five deputy commissioner positions to conduct mentally disordered offender hearings. The Office of the Inspector General found, however, that the board could achieve significant savings by streamlining the mentally disordered offender hearing process and reducing the personnel resources needed for the hearings. Making those changes would enable the board to fulfill this function with only one deputy commissioner position instead of the five currently budgeted. Scheduling placement

hearings only as needed would save resources, as would allowing mentally disordered offender hearings to be conducted by only one deputy commissioner.

FINDING 6

The Office of the Inspector General found that the State's parole revocation process is unnecessarily burdensome and prevents it from affording inmates and parolees their due process rights to a timely hearing.

The purpose of parole revocation process is to determine whether a parolee has violated parole conditions and should be sent back to prison. But the process by which the State presently carries out that responsibility is burdensome and inefficient and in need of thorough revamping. The current process is fragmented, with the board sharing overlapping responsibilities with the Department of Corrections—an arrangement that leads to delays, errors, and communication problems. In recent years the parole revocation hearing process also has been complicated by the impact of court decisions specifying due process rights of parolees to a hearing within a reasonable time period and of inmates and parolees suffering from disabilities to necessary accommodation. Under its present parole revocation screening and hearing process, the State has not been able to adequately provide for those due process rights. Nor has the State been able to successfully implement the provisions of Proposition 36 allowing nonviolent drug offenders the option of treatment instead of incarceration.

The Board of Prison Terms deputy commissioners, whose primary responsibility is conducting parole revocation hearings, are under-utilized, and adding more deputy commissioners will not remedy the problems. Eliminating screening offers and proceeding directly to parole revocation hearings, however, would streamline the process and improve the timeliness of the hearings. The Office of the Inspector General calculated that the number of deputy commissioners needed would increase from 39 to 58 under this approach because the time required to conduct a parole revocation hearing is significantly longer than the time required to do a parole revocation screening. But despite that increase, the total number of deputy commissioner positions needed would still be considerably less than the 84.3 positions currently budgeted. The change would also eliminate the need for the board's 29 board coordinating parole agent positions, for an estimated state savings of more than $2.5 million annually. In addition, it would reduce the workload of the Department of Corrections district hearing agents. Consolidating the parole revocation process in one agency would also improve efficiency.

INTRODUCTION

This report presents the results of a review conducted by the Office of the Inspector General of the operations of the Board of Prison Terms, with particular emphasis on the workload of the deputy commissioners. The review was conducted pursuant to the Inspector General's authority under Section 6126 of the *California Penal Code.*

The review was initiated in response to a plan by the Board of Prison Terms to fill 24 of its vacant deputy commissioner positions. The review was performed to determine whether there is a legitimate need for the board to fill the deputy commissioner positions in light of the current state budget crisis. The review follows a March 2000 report by the Office of the Inspector General concerning the board's backlog of indeterminate sentence hearings. In April 2002, the Office of the Inspector General also conducted a follow-up review of the remedial actions undertaken by the Board of Prison Terms following the March 2000 review. The April 2002 review found that the board had not made progress in eliminating the large backlog of indeterminate sentence parole hearings and also had a significant backlog of inmate and parolee appeals pending review.

BACKGROUND

The principal responsibility of the Board of Prison Terms is to conduct hearings to grant, deny, revoke, or suspend the parole of state inmates and parolees. Accordingly, the board conducts parole revocation hearings for parolees who have violated their parole conditions and parole hearings for inmates sentenced to indeterminate sentences. In carrying out responsibilities associated with the parole revocation process, the board shares overlapping functions with the Department of Corrections. The Board of Prison Terms also advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine whether they should be classified as mentally disordered offenders and be confined to inpatient treatment at state hospitals or as sexually violent predators subject to civil confinement. Because any decision by the board can be appealed, the Board of Prison Terms also reviews and resolves inmate and parolee appeals.

In addition to nine commissioners appointed by the Governor, the Board of Prison Terms employs approximately 65 deputy commissioners and 20 retired annuitants to fulfill deputy commissioner responsibilities. The most significant responsibility of deputy commissioners—and the bulk of deputy commissioner workload—is conducting parole revocation hearings for the purpose of determining whether a parolee has violated his or her parole, whether the parolee should be returned to prison, and how long the prison term should be. Deputy commissioners are also responsible for conducting hearings for mentally disordered offenders and sexually violent predators and for participating in indeterminate sentencing hearings. In addition, deputy commissioners are responsible for non-hearing tasks that relate to the revocation process, such as entering parole suspension or wanted person information into statewide databases. They also perform a revocation screening function in which they review documentation prepared by parole agents for each parole violator and decide on a revocation prison term. This "screening offer" is presented to the parolee, and the parolee can accept the revocation term or reject it and request a revocation hearing. The deputy commissioners also review appeals and conduct other hearings and functions within the board's jurisdiction.

The deputy commissioners are hired under state civil service rules and procedures and are represented by Bargaining Unit 2. The annual salary of a deputy commissioner ranges from $75,732 to $91,512. Deputy commissioners are considered exempt employees, which means they are exempted from federal law requiring overtime to be paid if they work more than 40 hours in one week. Pursuant to the collective bargaining agreement between the State and the deputy commissioners, the deputy commissioners are supposed to work an average of 40 hours per week to complete their assignments — including occasionally working more than 40 hours in a week. Most of the deputy commissioners work from home and commute to various correctional facilities to conduct hearings and perform other duties.

SCOPE AND METHODOLOGY

The Board of Prison Terms prepares a workload analysis in the spring and fall of each year. For the purpose of this review, the Office of the Inspector General examined the fall 2001 workload analysis. More recent workload analyses are available for the spring and fall of 2002, but recent operational problems in the revocation scheduling and tracking system implemented by the California Department of Corrections in March 2001 and used jointly by the department and the Board of Prison Terms rendered the more recent reports unusable. Appendix A of this report includes a summary of the Board of Prison Terms' fall 2001 workload analysis.

The Office of the Inspector General evaluated the board's workload by reviewing its systems and procedures for capturing and reporting deputy commissioner activity. To that end, the Office of the Inspector General performed the following:

- Reviewed and evaluated the board's regulations and procedures used to schedule revocation, revocation extension, and mentally disordered offender hearings;
- Interviewed Board of Prison Term staff to obtain background information and understanding of the procedures used to summarize deputy commissioner daily activity and record the activity in the board's data processing systems;
- Examined the fall 2001 workload analysis for reasonableness and to determine whether the premises were adequately supported;
- Traced the reported deputy commissioner activity to the supporting management information system reports for the areas in which significant amounts of deputy commissioner time is spent;
- Observed the deputy commissioner revocation screening offer function;
- Observed mentally disordered offender hearings conducted by the deputy commissioners;
- Selected a sample of audio-tapes of revocation, revocation extension, and mentally disordered offender hearings that had been conducted throughout the state and calculated the average length of those hearings.
- Reviewed the Summary of Revocation Hearing and Decision (Form 1103) documents that the deputy commissioners complete for each hearing and compared the reported hearing length to the audio tapes;

- Reviewed the Summary of Mentally Disordered Offender Hearing and Decision (Form 1415) documents that the deputy commissioners complete for each hearing, and compared the reported hearing length to the audio tapes;

- Reviewed and evaluated the hearing decision review process established by the board to ensure complete, accurate, consistent, and uniform hearing decisions;

- Reviewed the conclusions documented on the Miscellaneous Decision (Form 1135) documents prepared as a result of the decision review process for mentally disordered offender hearings.

The Office of the Inspector General also examined the budget assumptions employed by the board in determining its staffing needs. This included:

- Reviewing the board's methodology for determining the deputy commissioner personnel years available.

- Reviewing documentation supporting the assumptions made concerning the average deputy commissioner travel and training days.

FINDINGS AND RECOMMENDATIONS

FINDING 1

The Office of the Inspector General found that the Board of Prison Terms has significantly overstated the number of deputy commissioner positions it requires to fulfill its responsibilities and that the actual number of deputy commissioner positions it needs is only about 39—slightly more than half of the present deputy commissioner staff.

The Office of the Inspector General found that the Board of Prison Terms has both underestimated the available work time of its existing deputy commissioners and overstated the time needed for deputy commissioners to complete the activities that make up the bulk of the board's responsibilities. As a result, the board has significantly overestimated the number of deputy commissioners it needs. The board has requested an increase of 24 to its present staff of approximately 65 deputy commissioners and 20 retired annuitants, maintaining that it needs the additional deputy commissioners to adequately fulfill its responsibilities. The board uses a budget worksheet called the "workload analysis" to justify the number of deputy commissioners it needs in order to complete the hearings and other functions the board performs. The workload analysis is based on a formula that takes into account 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. But the management of the Board of Prison Terms acknowledged to the Office of the Inspector General that it has not established the validity of the workload analysis by conducting a workload study or any other performance measure of the deputy commissioners for at least 15 years. The board's chief deputy commissioner, who is supposed to administer and oversee all duties and functions related to the deputy commissioners, told the Office of the Inspector General that he has never seen the workload analysis and does not know how it was compiled.

The Office of the Inspector General found from this review that in fact the assumptions used to develop the workload analysis are flawed. Not only are the lengths of time given as necessary to complete specific tasks not reflective of the actual practices of the deputy commissioners, the assumptions also underestimate the amount of time available for the deputy commissioners to work each year. The review also revealed that when deputy commissioners fill out the forms reporting the time they spent conducting each hearing, they regularly exaggerate how long the hearing process took, sometimes by as much as 150 percent. The Office of the Inspector General found from the review that deputy commissioners are assigned workloads that typically require no more than five hours a day to complete, while earning annual salaries of between $75,732 and $91,512.

Using more valid estimates of the time needed for deputy commissioners to conduct hearings and perform other functions, and the amount of work time available each year, the Office of the Inspector General found that the Board of Prison Terms could actually fulfill its responsibilities with slightly more than half the number of deputy commissioners presently on its staff. According to the analysis by the Office of the Inspector General, the maximum number of deputy commissioner positions needed to fulfill all of the board's responsibilities comes to about 39.

Appendix A to this report presents the workload analysis prepared by the Board of Prison Terms to justify its request for additional deputy commissioner positions, along with the Office of the Inspector General's analysis showing that the board needs only a total of 38.8 deputy commissioner positions to fulfill its present responsibilities.

The board's analysis overstates the time required to perform various functions. The workload analysis used by the Board of Prison Term to determine the number of deputy commissioners needed to fulfill the board's responsibilities is based on the following formula:

BOARD OF PRISON TERMS FORMULA USED IN WORKLOAD ANALYSIS TO DETERMINE NUMBER OF DEPUTY COMMISSIONERS NEEDED TO COMPLETE YEARLY WORKLOAD	
The Number of Hearings, Screenings, and Other Actions per year **multiplied by** ***the Number of Minutes Needed to Complete Each Type of Action equals***:	The total hours needed to complete all hearings, screenings, and other actions in one year
The Total Hours Needed to Complete All Hearings, Screenings and Other Actions in One Year **divided by** ***the Number of Hours each Deputy Commissioner can work in One year equals***:	The total number of Deputy Commissioners needed to complete yearly workload

The workload analysis overstates the time needed for the deputy commissioners to perform various board functions. Specifically:

- ***The analysis overstates the time needed for parole revocation screening offers.*** The workload analysis uses 12.5 minutes as the time required to complete a parole revocation screening offer, whereas the Office of the Inspector General observed that the process takes closer to half that time. In handling a revocation screening offer, deputy commissioners review parole violation and police reports and consider the factors surrounding the revocation to determine whether the evidence supports revoking parole. If the deputy commissioner determines that there is enough evidence to conclude that the parolee did violate parole, the deputy commissioner, using guidelines in *California Code of Regulations,* Title 15, proposes a "screening offer" to the parolee specifying a recommended prison term. The parolee can accept the screening offer and serve the prison time or reject the offer and request a parole revocation hearing. If the parolee rejects the screening offer, he must accept the decision of the deputy commissioner at the revocation hearing unless he files an appeal.

  The Office of the Inspector General found from observing the revocation screening process that a deputy commissioner was able to complete each screening offer in approximately 6.5 minutes while simultaneously answering questions and explaining the screening offer process to the staff of the Office of the Inspector General. In fact, the Office of the Inspector General found that the board's own data shows the assumption of 12.5 minutes for each parole revocation screening to be inflated. Using data provided by the board, the Office of the Inspector General computed the number of screenings performed by each deputy commissioner for fiscal year 2000-01 and found that if the screenings had in fact taken an

average of 12.5 minutes each, 17 of the deputy commissioners would have worked more than 24 hours a day. In one extreme example, a deputy commissioner reportedly completed 223 screening offers in one day, meaning that at 12.5 minutes per screening offer, that task would have taken 2,787 minutes, or 46.5 hours. While the time required to complete a screening offer varies depending on the complexity of the case and the experience of the deputy commissioner, the data demonstrate that the 12.5-minute assumption lacks validity.

- ***The analysis overstates the time needed for central office calendar duties.*** The workload analysis provides 13,797 hours (approximately 10.4 deputy commissioner positions) to provide staffing for central office calendar duties, which consist of an array of tasks related to the revocation proceedings at the board's central headquarters or regional headquarters. Examples of the duties include reviewing and processing documents to suspend, continue, or reinstate parole. From the weekly itineraries of the deputy commissioners, the Office of the Inspector General calculates that for the last quarter of the 2001-02 fiscal year, the average number of deputy commissioners assigned to perform central office calendar duties was 3.9 instead of the 10.4 positions budgeted.

- ***The analysis overstates the time needed to conduct parole revocation hearings.*** The workload analysis assumes that 78 minutes is needed for each parole revocation hearing. Yet the deputy commissioners report spending an average of only 65 minutes, and the board's own documents show that the deputy commissioners actually spend even less time than that. The Office of the Inspector General calculates that a more accurate estimate of the average time required for each hearing is 45 minutes. To assess the validity of the 78 minutes allotted for each parole revocation hearing, the Office of the Inspector General reviewed a sample of 171 parole revocation hearing reports completed by a cross-section of deputy commissioners from each region of the state. In the reports, which are called the "Summary of Revocation Hearing and Decision" (Form 1103), the deputy commissioners present a summary of findings, report the hearing decision, and record the number of minutes spent preparing for the hearing, conducting the hearing, completing the hearing report, and performing any other hearing-related tasks. The review showed the following:

    - ***Deputy commissioners reported spending 65 minutes per hearing.*** Rather than the 78 minutes allotted by the workload analysis, the Office of the Inspector General found that the deputy commissioners reported spending an average of only 65 minutes on each hearing, including preparing for the hearing, conducting the hearing, and writing the hearing report.

    - ***A review of the hearing audio-tapes showed that reported times were inflated.*** Even more revealing, although the deputy commissioners reported spending an average of 37 minutes conducting the actual hearings, a review of the audio-tapes of the same hearings showed that the deputy commissioners actually spent an average of only 22.5 minutes—14.5 minutes less than they reported. Although hearing recesses conceivably could account for the differences between the reported and actual hearing lengths, the Office of the Inspector General found that not to be the case, as 62 percent of the tapes reviewed did not include a recess. Moreover, as reported by the deputy commissioners, the

difference in length between hearings that did include a recess and those that did not, was only three minutes.

Some of the differences between the reported times and actual times as revealed by the audio-tapes were particularly dramatic. For example, one deputy commissioner who had conducted nine hearings reported that seven of the hearings had each taken 75 minutes and that the other two hearings had taken 45 and 55 minutes respectively—for an average of 69 minutes per hearing. Yet, the hearing tapes showed that the longest hearing actually lasted 54 minutes and the shortest lasted only six minutes, for an average of 19 minutes, not 69 minutes. In another case, a deputy commissioner recorded that a hearing took 80 minutes, while the audio-tape of the hearing revealed that the hearing actually lasted only 18 minutes. The same deputy commissioner reported that another hearing took 150 minutes, while the audio-tape revealed that in fact the hearing lasted just seven minutes.

- ***Times reported for other hearing-related functions were also exaggerated.*** The times reported by the deputy commissioners in completing other functions related to the parole revocation process appear to have been similarly inflated. In the 171 parole revocation hearing cases reviewed, the deputy commissioners reported that they spent an average of 14 minutes in pre-hearing preparation time and 12 minutes writing the hearing report—that is, filling out the Form 1103. But the Office of the Inspector General found instances in which the hearing preparation time and the report writing time was disproportionately long compared to the actual hearing time, raising questions about the authenticity of the time reported. For example, one deputy commissioner reported that the pre-hearing preparation and report writing each took 20 minutes, for a total of 40 minutes; yet the audio-tape showed that the actual hearing took only six minutes and that the hearing issues were not complex. The same commissioner reported 20 minutes for report writing time even when a case was postponed and the report writing time required presumably was minimal.

  The review also showed that of the 14 deputy commissioners who had at least five hearings in the sample, seven routinely recorded the same number of minutes for completing the hearing report for every hearing. Because the documentation used in completing the hearing report is filed in the inmate's central file, the Office of the Inspector General was unable to assess the reasonableness of the time reported for that purpose. But the Form 1103 consists mostly of check boxes that can be completed quickly during the hearing. In the sections of the form where the deputy commissioners must document the reasons for their conclusions and disposition of the case, the Office of the Inspector General found wide disparity among deputy commissioners in the quality and thoroughness of the comments provided. One deputy commissioner, who routinely reported 10 minutes for report writing time, carefully documented on a full page the basis for her conclusions and case disposition, while another, who routinely recorded 20 minutes for report completion time, wrote only brief comments.

- ***A more accurate estimate of the time required for the hearings is 45 minutes.*** Using the average hearing length of 22.5 minutes as shown in the sample of audio-tapes reviewed, and allowing another 10 minutes for pre-hearing preparation and 10 minutes for report writing, the Office of the Inspector General calculates that the average total time needed

to complete a parole revocation hearing is 45 minutes rather than the 65 minutes reported by the deputy commissioners or the 78 minutes budgeted in the board's workload analysis. The chart below illustrates these calculations.

MINUTES NECESSARY TO CONDUCT A REVOCATION HEARING		
TYPE OF ACTIVITY	AS CALCULATED BY THE BOARD OF PRISON TERMS	AS CALCULATED BY THE OFFICE OF THE INSPECTOR GENERAL
Prehearing Preparation	14	10
Conduct Hearing	37	25
Report Completion	12	10
Other	2	0
Total	**65**	**45**

- ***The board overstates the time needed for mentally disordered offender hearings.*** The workload analysis also overestimates the time required for deputy commissioners to conduct mentally disordered offender hearings. The analysis assumes 400 minutes for each mentally disordered offender hearing, with two deputy commissioners attending each hearing. Again, the Office of the Inspector General found that the board's own documents contradict the 400 minutes the analysis allots to that purpose. A review by the Office of the Inspector General of a sample of 135 mentally disordered offender hearing reports, termed the "Summary of Mentally Disordered Offender Hearing and Decision," Form 1415, showed that deputy commissioners documented spending an average of 200 minutes per hearing, with an average of 39.9 minutes spent conducting the actual hearing. Yet, again, the audio-tapes of the hearings showed that in fact the deputy commissioners spent much less time than that conducting the hearings —21.3 minutes, rather than 39.9 minutes. After adjusting for this difference, the Office of the Inspector General estimates that the time required for the mentally disordered offender hearing process totals 162.8 minutes, rather than the 400 minutes allotted by the board's workload analysis or the 200 minutes reported by the deputy commissioners.

  In the mentally disordered offender reports, the deputy commissioners record the number of minutes spent on all tasks related to each hearing, including pre-hearing preparation, the actual hearing, and preparing the hearing report. The table below illustrates the time the deputy commissioners reported spending on each phase of the hearing process. As the table shows, the average length of the hearings, as reported by the deputy commissioners, varies slightly depending on the type of hearing —annual, certification, or placement hearings. The table accounts for the combined time of the two deputy commissioners attending each hearing.

AVERAGE DURATION (IN MINUTES) OF MENTALLY DISORDERED HEARINGS AND RELATED TASKS CONDUCTED BY DEPUTY COMMISSIONERS – BY HEARING TYPE			
	Certification	**Placement**	**Annual**
Pre-hearing preparation:	44	40	45
Hearing	40	36	46
Report	19	18	19
Other/Miscellaneous	0	1	2
Total average time (in minutes) per hearing and related tasks:	**103**	**95**	**112**
Multiplied by number of Deputy Commissioners attending each hearing (2)			
Total Deputy Commissioner time (in minutes) per hearing and related tasks:	**206**	**190**	**224**

Overstating the time needed for functions inflates the staff needed by the board. The over-estimations of the time needed to carry out the revocation screening offers, parole revocation hearings, and mentally disordered offender hearings similarly inflates the board's estimations of the number of deputy commissioners needed to perform those duties. Revising the estimations of time required for each function to more accurately reflect the time actually required, results in the following downward estimates of the number of deputy commissioners needed:

- ***Revocation screening offers.*** The workload analysis assumes that the board needs 14.1 deputy commissioner positions to handle 90,000 revocation screening offers each year at 12.5 minutes each. If each screening offer actually takes only 6.5 minutes, as shown by this review, the number of deputy commissioner positions needed for that function drops to 7.3 — a savings of 6.8 positions. If, on the other hand, the screening offer function were discontinued, an option discussed in Finding 6 of this report, the number of deputy commissioners needed for that purpose would drop to zero.

- ***Parole revocation hearings.*** The workload analysis assumes that the board needs 37.1 deputy commissioners to handle 38,000 parole revocation hearings each year at 78 minutes each. If each parole revocation hearing actually takes only 45 minutes, as shown by this review, the number of deputy commissioner positions needed for that function drops to 21.4—a savings of nearly 16 positions.

- ***Mentally disordered offender hearings.*** The workload analysis assumes that the board needs five deputy commissioner positions to handle 1,000 mentally disordered offender hearings each year at 400 minutes each. If each mentally disordered offender hearing actually requires only 162.8 minutes, the number of deputy commissioner positions required for that function drops to 2.0—a savings of 3.0 positions. If, in addition, the mentally disordered offender hearings were each handled by only one deputy commissioner instead of two—an option discussed in more detail in Finding 5 of this report—the board would need slightly less than one deputy commissioner position for that function.

The board's calculation underestimates deputy commissioners' available work hours. Just as it overestimates the time required for deputy commissioners to carry out board functions, the workload analysis understates the work time available to the deputy commissioners. The board's workload analysis assumes that each deputy commissioner is available to work only 111 hours a month — 1,330 hours a year—compared to other state workers, who work 147 hours a month or 1,760 hours year. The calculation for deputy commissioners is less than that for other state workers because it assumes that deputy commissioners work only seven hours a day and it deducts 145 days per year for weekends, vacations, holidays, sick leave, and professional leave; 26 days for travel; and 10 days for training and board meetings.

CALCULATIONS USED TO DETERMINE A DEPUTY COMMISSIONER'S AVAILABLE NET WORKING HOURS PER YEAR

As Calculated by the:	**Board of Prison Terms**	**Office of the Inspector General**
Total days per year	**365**	**365**
Less Total of: Weekends (104); Holidays (13); Vacation days (20); Sick Leave days (6); and Professional Leave days (2)	(145)	(145)
Subtotal	**220**	**220**
Less: Travel (days)	(26)	(13)
Training and Board Meetings (days)	(10)	(7)
Net days available	**184**	**200**
Conversion to hours Multiply Times Hours per Day:	x7 hours	x8 hours
Average hours a deputy commissioner can work in one year	**1,330***	**1,600**

Although the number of days available (184) multiplied by 7 hours per day actually results in 1,288 hours, the board used the 1,330 hours figure in its workload analysis calculations.

The Office of the Inspector General found that the calculation significantly underestimates the work time available for the deputy commissioners. The Bargaining Unit 2 agreement, which covers deputy commissioners, requires a 40-hour work week, equating to 2,080 hours per year. The calculations used by the board reduce that total by 750 hours—more than one-third. Even allowing for vacation, sick leave, travel, meetings, and training, the 750-hour reduction is excessive for the following reasons:

- ***Deputy commissioners can work more than seven hours a day.*** Requiring deputy commissioners to work only seven hours a day drops available productive time by 184 hours—23 full work days per deputy commissioners per year. The board budgets the deputy commissioners to work seven hours a day on the premise that only seven hours of hearing time are available during the course of a day because security staff and hearing facilities are not available after 4:30 p.m. But the premise is flawed and the assumption that deputy commissioners can work only seven hours a day is not valid. Specifically:

- ***More than a third of the deputy commissioners do not conduct hearings***. The Office of the Inspector General found from a review of the current workload analysis that the board has budgeted 31 (37 percent) of the 84 deputy commissioner positions to perform duties other than conducting hearings, including conducting screenings, and handling the central office calendar, which consists of processing documents, answering telephone inquiries, and other tasks related to revocation proceedings.

- ***Other tasks can be performed to make up an eight-hour day.*** Even under the assumption that hearings can be held only seven hours a day, deputy commissioners can perform other tasks, such as writing reports, reviewing files, handling appeals, and other administrative tasks, to work an eight hour day. Also, deputy commissioners often work close enough to a California Department of Corrections parole office that when a day of hearings ends early, they could go to the parole office to perform screening reviews for the balance of the day.

- ***Security is available at the institutions***. Some of the hearings that the deputy commissioners conduct are held at institutions where parolees are incarcerated that are open 24 hours a day. Security measures could be arranged to extend available hearing hours beyond seven hours.

- ***The board has not justified allowing for 26 travel days a year***. Because deputy commissioners work from home and travel to hearing locations, the board's workload analysis for deputy commissioners allows for travel time at the rate of 26 days a year. But the board was unable to provide a study or other documentation to justify reducing available work time by 26 travel days a year for each deputy commissioner. In response to a request for such documentation, the board provided a schedule prepared in 1977 documenting that one-half day a week ——24 days a year — was deducted from the days available to the deputy commissioners to hold hearings. The board provided similar calculations dated 1991 and 1998 each of which reported 26 days allocated for travel. But the board was unable to provide evidence or data showing the estimates to be realistic, and no study has been performed to determine how much time the deputy commissioners spend in travel. The board provided schedules of vehicle mileage purportedly showing the total miles driven by deputy commissioners during 1996, 1997, and 2001, but the logs cannot validly be used as a basis for measuring the deputy commissioners' travel time. Although deputy commissioners work from home, the logs do not take into account that some deputy commissioners commute long distances to hearing locations while others do not, and that some deputy commissioners do not perform hearings and therefore may not travel at all. In fact, the board has no basis for allowing for 26 days a year of travel time for the deputy commissioners. In the absence of any documentation to the contrary, the Office of the Inspector General found that allocating 13 days for travel should be more than sufficient.

- ***The board has not justified the assumption of 10 training days a year.*** Similarly, although newly hired deputy commissioners receive approximately four weeks of training, the board could not provide supporting documentation for the ten days of training the board assumes annually for each deputy commissioner. When the Office of the Inspector General requested documentation of training attended by deputy commissioners for the 2000-01 and 2001-02

fiscal years, the board staff replied that the board does not have a training coordinator to maintain that documentation. The board did provide the Office of the Inspector General with sign-in sheets for classes attended by the deputy commissioners, which showed that the deputy commissioners attended an average of 3.4 days of training during fiscal year 2000-01 and 2.6 days during fiscal year 2001-02. Recognizing the need for and value of training, the Office of the Inspector General allocated seven days of training for each deputy commissioner.

- ***The deputy commissioners do not work even a full seven-hour day.*** Even though the workload analysis assumes the deputy commissioners work only a seven, rather than an eight-hour day despite the Bargaining Unit 2 agreement requiring a 40-hour work week, they actually work even less than seven hours. To compute the average workday of a deputy commissioner, the Office of the Inspector General arbitrarily selected two deputy commissioners — one from the northern region and one from the southern region — and calculated the time each spent during the 2000-01 fiscal year conducting parole revocation hearings and handling revocation screening offers — the two activities that represent the bulk of the deputy commissioners' workload. Using the times reported by the deputy commissioners on the BPT Form 1103 for parole revocation hearings and 12.5 minutes for revocations screening offers — the Office of the Inspector General calculated that the southern region deputy commissioner would have averaged 5.8 hours a day and the northern regional deputy commissioner would have averaged 4.8 hours a day. But assuming the more accurate time required for each function — 45 minutes for a parole revocation hearing and 6.5 minutes for a revocation screening offer — shows that the southern region deputy commissioner would have worked an average of 3.9 hours a day and the northern region deputy commissioner 3.4 hours a day.

FINDING 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, receive little supervision and the board has no means of accounting for how they spend their time.

The deputy commissioners conduct more than 130,000 Board of Prison Terms parole revocation screenings and hearings each year and account for nearly 40 percent of the board's total personnel costs. The decisions made by the deputy commissioners vitally affect the lives of inmates and parolees and public safety. Yet the board lacks critical information about the deputy commissioners' performance and provides them with almost no direct supervision. Most of the deputy commissioners work from home, but the board has no timekeeping system to monitor how they spend their time and cannot determine whether they work the 40 hours a week required by the Bargaining Unit 2 agreement. As noted in Finding 1, the Office of the Inspector General in fact found wide variation among the deputy commissioners in the amount of time spent on various functions. The lack of information prevents the board from knowing how much time is actually required for the deputy commissioners to conduct hearings and carry out other responsibilities or how many deputy commissioners the board needs to handle its workload. Nor is the board able to monitor the overall productivity of the organization, make improvements to the system, or measure the performance of individual deputy commissioners. And although the

Department of Corrections has been working to implement a new computerized tracking system to help ensure that parolees on hold receive a hearing within specified time limits, the deputy commissioners have refused to cooperate by entering information directly into the computerized system because they regard the work as "clerical." Instead, the deputy commissioners continue to fill out forms by hand and mail them to Sacramento headquarters to be entered into the system by the board staff—a duplicative process that has resulted in a backlog of unprocessed data.

The board has no timekeeping system for the deputy commissioners. Even though most of the deputy commissioners are based at home and work independently at state prison facilities and local jails without close supervision, the board management has no means of tracking how they use their time. An effective timekeeping system would provide management with the information needed to monitor the activities of the deputy commissioners, help management compare the amount of time needed to complete hearings in various regions of the state, and help in identifying problems and improving the hearing process. The absence of a timekeeping system has resulted in the following problems:

- ***The number of parole revocation hearings scheduled each day is too low.*** Because the board's management has lacked accurate information about the time needed to conduct parole revocation hearings, deputy commissioners are routinely scheduled to conduct only six hearings a day on non-travel days, allowing for 78 minutes per hearing. As Finding 1 suggests, a more accurate calculation of the time needed to complete each hearing is 45 minutes, which potentially would allow for as many as ten hearings to be held a day over the same period of time—a 67 percent increase in productivity.

- ***Wide variation in the number of screening offers handled.*** The number of revocation screening offers handled in a day varies widely among deputy commissioners. The Office of the Inspector General found from reviewing a six-month sample of revocation screening offers that some deputy commissioners completed an average of 60 screening offers a day, while others averaged only 19. The difference is significant in that deputy commissioners spend an average of 30 days a year on screening offers. If deputy commissioners who complete fewer than 45 screenings a day increased the total completed to 45 a day, the board could save 774 personnel days a year, or the equivalent of about 3.5 personnel years**.**

- ***The board presently cannot determine how deputy commissioners spend their time***. Although deputy commissioners record time spent on parole revocation and mentally disordered offender hearings on the BPT Forms 1103 and 1415, as Finding 1 notes, the time recorded is not always accurate. Moreover, the forms do not fully account for the deputy commissioner's time. Deputy commissioners also spend time working at home preparing for upcoming hearings and traveling to various hearing sites, but do not keep timesheets or daily logs to report the time they spend each day on board activities. Consequently, management has no means of knowing whether deputy commissioners have worked 40 hours each week, even though the Bargaining Unit 2 agreement between the deputy commissioners and the State requires them to do so. Deputy commissioners are considered "workgroup E" employees, which according to the bargaining unit agreement means they are "expected to work all hours necessary to accomplish their assignments and fulfill their responsibilities."

But the agreement also notes that "Employees may be required to record time for purposes such as client billing, budgeting, case or project tracking."

Deputy commissioners receive little supervision. According to the organization charts, deputy commissioners report to three of the board's four associate chief deputy commissioners. In actuality, according to the board's chief deputy commissioner, the associate chief deputy commissioners spend little time directly supervising deputy commissioners and instead perform administrative tasks and special projects for the board. Associate chief deputy commissioners are promoted from the ranks of the deputy commissioners, but few desire the position because those who promote receive only a 5 percent salary increase, lose their public safety retirement benefits, and are required to report every day to an office instead of working from home. As a result, the board has resorted to sometimes placing deputy commissioners as "acting" associate chief deputy commissioners on a temporary 12-month basis only, and must keep the vacant deputy commissioner position open in the meantime for the deputy commissioner to return to. The knowledge that they will soon return to rejoin the other deputy commissioners may act as a disincentive for acting associate chief deputy commissioners to diligently pursue supervisory responsibility.

Deputy commissioners refuse to use a needed computerized tracking system. In 1997 the Department of Corrections and the Board of Prison Terms began implementing a new computerized system to facilitate the parole revocation process. The system, termed the "revocation scheduling and tracking system," was designed to serve as a single repository for parole revocation data and was intended to increase the number of cases in compliance with the requirement that hearings be held within 45 days of a parole hold. The system was supposed to replace the antiquated present system in which deputy commissioners manually complete a Form 1103 for each hearing and mail the forms to board headquarters where the board staff keys the data into a computer system. That inefficient process is affected by mail delays, illegible handwriting, and information missing from forms. The Office of the Inspector General found that the board has no filing system for the 1103 forms that have been processed and instead keeps them in a room full of unused furniture. The revocation scheduling and tracking system was intended to remedy the problems by allowing deputy commissioners to enter the hearing results directly into the system, but the deputy commissioners have refused to do so, claiming that the task is burdensome and is clerical in nature, and the board management has not required them to perform that duty.

FINDING 3

The Office of the Inspector General found that until recently the State has had no means of tracking to ensure that parolees detained for violating parole receive a hearing within the 45-day time-frame specified in state regulations or within a "reasonable time period," as specified under federal law.

More than 7,000 California parolees are presently incarcerated awaiting Board of Prison Terms parole revocation hearings and screenings, which will determine whether they have violated parole conditions and should be returned to prison, and, if so for what period of time. Although *California Code of Regulations,* Title 15, Section 2640 specifies that parole revocation hearings should be held within 45 days of the date the parole hold was placed, and federal law requires

that a hearing be held within a "reasonable time period," neither the Board of Prison Terms nor the Department of Corrections has a means of tracking how long parolees incarcerated before October 1, 2002 have been held to ensure that time limits are met. In reviewing a sample of 171 parole revocation hearing cases, the Office of the Inspector General found that 137 (81 percent) had been held longer than the 45-day guideline and that 12 (7 percent) of the parolees had been held without hearings for more than 100 days. In many cases, by the time parolees are given a hearing to determine whether parole should be revoked, they have already served as much or more time than the parole revocation sentence they would have received.

An attempt to implement a computerized tracking system failed. In March 2001 the Department of Corrections attempted to implement a system—the revocation scheduling and tracing system—for tracking how long parolees had been waiting for hearings. But the attempt failed, in part because it did not accommodate the requirements of the Armstrong remedial plan, which grew out of a federal court decision requiring the board to modify its procedures to accommodate disabled prisoners and parolees. The system also did not accommodate Proposition 36, an initiative passed by the voters of California allowing drug offenders to receive treatment rather than jail time. As discussed in Finding 2, the system was further hampered by the unwillingness of Board of Prison Terms deputy commissioners to enter information directly into the computerized system instead of filling out forms manually and sending them by mail.

Although a new version of the revocation scheduling and tracking system was implemented on October 1, 2002, the system is not retroactive and captures only current information. As a result, the board and the Department of Corrections have instituted a weekly "hold-to-hearing meeting," referring to the 45-day timeframe from the date the parole hold was placed to the hearing date, in which the status of the thousands of parolees in the revocation process is reviewed. The meeting centers on the "Weekly Hold-to-Hearing Report," which gives the status of parolees waiting for parole revocation hearings. A summary of a recent such report is shown below.

Parole Region	NUMBER OF PAROLEES (BY PAROLE REGION) WAITING FOR:				
	ADA or C- File Review	Screening	Second Serves	Hearing	Totals
Region I	362	776	296	425	1,859
Region II	542	405	352	413	1,712
Region III	395	345	285	398	1,423
Region IV	965	55	659	644	2,323
Totals	**2,264**	**1,581**	**1,592**	**1,880**	**7,317**

The usefulness of the weekly hold-to-hearing report, however, is limited. The reasons are the following:

The accuracy of the information is questionable. The report is generated from information reported by each parole region, and each region uses its own procedures to compile the data. For

example, in Region III, the staff manually categorizes and counts the case files each week and consolidates the totals into the weekly report, but there is no means of validating the accuracy of the counts at any given point. The numbers continually change, and case files in transit from one staff member to another may not be included in the count.

The report does not include the length of time parolees have waited for hearings. Both the Board of Prison Terms and the Department of Corrections acknowledged to the Office of the Inspector General that they have no means of monitoring the status of individual parolees in the parole revocation process or how long they have been waiting for parole revocation hearings. The report reveals only patterns and trends in the number of cases reported to be in each phase of the process. Without information on the status of the individuals, the State cannot ensure that parolees' legal rights to a timely hearing are fulfilled. The status of the 2,264 parolees shown in the report as "Waiting for ADA or C-File Reviews," is of particular concern. In these cases, the revocation unit is waiting for Americans with Disabilities Act documentation from the field or from the parolee's central file in compliance with the *Armstrong* remedial plan. This process can be time-consuming, as the parolees' Americans with Disabilities Act documentation must be located, sent to the appropriate revocation unit, matched with the parole violation documents, and forwarded to the Board of Prison Terms. An additional concern is that some of the parolees are Proposition 36-eligible and according to the law should not be incarcerated, but rather should be referred to a drug treatment program. But the parolees do not receive a drug treatment screening offer until this lengthy process is completed. Neither the board nor the Department of Corrections knows how many parolees are Proposition 36-eligible or how long they have been incarcerated.

Each parole region is using its own tracking process to track parolee status. Since neither the board nor the Department of Corrections has a means of tracking the status of the parolees waiting for hearing, the parole regions have devised their own systems for doing so. Some of the regions have resorted to manually tracking arrested parolees through the use of jail logs. Parole Region III has returned to a previous system, which can produce a report giving statistics on parolees held longer than 45 days. That report, although incomplete, reports an average hold-to-hearing time as of October 9, 2002 of 70 days for hearings falling beyond the 45-day threshold.

The fragmented manner in which information about the status of parolees awaiting hearings is gathered raises questions about the accuracy of the information and impairs the ability of the board to ensure that the revocation hearings are conducted within specified time limits.

FINDING 4

The Office of the Inspector General found that the Board of Prison Terms is not complying with state regulations requiring that board decisions undergo systematic review to ensure that they are valid and consistent and that they further public safety.

California Code of Regulations, Title 15, Sections 2041 and 2042 require that decisions rendered by the Board of Prison Terms in parole revocation, indeterminate sentencing, and mentally disordered offender hearings undergo review before they take effect. The purpose of the review is to ensure that results are consistent, that the findings are supported by the evidence, and that the law has been correctly applied. The review is also meant to ensure that the decisions further

public safety. The Office of the Inspector General found that Board of Prison Terms is not complying with these requirements. Decisions in indeterminate sentencing cases undergo review by the board's legal department only if parole is granted. If parole is denied in an indeterminate sentencing case, the decision undergoes only a superficial review intended just to verify the clerical accuracy of the hearing documents. Of the mentally disordered offender hearings, only a small fraction—those in which the inmate is proposed to be released from inpatient treatment or from the mentally disordered offender classification — undergo a meaningful review. The others are reviewed by a second deputy commissioner who may lack training in the medical complexities of the case. And the board provides no review at all of the 38,000 parole revocation hearing decisions issued each year by its deputy commissioners, which constitutes the bulk of the deputy commissioners' workload.

State regulatory requirements for Board of Prison Terms decision review. California Code of Regulations Title 15, Sections 2041 and 2042 provide in pertinent part:

> *[B]oard decisions, except decisions made at recommendation hearings and decisions which do not require a hearing, are proposed decisions and shall be reviewed prior to their effective date…*
>
> *[T]he purpose of the decision review process is to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety. Criteria for disapproval of a decision by the decision review unit, reconsideration panel, or board review committee include clerical errors, apparent inconsistency of result from results generally obtained for the same or similar cases, incorrect application of the law (statutes or regulations), a decision not supported by the findings, findings not supported by the evidence on the record, or a unique or unusual policy issue posed by the proposed decision.*

Review of indeterminate sentencing decisions does not meet regulatory intent. The board's workload analysis provided for the equivalent of almost one full deputy commissioner position (2,296 cases at a half-hour each) to review hearing decisions involving inmates with indeterminate sentences. In fact, though, only indeterminate sentencing decisions in which parole is granted are reviewed by the board's legal department. When parole is denied, deputy commissioners perform only a clerical review that involves comparing the hearing transcripts to the hearing file documents to verify that information such as the inmate's CDC number, the hearing date, the institution where the hearing occurred, and the commitment offense are accurate. The Office of the Inspector General observed that the process takes five or ten minutes. Although the review also includes confirming that the reason for the parole denial has been documented, the task could easily be performed by other members of the staff working at a much lower pay scale. No meaningful review of the decisions consistent with regulatory intent is conducted.

The board's parole revocation hearing decisions are not reviewed. The Board of Prison Terms received funding for 3.4 deputy commissioner positions to conduct decision reviews for 20 percent of the parole revocation hearings and 100 percent of the mentally disordered offender hearings. But the board stopped reviewing parole revocation decisions in December 2001, claiming that it did not have enough deputy commissioners for that purpose. As a result, unless a problem with a hearing is brought to the attention of the chief deputy, parole revocation decisions are not reviewed.

Parole revocation decisions appear to lack consistency. Even though parole revocation decisions issued by the board's deputy commissioners have profound implications for parolees and for the public, the Office of the Inspector General found that the deputy commissioners do not appear to follow consistent standards in rendering the decisions. In the 171 parole revocation hearing cases examined, the Office of the Inspector General found for example that one deputy commissioner dismissed charges that included fraud, possession of stolen property, attempted burglary 2nd degree, burglary 2nd degree, false identification to a police officer, and use of cocaine against a parolee because the parolee had been in jail for 69 days before the revocation hearing was held. In another case, the same deputy commissioner dismissed all charges because the parolee had been jailed for 67 days. Yet, a different deputy commissioner gave a parolee who had been held for 163 days for failure to follow parole instructions, evading arrest, absconding parole supervision, and possession of cocaine a prison term of nine months.

As noted in Findings 1 and 2, the deputy commissioners also vary widely in the apparent diligence with which they conduct and document the hearings, as seen in the wide variation in hearing length and in the detail or lack thereof in the hearing reports. Without a meaningful and effective review process, the management of the board has no means of identifying and rectifying the inconsistencies, which not only undermine the fairness of the hearing process, but also render the board vulnerable to legal action.

Mentally disordered offender reviews reflect deputy commissioners' lack of expertise. Only a fraction of the board's mentally disordered offender decisions — those in which the deputy commissioner's proposed decision was to release the inmate from inpatient treatment or from the mentally disordered offender classification — undergo a meaningful review. Those decisions are reviewed by the board's offender screening section analysts. But all of the other mentally disordered offender reviews, which make up by far the greatest proportion of the decisions, are performed by other deputy commissioners. In those cases, the deputy commissioner who conducted the hearing decided that inpatient placement was necessary or that the mentally disordered offender classification was "reaffirmed," and the decision is reviewed by another deputy commissioner who may lack adequate training in the medical complexities of the cases. From a sample of 60 mentally disordered offender hearings, the Office of the Inspector General found that deputy commissioners had performed decision reviews for 58 and that in 25 of the 58 cases (43 percent), the deputy commissioner who performed the review had not been trained in conducting mentally disordered offender hearings.

The Office of the Inspector General found that in fact the offender screening section analysts overturn a high percentage of the mentally disordered offender decisions they review, raising the possibility that decisions not reviewed by the analysts may contain an equal proportion of flawed or erroneous decisions that escape detection. Of the 625 mentally disordered offender hearings held from January to September 2002, 13 resulted in a decision by the deputy commissioner to release the inmate from inpatient treatment or from the mentally disordered offender classification and therefore underwent review by offender screening analysts. The offender screening section analysts overturned eight of the 13 decisions. In six of the eight cases, the deputy commissioners had decided that the parolee no longer met the criteria for a mentally disordered offender, but the analysts concluded that the parolee did meet the criteria, and found that the facts presented by the deputy commissioner failed to support the decision to remove the

designation. In two of the cases, the analysts found that the deputy commissioners' decisions were so deficient as to warrant rescinding the decision and ordering a new hearing.

The mentally disordered offender decision review process is not monitored. Although the board prepares a decision review tracking report covering mentally disordered offender decisions, the process is not monitored to ensure that the reviews are conducted. The Office of the Inspector General found that a decision review tracking report provided by the board listed 22 mentally disordered offender hearings held between November 2000 and December 2000 that never were reviewed during the decision review process. The board staff said that the cases were apparently sent to the deputy commissioners for review but were returned and re-filed without the decision review taking place. The staff responsible for logging the files back from the deputy commissioners failed to notice that the deputy commissioners had not signed off on the cases. The cases also were not logged as returned on the tracking report, but no supervisors review the tracking report and the absence of the reviews went unnoticed. The Office of the Inspector General noted that seven other mentally disordered offender decisions in 2001 and 2002 also were not documented as having received a review.

The Office of the Inspector General found other evidence that the decision review tracking report is not accurate. From a sample of 20 hearings listed in the tracking report, the Office of the Inspector General reviewed the corresponding BPT 1415 forms to determine whether the decision review had occurred. In three of the 20 documents, the decision review section of the form was blank, indicating that the review had not been performed, yet the tracking report indicated that the review had been performed.

FINDING 5

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 is unnecessary and inefficient. The requirement that two deputy commissioners conduct the mentally disordered offender hearings is similarly unnecessary.

The workload analysis of the Board of Prison Terms budgets five deputy commissioner positions to conduct mentally disordered offender hearings. The Office of the Inspector General found, however, that the board could achieve significant savings by streamlining the mentally disordered offender hearing process and reducing the personnel resources needed for the hearings. Making those changes would enable the board to fulfill this function with only one deputy commissioner position instead of five.

Scheduling placement hearings only as needed would save resources. State regulations allow a parolee to request a placement hearing to determine whether he or she will be treated as an inpatient or outpatient within 60 days of the parolee's arrival in custody as a mentally disordered offender. In practice, however, the board does not wait for the patient to request the hearing, but instead automatically schedules the placement hearing after 60 days. But that process does not allow the medical treatment team enough time to stabilize the patient's treatment and accurately assess suitability for outpatient treatment. As a result, 99 percent of the placement hearings result in an order that the patient remain in a Department of Mental Health hospital for continued inpatient treatment.

California Code of Regulations, Title 15, Section 2578 states:

> *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 Penal Code Section 3001, the parolee may request a hearing before the board to determine whether he or she shall be treated as an inpatient or an outpatient.*

The Office of the Inspector General found that in the six months ending June 30, 2002, only one of 102 mentally disordered offender placement hearings resulted in an order that the parolee be treated as an outpatient. When the patient remains in medical custody after the placement hearing, annual hearings are held to reassess the patient's status as a mentally disordered offender and suitability for outpatient care. Instead of the current process, the placement hearings could be conducted after the medical staff at the Department of Mental Health determines that the patient is suitable for outpatient treatment. At that point the staff could request that the board conduct a placement hearing and weigh the evidence presented in the hearing to determine the patient's suitability for outpatient treatment.

Adopting this alternative would save in two ways: first, because some mentally disordered offenders never reach the level at which treatment can be done on an outpatient basis, many hearings now automatically scheduled could be put off indefinitely. Second, scheduling the placement hearing at the time it is actually needed would allow the Department of Mental Health to save because patients whose release to outpatient care would otherwise be delayed until an annual hearing could be released earlier. Under current procedures, when there is disagreement between the Department of Mental Health and the providers of outpatient treatment about a patient's suitability for outpatient treatment, the Department of Mental Health waits for the board to make the final decision at the annual hearing. Since annual hearings obviously occur only once each year, some patients may remain unnecessarily in Department of Mental Health treatment for several months—at an annual cost of $100,000, compared to the cost of treatment in the Department of Corrections outpatient program of between $12,000 and $24,000 per year.

The hearings could be handled by one deputy commissioner instead of two. *California Code of Regulations,* Title 15, Sections 2576, 2578, and 2580 require the board's mentally disordered offender hearings to be conducted by two deputy commissioners, even though its other hearings, except for parole hearings for inmates with indeterminate sentences, are handled by one commissioner. The purpose of mentally disordered offender hearings is to determine whether a parolee meets the criteria of a mentally disordered offender or whether he or she needs inpatient or outpatient medical treatment. The deputy commissioner's decision is largely guided by expert testimony from treating doctors or clinicians and the patient.

The supervising agent who manages the board's offender screening section maintains that the complexity of mentally disordered offender hearings justifies the presence of two deputy commissioners. But although the medical context of the hearings may require a set of skills different from those required for other hearings, the basic skills of weighing evidence and assessing the credibility of witnesses are no different. A more prudent approach would be to ensure that the deputy commissioner who conducts the hearings is sufficiently trained and experienced to handle the medical complexities of the hearings. The mandated review of each

hearing decision further mitigates the need for two deputy commissioners to conduct the hearing, provided that a qualified individual performs the review.

Streamlining the mentally disordered offender hearing process to eliminate unnecessary hearings and using only one deputy commissioner at each hearing instead of two, would enable the Board of Prison Terms to fulfill its responsibility for conducting the hearings with the equivalent of only one deputy commissioner position instead of the five positions presently budgeted.

FINDING 6

The Office of the Inspector General found that the State's parole revocation process is unnecessarily burdensome and prevents it from affording inmates and parolees their due process rights to a timely hearing.

The purpose of the parole revocation process is to determine whether a parolee has violated parole conditions and should be sent back to prison. But the process by which the State presently carries out that responsibility is burdensome and inefficient and in need of thorough revamping. The current process is fragmented, with the board sharing overlapping responsibilities for the process with the Department of Corrections—an arrangement that leads to delays, errors, and communication problems. In recent years the parole revocation hearing process also has been complicated by the impact of court decisions specifying due process rights of parolees to a hearing within a reasonable time period and the rights of inmates and parolees suffering from disabilities to necessary accommodation. Under its present parole revocation screening and hearing process, the State has not been able to adequately provide for those due process rights. Nor has the State been able to successfully implement the provisions of Proposition 36 allowing nonviolent drug offenders the option of treatment instead of incarceration. The Board of Prison Terms deputy commissioners, whose primary responsibility is conducting parole revocation hearings, are under-utilized, and adding more deputy commissioners will not remedy the problems.

Eliminating the screening offer process and proceeding directly to parole revocation hearings, however, would streamline the process and improve the timeliness of the hearings. The Office of the Inspector General calculated that the number of deputy commissioners needed would increase from 39 to 58 under this approach because the time required to conduct a parole revocation hearing is significantly longer than the time required to do a parole revocation screening. But despite that increase, the total number of deputy commissioner positions needed would still be 31 percent lower than the 84.3 positions currently budgeted. The change would also eliminate the need for the board's 29 board coordinating parole agent positions, for an estimated state savings of more than $2.5 million annually. It would also reduce the workload of the Department of Corrections district hearing agents. Consolidating the parole revocation process in one agency would also improve efficiency.

Morrisey v. Brewer decision established due process rights to a timely hearing. Since 1972 the parole revocation process nationwide has been governed by the landmark U. S. Supreme Court decision *Morrissey v. Brewer,* which afforded parolees undergoing parole revocation proceedings certain due process rights, including the fundamental right to a hearing within a reasonable time period. Although the court did not specify the length of time within which the

hearing should be held, it cited 60 days as a reasonable standard and implied that pre-revocation hearings should be held soon after the alleged violation in order to determine whether probable cause exists to continue the proceedings. In adopting regulations to comply with the *Morrissey* decision, California elected to dispense with the pre-revocation hearing and to hold a single or unitary hearing instead. *California Code of Regulations,* Title 15 recommends that a parole revocation hearing be held within 45 days of the placement of the no-bail parole hold.

Pittman decision provided a 30-day standard for a hearing to be held. In August 1987 another court decision resulted in a more stringent time frame for the revocation hearing process. The *Pittman* decision by the San Bernardino Superior Court mandated that the revocation process in San Bernardino County be completed within 30 days of the placement of the parole hold. Therefore, two standards were set: a 45-day guideline for hold-to-hearing for most of the state and a 30-day requirement for hold-to-hearing in San Bernardino County.

Armstrong v. Davis court decision established rights for disabled parolees. The parole revocation process again changed dramatically in 1999 with the impact of the *Armstrong v. Davis* decision. In *Armstrong,* the U. S. Court of Appeals ruled that the State of California regularly discriminated against disabled prisoners and parolees in its parole and parole revocation process. The court found that the Board of Prison Terms failed to provide proper accommodation for disabled prisoners and parolees. The court issued a system-wide injunction requiring the board to modify its policies and procedures to comply with federal statutory and constitutional standards. In response, the Department of Corrections developed the *Armstrong v. Davis* Board of Prison Terms parole proceedings remedial plan, the goal of which is to ensure that all inmates and parolees who have a disability under the Americans with Disabilities Act are afforded reasonable accommodation at board parole proceedings. Under the plan, the board and the Department of Corrections are jointly responsible for ensuring that the inmate or parolee is made aware of his or her rights, is informed as to how to request reasonable accommodation, and has equal access to all parole proceedings.

The Board of Prison Terms has not complied with the 45-day standard. As discussed in Finding 3, the board has not been able to provide parole revocation hearings within the 45-day timeframe recommended under Title 15 of the *California Code of Regulations*, in part because it lacks a means of tracking how long parolees have been held to ensure that time limits are met. The board's ability to meet the 45-day guideline is further hampered by the burdensome and convoluted process by which the parole revocation screening offers and hearings are carried out and by the procedures used by the Board of Prison Terms and the Department of Corrections to comply with the *Armstrong* decision requirements. Following are some of the factors complicating the parole revocation hearing process.

- ***Identifying parolees requiring accommodation delays the hearing process.*** Under the *Armstrong v. Davis* Board of Prison Terms parole proceedings remedial plan, the Department of Corrections and the Board of Prison Terms divide responsibilities for providing accommodation to inmates and parolees with disabilities. As a first step, the Department of Corrections must identify those who need accommodation at a parole hearing. That seemingly simple process can delay the hearing for months because the department has no means of readily retrieving the information and gives the task low

priority. To gather the needed information, the inmate or parolee's central file must be requested and located and then manually reviewed to determine whether it contains documents that might identify a disability or need for accommodation. Once the disability information is obtained, it must be matched with the parole violation report, processed, and sent to the board so that the deputy commissioner can screen the case and prepare a screening offer. With hundreds of parole violation reports awaiting review for compliance with the Americans with Disabilities Act, the procedures have caused a backlog in the hearing process.

- ***Coordination between the board and the department causes further delays.*** The fragmented responsibility for the parole revocation hearing process between the board and the Department of Corrections causes additional delays. Because there is no automated system to manage the cases, the two agencies coordinate the hearing process through telephone calls and fax messages, a process both labor-intensive and susceptible to error, which in turn causes still more delays. The process is further complicated by the fact that two different employee classifications at the two separate agencies — board coordinating parole agents at the Board of Prison Terms and district hearing agents at the Department of Corrections— perform almost the same function. After the board's deputy commissioner prepares a screening offer, if no Americans with Disabilities Act requirements have been identified, a Department of Corrections district hearing agent "serves" the offer to the parolee, who then has 72 hours to review the screening offer and decide whether to accept it. On the other hand, if an Americans with Disabilities Act requirement is identified, a Board of Prison Terms board coordinating parole agent —a classification established in response to the *Armstrong* case —serves the offer to the parolee.

- ***Proposition 36 requirements are not being met.*** Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, enacted by the voters of California in November 2000, provides for treatment rather than incarceration for non-violent drug offenders. Under the new law, a parole violator found to have committed a nonviolent drug offense or to have violated drug-related conditions of parole is supposed to be allowed to participate in a community drug treatment program with up to six additional months of follow-up care instead of being returned to prison. According to the law, within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated certain drug-related conditions of parole, the board is to notify the treatment provider designated to provide drug treatment under the Act. Within 30 days thereafter, the treatment provider is to prepare a drug treatment plan and forward it to the board and to the parole agent of record responsible for supervising the parolee. But under the current parole revocation hearing process, the requirements of the law are not being met because the State has no means by which to readily distinguish parolees who are eligible for Proposition 36 from other parolees. As a result, parolees eligible for drug treatment under Proposition 36 may be held in jail for months before they receive a screening offer to participate in a drug treatment program.

- ***A pending court case could further complicate the parole revocation process.*** A major class action lawsuit pending in U.S. District Court could also affect the parole revocation process. That lawsuit, *Valdivia v. Davis,* alleges that inmates and parolees are being denied the right to counsel and due process in the revocation of their parole. The lawsuit alleges that

parolees are placed on hold without the proper and timely notice of the reasons for the detention or sufficient mechanism to appeal the detention and that prompt and preliminary hearings on the cause of the parolee's detention are not being conducted in California. The lawsuit further alleges that in almost all cases, no hearing is held, whether on the basis for the detention or on the charges themselves, until 45 days or even months after the arrest. Other issues raised in the lawsuit are that parolees are not provided with attorney representation at the time the screening offer is made; are often denied a request for an attorney; and that even when an attorney is appointed, the pay scale and criteria for attorney representation renders the right meaningless. Although the outcome of the *Valdivia* lawsuit is uncertain, if successful it will almost certainly require extensive changes to the existing parole revocation process.

- ***The use of screening offers unnecessarily contributes to hearing delays.*** The screening offer process was designed to lessen the number of cases requiring full parole revocation hearings, and thereby save resources. In reality, the screening process causes delays and impairs the ability of the board to provide hearings within the 45-day time guideline. In the screening process, a deputy commissioner screens the parolee's case file and decides on an offer that involves an incarceration period of up to twelve months. As noted above, the screening offer is served to the parolee by either a Department of Corrections district hearing agent or a Board of Prison Terms board coordinating parole agent, depending on whether or not the parolee is eligible for reasonable accommodation under the Americans with Disabilities Act. After that, the parolee accepts or rejects the screening offer. Each stage of the process carries with it the potential for delay.

The board could complete hearings more promptly if it eliminated screening offers. The Board of Prison Terms could complete parole revocation hearings more efficiently with its present resources and address the due process rights of parolees to a timely hearing if it eliminated the screening offer process. According to its workload analysis, the board estimated that in the 2001-02 fiscal year it would receive 91,249 cases requiring a screening review, 35,067 of which would result in formal parole revocation hearings. The board further estimated that 2,937 of the parole revocation hearings would be postponed and therefore would require a rehearing. To perform the revocation screenings, parole revocation hearings, and postponed hearings, the board budgeted a total of 68,415 hours. Using the board's assumption of 1,330 in annual productive hours per deputy commissioner, the board received funding for 51.4 deputy commissioner positions to carry out the revocation screening and hearing functions.

As noted in Finding 1, however, the board's workload analysis over-estimated the time required for each parole revocation hearing. The Office of the Inspector General found that instead of 78 minutes, the hearings require an average of only 45 minutes. If the board were to eliminate the revocation screening function and proceed directly to the revocation hearing, it would require a total of 70,640 hours to conduct the 91,249 revocation hearings and 2,937 postponed hearings under the current estimated hearing workload —slightly more than the 68,415 hours presently budgeted for the screenings and hearings together.

The Office of the Inspector General further notes that the board's entire parole revocation hearing workload (parole revocation screenings and hearings) could be handled by fewer deputy

commissioners than the 51.4 currently budgeted. The reason is that, as explained in Finding 1, the board's budget assumption of 1,330 in annual productive hours per deputy commissioner is unrealistically low. Using a more reasonable assumption of 1,600 hours annually, or 133 productive hours per deputy commissioner per month—which provides for a normal eight-hour workday and still allows for a generous 13 travel days a year — reveals that the entire hearing workload could be handled by 43.46 deputy commissioner positions, compared to the 51.4 positions currently budgeted specifically for parole revocation screenings and hearings.

If the screening offer function is eliminated, the Office of the Inspector General calculates that the total number of deputy commissioner positions needed for all functions will increase by 19, from 39 to 58.2 (see Appendix B). The increase is necessary because the time required to conduct a parole revocation hearing (45 minutes) is longer than the time required for a parole revocation screening (6.5 minutes). But the total number of deputy commissioner positions needed would still be 31 percent less than the 84.3 positions currently budgeted.

Elimination of the screening function offers several advantages to the State. First, it would expedite the hearing scheduling process by eliminating the time required to review and process the screening offers. Second, the 29 board coordinating parole agent positions, funded in the board's 2001-02 fiscal year, whose primary function is to serve screening offers to parolees eligible for accommodation under the Americans with Disabilities Act could be eliminated, for an estimated savings to the State of more than $2.5 million annually. Third, parallel savings in the workload of the Department of Corrections also would be realized, since the department's district hearing agents would no longer be needed to serve screening offers to parolees not eligible for Americans with Disabilities Act accommodation. The effect of the savings from the reduction in the workload of district hearing agents cannot be quantified at this time.

Consolidating parole revocations at the department would improve the process. The existing parole revocation process, with the Board of Prison Terms sharing responsibilities with the Department of Corrections, results in overlap and inefficiency and undermines the State's ability to afford inmates and parolees their constitutional right to a timely hearing. Consolidating the parole revocation process in one agency would eliminate the overlaps and shorten the time required to process cases. The Department of Corrections, as the agency with overall responsibility for inmates and parolees and with its Parole and Community Services Division and regional parole offices, would be the logical agency to handle the parole revocation process.

Adding pre-revocation hearings will not remedy the due process problems. Because of the *Valdivia* case, the State is contemplating conducting pre-revocation hearings for all parolees soon after the alleged violation to determine whether probable cause exists to continue the proceeding. But given the State's inability to readily identify parolees eligible for Americans with Disabilities Act accommodation, it is doubtful that the pre-revocation hearings can be conducted within mandatory time limits either. On the contrary, adding another time-consuming procedure into an already cumbersome and convoluted process could cause significant additional delays.

A Proposition 36 memorandum of understanding could have additional impact. A memorandum of understanding between the Board of Prison Terms and the Department of Corrections concerning implementation of Proposition 36 could significantly reduce the number

of parole revocation hearings and should be considered in any revision of the hearing process. Implementation of Proposition 36 was initially the responsibility of the Board of Prison Terms, but the board has not been able to carry it out. A recent memorandum of understanding between the board and the Department of Corrections has now transferred the responsibility to the department. In the memorandum of understanding, the board agreed to immediately delegate and seek regulatory change to waive mandatory reporting requirements for certain parolees. The provision affords the parole agents of record and unit supervisors greater discretion in retaining parolees on parole, rather than automatically referring them for revocation hearings. While the provision could significantly reduce the number of revocation hearings, its impact cannot be determined at this time, especially given uncertainty about whether the board will be successful in effecting the necessary regulatory changes.

RECOMMENDATIONS

The Office of the Inspector General recommends the following:

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.

Regardless of whether the parole revocation process is consolidated or remains with the Board of Prison Terms and the Department of Corrections, the responsible entity should take the following actions:

- **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 report. The two critical factors in the workload analysis report—total hours 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:

- **Ensure that the deputy commissioners work an average of 40 hours per week as specified in the collective bargaining agreement.**

- **Systematically conduct reviews of the hearing proceedings and decisions reached to ensure that deputy commissioners conduct hearings properly and consistently. Such reviews should be coordinated with similar reviews completed by other staff members.**

- **Require deputy commissioners to use the revocation scheduling and tracking system.**

- **Refine the revocation scheduling and tracking system to ensure that it provides the information needed to efficiently administer the parole revocation process. At a minimum, the system should be able to:**

  - **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, decision reached during the hearing, and the basis for the decision.**

- **Ensure that hearing decisions are proper, consistent, and fully documented and supported by:**

  - **Establishing formalized training for deputy commissioners and associate chief deputy commissioners.**

  - **Reinstating a systematic review process that fulfills the existing requirements in *California Code of Regulations,* 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.**

- **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.**

- **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.**

OFFICE OF THE INSPECTOR GENERAL'S ANALYSIS OF THE BOARD OF PRISON TERMS' WORKLOAD ANALYSIS USING CURRENT PAROLE REVOCATION PROCESSES

TYPE OF HEARING OR REVIEW:	BOARD OF PRISON TERMS			OFFICE OF THE INSPECTOR GENERAL		
	FY 2001-02 ACTIONS FUNDED	BUDGETED MINUTES PER ACTION	DEPUTY COMMISSIONER TIME(HOURS)	FY 2001-02 ACTIONS FUNDED	AUDITED MINUTES PER ACTION	DEPUTY COMMISSIONER TIME(HOURS)
Parole Consideration Hearings	5,103	Various	7,744	5,103		7,744
Mentally Disordered Offender Hearings						
Cases Reviewed [1]	516	60	518	516	0	0
Certification Hearings[2]	377	400	2,513	377	**162.8**	1,023
Placement Hearings[2]	326	400	2,173	326	**162.8**	885
Annual Hearings[2]	288	400	1,920	288	**162.8**	781
Sexually Violent Predator Hearings	34	90	50	34		50
Revocation Hearings						
Central Office Calendar (non-hearings)[3]	180,163	Various	13,797	180,163	N/A	6,400
Revocation Screening Calendar[4]	91,249	12.5	19,010	91,249	**6.5**	9,885
Community Hearings[5]	35,067	78	45,587	35,067	**45**	26,300
Extension Hearings[5]	2,307	65	2,499	2,307	**45**	1,730
Postponed Hearings[5]	2,937	78	3,818	2,937	**45**	2,203
Proposition 36 Hearings[6]	7,181	30	3,591	7,181	0	0
Decision Review						
Indeterminate Sentencing Hearings[7]	2,296	30	1,148	2,296	**10**	383
MDO and Revocation Hearings[7]	9,077	30	4,539	9,077	**10**	1,513
Appeals	8,104	24	3,242	8,104		3,242
Total			**112,147**			62,139
Net Hours Worked per Deputy Commissioner per fiscal year[8]			**1,330**			1,600
Personnel Year Equivalent Worked/Needed			**84.3**			**38.8**

[1] The Office of the Inspector General found that deputy commissioners no longer perform these case reviews. As a result, this activity was eliminated from the Office of the Inspector General's analysis.

[2] The Office of the Inspector General found that the mentally disordered offender hearings last an average of 162.8 minutes.

[3] The Office of the Inspector General found that the Board of Prison Terms actually only assigns four deputy commissioners to the central office calendar function.

[4] The Office of the Inspector General found that the deputy commissioners spend an average of 6.5 minutes on each screening offer. As a result, this figure was reduced from 12.5 minutes to 6.5 minutes.

[5] The Office of the Inspector General found that the parole revocation hearings last an average of 45 minutes, not the 78 minutes recorded by the deputy commissioners.

[6] The Board of Prison Terms and the California Department of Corrections recently entered into a memorandum of understanding to transfer the implementation of Proposition 36 from the board to the department, effective October 1, 2002.

[7] The Office of the Inspector General found that decision review items last about 10 minutes each, not 30 minutes. In addition, the number of hearing decision reviews completed in FY 2000-01 was overstated by 334 cases.

[8] The Office of the Inspector General found that the 1,300 annual hours allotted underestimates the hours deputy commissioners can work. A more reasonable figure is 1,600 hours, which includes working an 8-hour day and allows fewer hours for travel and training.

REVISED WORKLOAD NEEDS BASED ON THE OFFICE OF THE INSPECTOR GENERAL'S RECOMMENDED PROCESS CHANGES

TYPE OF HEARING OR REVIEW:	FY 2001-02 ACTIONS FUNDED	OFFICE OF THE INSPECTOR GENERAL RECOMMENDED	
		MINUTES PER ACTION	DEPUTY COMMISSIONER TIME(HOURS)
Parole Consideration Hearings	5,103		7,744
Mentally Disordered Offender Hearings			
Cases Reviewed	516	0	0
Certification Hearings[1]	377	**81.4**	511
Placement Hearings[1]	326	**81.4**	442
Annual Hearings[1]	288	**81.4**	391
Sexually Violent Predator Hearings	34		50
Revocation Hearings			
Central Office Calendar (non-hearings)	180,163		6,400
Community Hearings[2]	91,249	45	68,437
Extension Hearings	2,307	45	1,730
Postponed Hearings	2,937	45	2,203
Proposition 36 Hearings	7,181	0	0
Decision Review			
Indeterminate Sentencing Hearings	2,296	10	383
MDO and Revocation Hearings	9,077	10	1,513
Appeals	8,104		3,242
Total			**93,046**
Net Hours Worked per Deputy Commissioner per fiscal year[3]			**1,600**
Personnel Year Equivalent Worked/Needed			**58.2**

[1] The Office of the Inspector General found that mentally disordered offender hearings last an average of 162.8 minutes. The Office of the Inspector General also recommends that mentally disordered offender hearings be conducted by one deputy commissioner instead of two, reducing the number of minutes per hearing by 50 percent, from 162.8 minutes to 81.4 minutes.

[2] The Office of the Inspector General recommends that the screening process be eliminated and that 45 minutes be budgeted for each of the 91,249 revocation hearings.

[3] The Office of the Inspector General found that the 1,330 annual hours alotted underestimates the hours deputy commissioners can work. A more reasonable figure is 1,600 hours, which includes working an eight-hour day and allows fewer hours for travel and training.

RESPONSE OF
THE BOARD OF PRISON TERMS

BOARD OF PRISON TERMS
1515 K Street, 6th Floor
Sacramento, CA 95814

(916) 445-4072

December 24, 2002

John Chen
Chief Deputy Inspector General
Office of the Inspector General
3927 Lennane Drive, Suite 100
Sacramento, California 95834-8780

RE: REVIEW OF THE BOARD OF PRISON TERMS

Dear Mr. Chen:

Attached please find the Board of Prison Terms' (Board) response to the above draft report prepared by the Office of the Inspector General (OIG) and presented to the Board on December 4, 2002. An effort has been made to include responses to all findings and recommendations, including specific sub-sections outlined by the OIG. For the past several months, this has been a very arduous, stressful, and time-consuming experience that has impacted virtually every employee at the Board. We are eager to reach closure on this phase of the audit. The current leadership of the Board intends to move forward and effect positive change and appropriate remedies for identified areas of concern.

In general, we concur with the majority of the findings and recommendations of the OIG. We also acknowledge and appreciate the thoroughness and professionalism of the OIG staff assigned to this task. As with most organizations, particularly those in government, the Board has some inefficient practices that warrant our attention and correction. In some cases, the inaccuracy or our record-keeping regarding workload has contributed to the problem and we will take steps to correct that. In other cases, there has been an over-reliance on some flawed, yet enduring, past business practices. A planned workload study contracted to an outside vendor in the upcoming months, in conjunction with the OIG findings, will help improve this situation, as well.

As you review our response, however, it is important to note that we are bound by many laws and regulations that are designed to strike a delicate balance between efficiency and preserving critical due process rights of inmates as we pursue the Board's mission of protecting public safety. To that end, we deploy staff to conduct hearings off-site at locations throughout the state. That includes state correctional facilities located in remote areas, as well as parole offices and county jails. Every day, staff dispatched to hearing sites are confronted with unavoidable delays and logistical problems that range from extensive travel to security procedures. The reality is that the nature of our work and the environment where we labor is subject to unavoidable inefficiencies and some inherent lost productivity by our Deputy Commissioners. Nevertheless, there is a commitment to explore all prudent options available to us in order work more resourcefully and address the deficiencies you have outlined.

Thank you for the opportunity to respond to this report.

CAROL A. DALY
Chairperson

Attachment

BOARD OF PRISON TERMS

RESPONSE TO DECEMBER 2002
"OIG REVIEW OF THE BOARD OF PRISON TERMS DRAFT REPORT"

INTRODUCTORY REMARKS

Response from the Board as to OIG Findings 1-6 provides one of three standardized responses:

a. Respondent agrees with finding.

b. Respondent disagrees with finding.

c. Respondent agrees partially with finding.

An effort has been made to respond to all Findings, including sub-sections, as noted in bold type within the OIG's review and re-stated in this response.

Response as to OIG Recommendations, including sub-sections, provides one of four standardized responses:

a. The recommendation has been implemented, with a summary regarding the implemented action.

b. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

c. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study.

d. The recommendation will not be implemented with an explanation therefor.

RESPONSE TO THE

OFFICE OF INSPECTOR GENERAL'S

REIVEW OF THE

BOARD OF PRISON TERMS

December, 2002

FINDING 1

Page #12

The Board's analysis overstates the time required to perform parole revocation screening offers.

Partially agree. The Board agrees that the current analysis may overstate the time required to perform screening offers. The Board has been operating and using a workload formula with the concept it represented a valid assessment of the time needed for various functions. The accepted standard has been 12.5 minutes for many years; which was agreed to by the Department of Finance. The Board believes that further analysis is warranted. There is a management concern as to whether DCs screening large numbers of cases, those taking an inordinate amount of time to screen, or require additional training. It is believed that removing the numbers for the DCs on both ends of the spectrum will provide a more accurate sample upon which to base the actual workload. It is also noted that an updated version of the Revocation Scheduling and Tracking System (RSTS 2.5) implemented on October 1, 2002, will have an impact on the time required to screen cases. In addition, significant changes in the Proposition 36 process and the continuing evolution of the Armstrong process are factors relevant to screening workload. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for conducting these screenings. Additionally, continuous staff training in conjunction with increased supervisory oversight will ensure thoroughness and due process in conducting and properly recording the required time for revocation screenings.

Page # 13

The analysis overstates the time needed for central office calendar duties.

Partially agree. The Board was budgeted for 10.4 deputy commissioners for the workload. The various workload indicators budgeted for each central office calendar (COC) duty has been the accepted standard and agreed to by the Department of Finance. There are three physical locations for central office calendar functions. In addition, continuing changes related to the Armstrong injunction that occurred after the OIG data was collected must be considered. The Board agrees that the time needed for COC duties may be overstated. The aforementioned workload study will assist in the establishment of valid, current and defensible workload indicators for conducting these duties.

Page #13

The analysis overstates the time needed to conduct parole revocation hearings.

Partially agree. While 78 minutes has been the accepted standard for many years, the Board believes that further analysis will supplement the OIG findings. There are many factors that will impact this analysis, including procedural changes required by the Armstrong injunction, Proposition 36 and the soon to be implemented RSTS process for DCs at specific hearing sites. As with the screening function, the Board acknowledges that adequate supervisory oversight of DCs in the field is lacking. The OIG audit makes reference to certain DCs who have used questionable practices in conducting hearings. It is imperative that the time to conduct parole revocation hearings is based on average times of DCs that are properly conducting revocation hearings. To do otherwise would not be in the best interest of ensuring that adequate time is allotted while maintaining proper standards of due process. Increased field supervision in

conjunction with the results of the contracted workload study will establish a valid and defensible workload indicator for conducting these hearings.

Page #13

The DCs reported spending 65 minutes per hearing.

Partially agree. The Board agrees that the times reported by DCs for hearings lack consistency and, in isolated cases, reliability. The OIG analysis used a sampling of less than one percent of the total number of revocation hearings conducted. Further analysis from the contracted workload study in conjunction with the OIGs findings will establish a valid and defensive workload indicator for scheduling and conducting parole revocation hearings.

A review of the hearing audiotapes overstates the time needed to conduct parole revocation times.

Partially agree. Respondent's random sampling of 233* hearing reports and audio-tapes, from the year 2002, reveals the following: (In 26 of the cases, no determination could be ascertained due to technical problems with the audio-tape and were not used to calculate the information below).

HEARINGS CONDUCTED IN 2002

	BPT 1103 *MINUTES*				*HEARING TAPE MINUTES*	*AHT DIFF*
VALUE TOPICS	*PH*	AHT	RC	O	*AHT*	
Total Cases	230	230	230	230	230	230
Invalid Sample and/or /Missing Data	26	26	26	26	26	26
No. of Valid Samples	204	204	204	204	204	204
Average Value	14.04	36.60	13.43	3.83	24.76	8.13

PH = Pre-Hearing **AHT=** Actual Hearing Time **RC=**Recess

O= Other (Waiting for attorney, parolee, witnesses, etc; unexpected lockdowns; loss of electrical power). Data based on hearings conducted during 2002, in the months of August, September, October and December.

- In 76% percent of the cases, the DC overestimated the time it took to complete the hearing. The overestimated time range from a low of 1 minute to a high of 97 minutes. The average overestimated time was 8.6 minutes. (The 97 minute overestimated time resulted from a case scheduled for 3 hours and 30 minutes).

- In 8% percent of the cases, the DC accurately recorded the actual hearing time. In 41 percent of the cases, the deputy commissioner recorded the hearing time within plus or minus five minutes. In 16 percent of the cases, the DC underestimated the actual hearing time. The hearing actually lasted longer than reported by the deputy

commissioner. The underestimated time ranges from 1 minute to 25 minutes. In 22% percent of the cases, there was evidence that a recess was taken. The length of the recess in these cases could not be ascertained from the written or audio record. The actual hearing time was affected. This suggests that the hearing time was actually longer than was recorded on the audiotapes.

The average variance of all cases between the recorded time and the actual hearing time was an overestimated time of 8.1 minutes.

Pages #14 & 5

Times reported for other hearing-related functions were also exaggerated.

Partially agree. The Board acknowledges that times reported in this category reflect some approximations and otherwise unreliable data. Further training and supervisor oversight in this area is warranted. The Board would offer clarification for the suggestion that preparation time and completion time should be proportionate with actual hearing time. Individual case factors, including the possibility of charges being dismissed, requests for postponement, documentation issues, or sustaining objections among others could be factors in a hearing being disproportionately shorter than prep time. The Board recognizes that such information will be viewed as anecdotal and does not suggest that this is the norm. Rather, these are factors that need to be taken into consideration from an adequate sampling of properly conducted hearings to provide an accurate reflection of time. The Board does not dispute that the OIG audit data reflects their stated conclusions.

Page 15

A more accurate estimate of the time required for the hearings is 45 minutes.

Partially agree. It is clear from the above table that further analysis in this area is warranted and the Board intends to contract a workload study with an outside vendor to establish a valid and defensive workload indicator for these hearings.

Pages #15 & 16

The Board overstates the time needed for mentally disordered offender hearings.

Partially agree. The Board agrees that the OIG findings have merit. The Board was budgeted for 5.0 deputy commissioners for this workload. While 200 minutes per deputy commissioner (2) has been the accepted standard, and agreed to by the Department of Finance, the Board believes that further analysis would be helpful. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for conducting these hearings.

Page #16

The board overstates the time needed for revocation screening offers..

Partially agree. The Board agrees that in Fiscal Year 2001/02, the Board was funded for 14.2 deputy commissioners to perform this workload and that, if the Board discontinued screening offers, no deputy commissioners would be needed for this purpose. However, it must be noted

that if screening offers were discontinued, the number of revocation hearings would increase, thereby significantly increasing the workload for that function.

Pages #16 & 17

The Board overstates the time needed for parole revocation hearings..

Partially agree. [This was addressed in 1a(3).] While 78 minutes has been the accepted standard for many years, and agreed to by the Department of Finance, the Board believes that further analysis is warranted. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for conducting parole revocation hearings.

Page #17

Mentally disordered offender hearings.

Partially agree. While 200 minutes per hearing with two deputy commissioners for each hearing has been the accepted standard, and agreed to by the Department of Finance, the Board believes that further analysis is warranted. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for conducting these hearings.

Page #18

The Board's calculation underestimates deputy commissioners available work hours.

(See responses below)

Page #18

The DCs can work more than seven hours a day.

Agree. DCs do work more than seven hours a day and there are various indicators to support this position. These include reviewing legal decisions, memos, preparing cases at home and in hotel rooms, administrative functions (i.e., travel claims, car logs, travel reservations, etc.), inclement weather delays, travel time to and from work locations. DCs also often complete additional work at various work locations that were not expected and not scheduled. DCs are often required to work late into the evening to complete lifer hearings. The problem is that the Board has failed to adequately track and document all DC workload. The Board will remedy this shortcoming by January 2003 with the implementation of additional tracking mechanisms. Additional hearings and alternate workload will be implemented where appropriate. For clarification purposes, travel times vary dependent on geographical locations where distance may not appear to be a factor. Traffic congestion patterns may cause excessive time delays for DCs to get to and from their hearing sites. The Board again recognizes that such information may be considered anecdotal. The information is offered as a consideration in the review process. According to DPA, because DCs go to different work sites and reporting locations every day, their work time begins when they leave home and that must be factored into their day (FLSA rules).

Page #18

More than a third of the DCs do not conduct hearings.

Agree. Hearings are a substantial portion of DCs duties; however, they are not the only duties. DCs must be proficient in all tasks; Central Office Calendar, discharge review, special assignments, acting assignments, screening calendar, lifer review and appeals.

Page #18

Other tasks can be performed to make up an eight-hour day.

Agree. Further analysis is warranted and the Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for DCs.

Page #18

In reference to the OIG's recommendation, "Some of the hearings that the Deputy Commissioner conducts are held at institutions where parolees are incarcerated that are open 24 hours a day. Security measures could be arranged to extend available hearing hours beyond seven hours. . .", given the budget crisis, every consideration is being given to reviewing alternative ways of conducting day-to-day business. The California Department of Corrections (CDC) agrees appropriate staff could possibly flex their schedules, but would do so at the expense of the institution for the following reasons.

First, Correctional Case Records Services:

Flexing custody schedules requires flexing Case Records Staff schedules. Furthermore, Case Records supervisors would have to work the same hours as their subordinates. This takes staff away from completing essential day-to-day processes to run the institution when administrative staff are available.

The preparation and review by Case Records staff prior to sending Central Files to BPT hearings is timely. The aftermath will impact day-to-day workload that will create an administrative backlog and overtime (OT), when many staff are declining to work the existing available overtime.

At the end of each day, Case Records staff are still working, even though BPT Commissioners/Deputy Commissioners have departed. Case Records staff must spend additional time organizing, reviewing, and processing all BPT documents to ensure these documents are forwarded to Correctional Counselors (CC) to complete Post-Board Hearings within 15 days as is required.

Case Records staff predominantly work Monday through Friday,
8:00 a.m. to 5:00 p.m., with weekends and holidays off. Case Records staff work these hours largely due to the high contact with the public, other law enforcement agencies, and other state and county governments. Working beyond these hours incurs OT.

CDC has trouble hiring and retaining staff. There are high vacancy rates in
Case Records positions due to the enormous workload and other related issues. Therefore, current staff are required to do more with less in order to function on a daily basis.

In the event these hearings are for parolees pending revocation:

If BPT disposition is to release on conditions of parole or credit for time served, Case Records and Receiving and Release staff may be forced to release a parolee that night without the Parole Agent I having a current parole plan.

If an inmate is released by BPT that night, notification statutes referencing Penal Code (PC) Section 3058.6 must be adhered to and PC Section 3060.7 high control cases might be released on a Friday or a day before a holiday, which violates the law.

Concerns regarding transportation to the County of Last Legal Residence cannot be addressed due to limited staffing at night.

Could be releasing a transient or homeless parolee to the community without transportation until the next day. There would be no immediate supervision of these parolees. The potential for committing another crime or becoming victimized is high.

Secondly, Custody staff: (Note: May require Administrative staff, Regional Offices, Central Office, BPT, and the Classification and Parole Representatives to be available to provide technical assistance for issues that cannot be resolved by institutional staff.)

The bulk of Administrative Staff work 8:00 a.m. to 5:00 p.m., weekends and holidays off. Anything beyond that creates OT.

Second Watch has the bulk of CDC staff due to the mandated programs that inmates must participate in; i.e., academic, vocational, main kitchens, etc. Third Watch has less staffing due to many programs being completed by the end of Second Watch or at least by 4:00 p.m. The majority of disciplinary hearings and classification committees are conducted during these hours as well. Of course, First Watch has the least amount of staff.

Medical, Dental, Psychological/Psychiatric, surgeries, and court hearings are completed during administrative hours due to staffing on Second Watch. Inmates must be escorted and/or transported to and from these appointments. Custody staff cannot dictate completion time for these appointments.

CDC custody personnel are also affected by labor relation components in that the bargaining unit will need to be contacted regarding expanded work hours or days off. Certain positions are controlled by contracts.

As with Case Records staff, the inability to retain staff or fill vacant positions at some institutions is so difficult that CDC must look for other viable solutions just to retain current staffing levels.

It is assumed that BPT hearings take only seven hours to complete. BPT hearings are similar to medical and court appointments in that they take on a life of their own. Due process must be adhered to in all cases; therefore, sticking to any timeframe is extremely difficult. Most BPT hearings go beyond seven hours. The institution must incur OT to complete these hearings.

BPT hearings may involve Parole and Community Services Division staff, Agent of Record, Revocation Agent, and witnesses, which will incur OT, adjustable work hours, and negotiations with their respective bargaining units. Witnesses may include other law enforcement agencies,

i.e., Police Department, Sheriff's Office, California Highway Patrol, etc., that will drive their OT costs as well because their work schedules are also governed by bargaining unit contracts. Coordination with these agencies should be explored prior to implementation. Witnesses, victims, and next of kin may have to be transported, as driving restrictions or public transportation may be limited. Attorneys and interpreters for inmates with Mental Health Services Delivery System, Enhanced Outpatient Program, Developmental Disability Program, Disability Placement Program, etc., may incur an additional fee in the form of OT, shift differential, etc., based on their contracts.

In the event these hearings are for parolees pending revocation:

Board Coordinating Parole Agents will have to negotiate with their bargaining unit.

No BPT revocation hearings should be conducted on Friday or the day before a holiday that could potentially release an inmate to accommodate PC Section 3060.7 release processes. This would not include Saturday and Sunday (excluding Monday holidays) as still an option.

Recommendation

If we still move forward with the premise that the institution is open 24 hours a day, 7 days a week, 365 days a year, BPT must also explore "after business hours" efforts with county jails and contracted facilities, as they are also open 24 hours, 7 days a week, 365 days a year.

If coordinated and planned with all involved parties, the "plan" may work but at the cost of a negotiated premium price.

If you have questions or concerns regarding this subject, or if you require additional information, please telephone Michele Gonzalez, Correctional Counselor III (A), at 445-7485 or via email at Michele.Gonzalez@corr.ca.gov.

Pages 18 & 19

The Board has not justified allowing for 26 travel days a year.

Partially agree. While 26 travel days a year has been the accepted standard, and agreed to by the Department of Finance, the Board believes that further analysis will be beneficial. For clarification, the Board notes that outside of certain high production hearing sites, there are several remote locations where hearings must be held. Proper staffing levels must take into account the nature and number of these remote hearings. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible travel time standard.

Page 19

The Board has not justified the assumption of 10 training days a year.

Partially agree. A great deal of the OIG audit supports that DCs are not properly or adequately carrying out their assigned tasks. The Board believes that training is critical and required to correct these indicated deficiencies. While 10 training days a year has been the accepted standard, and agreed to by the Department of Finance, the Board believes that efficient use of training days may indicate a different baseline for training days is warranted.

Page #19

The DCs do not work even a full seven-hour day.

Partially agree. There are various indicators to support that DCs work more than seven (7) hour days. The OIG, however, would conclude they are anecdotal and undocumented. Reviewing legal decisions, memos, and preparing cases at home and in hotel rooms, administrative functions (travel claims, car logs, travel reservations, etc.), inclement weather delays, all influence the length of a DC's workday. There are clearly occasions when DCs are not working seven hour days. For clarification, however, under the applicable collective bargaining agreement, they are required to work 40 hours per week. The Board has been remiss in not adequately documenting project and case times in order to comprehensively determine hours worked per week. The Board will adjust DC schedules where appropriate to remedy any deficiencies.

FINDING 2 – Page 20

Page 20

The board has no timekeeping system for the DCs.

Partially agree. All Board employees, including deputy commissioners, are required to complete and submit monthly attendance forms (absence and additional time worked report form STS 634). As noted by the OIG, deputy commissioners' self-report time spent on parole revocation and mentally disordered offender hearings on Board forms 1103 and 1415. While these forms do not fully account for the deputy commissioner's time and there are examples of timekeeping being less than accurate, other means for management to know how deputy commissioners spend their time in performing assigned duties do exist. These include the number of case screenings completed (BPT form 1104), weekly itineraries and hearing calendars used by DHAs depicting the docket sheet/disposition for each day, the paper trail of miscellaneous decisions, physical presence at various hearing sites as well as at "post" position (such as Central Office Calendar), check-in and check-out logs at offices and institutions, number of appeals completed, and the actual tape recordings of hearings. Also, DCs are required by policy (see Hearing Directive 02/17) to contact their supervisor if scheduled work assignments are unexpectedly cancelled resulting in a shortened workday. The Board agrees that there is not a comprehensive and reliable timekeeping system for DCs but a form has been developed and will be implemented to remedy this shortcoming.

Page #20

The number of parole revocations hearings scheduled each day is too low.

Partially agree. The Board acknowledges that under certain circumstances, DCs at particular hearing sites could reasonably be required to conduct additional hearings. Parole revocation hearings are calendared by the P&CSD's revocation units at various locations throughout the state. The vast majority occur at prisons and jails, although there are occasional not-in-custody (NIC) hearings. The typical number of revocation hearings heard by a deputy commissioner assigned to one hearing site for a full workday is six. Adjustments are made for travel time, when necessary, as well as other case dynamics that can lengthen the duration of a hearing.

Examples include attorney representation, interpreter, ADA accommodations, complexity of charges, number of witnesses, etc. This is consistent with past practice dating back to at least 1993 and predicated upon a current workload indicator of 78 minutes per hearing. Organized labor asserts there have been agreements with the Board that have memorialized this, however it is acknowledged that the MOU has no specific reference to number of cases to be heard per day.

Per the OIG's audit, self-reporting by deputy commissioners (BPT Form 1103) reflects a typical hearing takes 65 minutes. The OIG, however, calculates 45 minutes (page 15), far below the 78 minutes budgeted in the Board's workload analysis. Further analysis with the impact of Armstrong, Proposition 36, RSTS 2.5 implementation and the pending Valdivia lawsuit is warranted. The Board intends to contract a workload study with an outside vendor to establish a valid and defensible workload indicator for conducting these hearings. Additionally, staff training and increased supervisor oversight appears to be in order to ensure the accurate recording of the actual time taken to prepare for, conduct, and properly complete the required documentation for revocation hearings.

This is an issue that needs full consideration of the various differences in hearing site capacity and particularities that affect the number of cases that a site can absorb. Some locations require DCs to leave by certain times and other sites have prisoners/parolees transported in and need to leave at specific times to return them. Geographical differences impact this factor as well. Northern hearing sites are widespread as compared to southern sites; starting and ending times are impacted by traffic, weather; site rules/policies and transportation of prisoners/parolees. Significant in the number of cases assigned is the workload standard. The number of cases heard per day was set given the formula of each case, assuming 78 minutes for each with consideration for lunch and breaks that many DCs do not take in order to complete their daily workload. Again, these factors are indicated for clarification purposes and not intended to refute or undermine OIG findings and conclusions.

Page #21

Wide variation in the number of screening offers handled.

Partially agree. As noted by the OIG report, the time required to complete a screening offer varies depending on the complexity of the case and the experience of the deputy commissioner. The Board concurs that 12.5 minutes per screening may be high. However the 6.5 minute per case as suggested by the OIG report may be low. The two DCs observed by the OIG were veterans. Any assessment of the number of minutes required to complete a screening offer must be based on a cross-section of veteran and newly hired DCs. When the OIG staff were observing the revocation screening process, the deputy commissioner's primary assignment was to explain the process to his guest. Time normally taken to obtain additional information, if needed, may not have been. During all of 2000 and part of 2001, screening offers were being done by hand, and typically completed faster than electronic entries through the RSTS. The Armstrong requirements, which require the Board to review documents for needed accommodation per the ADA had not yet been established. On several occasions during this time period, cases awaiting screenings backlogged to as many as 500 cases. Deputy commissioners were instructed to get as many cases done as possible. The twelve-month review of screenings completed by individual deputy commissioners during fiscal year 2000/2001 noted a low of 19 to a high of 223 per day. Several deputy commissioners worked 10-11 hour days with no lunch break in order to reduce the above backlog of screening cases. The Board is not implying that this is the norm, but this has occurred on more than one occasion

and could explain the high number of completed screenings. Just as significantly, there are occasions when a DC is assigned to do screenings for just a portion of their workday. Thus, significant fluctuations in individual accomplishment on a given day should not be cloaked in negativity.

With the introduction of RSTS, *Armstrong* requirements, etc., a thorough and proper case screening process should take longer than 6.5 minutes per case. Any unexpected wide discrepancy in the number of cases completed per day by deputy commissioners is an area of concern that needs to be addressed. Those include supervision, training and a valid workload study. Without proper supervision, the Board cannot be certain that staff is properly reviewing all the documents necessary to make an appropriate screening offer. Supervision, once such positions are in place and deployed, would also allow us to determine what additional training may be needed to assist deputy commissioners in knowing what documents must be included in the revocation package for review. As covered elsewhere, the Board intends to contract for a comprehensive workload study.

Page #21

The board presently cannot determine how deputy commissioners spend their time.

Partially agree. The Board acknowledges that there is no current mechanism for confirming that DCs are working 40 hours per week. All Board employees, including deputy commissioners, are required to complete and submit monthly attendance forms (absence and additional time worked report form STS 634). As noted by the OIG, deputy commissioners self-report time spent on parole revocation and mentally disordered offender hearings on Board forms 1103 and 1415. While these forms do not fully account for the deputy commissioner's time and there are examples of timekeeping being less than accurate, other means for management to know how deputy commissioners spend their time in performing assigned duties do exist. These include the number of case screenings completed (BPT form 1104), weekly itineraries and hearing calendars used by DHAs depicting the docket sheet/disposition for each day, the paper trail of miscellaneous decisions, physical presence at various hearing sites as well as at "post" position (such as Central Office Calendar), check-in and check-out logs at offices and institutions, number of appeals completed, and the actual tape recordings of hearings.

Page #21

Deputy commissioners receive little supervision.

Agree. The office of the Inspector General correctly concludes that there are incentive, workload and span of control issues impacting the Board's Associate Chief Deputy Commissioner class which, in turn, affect their ability to adequately supervise deputy commissioners. However, for clarification, the Board acknowledges the following supervisory tools:

- New deputy commissioners undergo eight weeks of initial, intensive training/supervision provided in part by the supervising Associate Chief Deputy Commissioners. The training includes: 1) at least one week of hearing observation, 2) six weeks of subsequent training at Board headquarters and 3) the final two weeks observing and conducting hearings under the direction of an experienced deputy commissioner who provides feedback to the new deputy commissioner's supervisor (Associate Chief Deputy Commissioner).

- During a new deputy commissioner's probationary period, the supervising Associate Chief Deputy Commissioner formally monitors the employee's work performance via direct observation as time permits, reviews hearing documentation (including hearing tapes) completed by the deputy commissioner as well as receiving feedback from other deputy commissioners and commissioners.

- In addition to formal supervision, the Board has previously used a formalized decision review process by employing retired annuitants to review the Summary of Revocation Hearing and Decision (BPT Form 1103), to ensure correct application of law, policy and procedure. In cases where errors were identified or an apparent improvident decision made, the reviewing deputy commissioner recommended corrective action, typically via completion of a Miscellaneous Decision (BPT Form 1135), submitted to an Associate Chief Deputy Commissioner for a final decision and signature. Provided the Associate Chief Deputy Commissioner agreed with the recommendation, copies of the Miscellaneous Decision were forwarded to the deputy commissioner whose action or decision was corrected. Copies of these documents were retained by the supervisor for discussion with the employee and at times cited in performance reports. The Board has previously, yet unsuccessfully, sought funding to reemploy a full-time decision review process. It also has found it necessary to temporarily abandon the full-time use of retired annuitants to conduct decision review, due to hearing backlog and coordinating the decision review process with the new automated Revocation Scheduling and Tracking System.

- The Board's inmate/parolee appeal process also serves as a supervisory tool as copies of all granted appeals are sent to the deputy commissioner who made an erroneous decision and to his or her Associate Chief Deputy Commissioner.

- The Office of the Inspector General correctly concludes that the current lack of a full complement of permanent Associate Chief Deputy Commissioners and reliance on using deputy commissioners as "acting" supervisors jeopardizes the Board's ability to provide adequate supervision of deputy commissioners. However, it should be noted that when deputy commissioners have been asked to act, they have nevertheless diligently pursued supervisory responsibilities. It is the other factors cited by the Office of the Inspector General, namely workload and span of control that inhibits their closer supervision of the deputy commissioners. Of particular note was the added responsibility of supervising 39 Board Coordinating Parole Agents effective October, 2001. Other significant responsibilities included overseeing federal court-mandated legal decisions in Armstrong and responding to both the ongoing Valdivia litigation and OIG's inquiries.

Page #22

Deputy commissioners refuse to use a needed computerized tracking system.

Partially agree. There are many components of the Revocation Scheduling and Tracking System (RSTS) the Board shares with P&CSD and CDC. The component specifically referenced by the OIG is the actual entering of the hearing results by the deputy commissioners directly into an on-line system via computer "live" at the revocation hearing. It is worth noting that the RSTS entry for hearings, as proposed, is limited to the busiest 17 hearing sites in the state that represent about 50% of our statewide hearing workload.

Because this action done via computer at the actual revocation hearing would be in lieu of manually completing BPT Form 1103 to document hearings and dispositions, dissonance from organized labor has been at issue. The introduction of computers into the hearing room, to include related equipment such as tables, monitors, printers and cables, is perceived as a health and safety concern should they be used by a parolee in a violent attack. The training needs and learning curve for Deputy Commissioners who are challenged by computer technology, exacerbated by their limited data entry and typing skills, were just some of the sensitive issues that emerged during the past three months of good faith negotiating by Board management. The posture of the deputy commissioners' union has caused the implementation date for on-line live hearings to be delayed. Nevertheless, Board management continues the meet-and-confer process and is resolute, with the assistance of DPA, to implement RSTS as soon as January 2003.

The characterization that deputy commissioners are opposed to a computerized tracking system is a generalization. Deputy Commissioners have been using RSTS since it was piloted in Parole Region I and have been using it statewide since March 2001. Deputy commissioners conduct revocation screenings using a computer and enter data via the RSTS application. As outlined above, the Board intends to use the computerized tracking system to record findings on BPT 1103s during hearings and continues in negotiations with the deputy commissioners' union to discuss the impact of RSTS on workload, safety, ergonomics and classification concerns. These discussions have been extended and exhaustive but are necessary to resolve significant and important issues to deputy commissioners. It should be noted that several Deputy Commissioners eagerly support the implementation of RSTS in the hearing rooms.

FINDING 3

Page #22 & 23

An attempt to implement a computerized tracking system failed.

Partially agree. The Revocation Scheduling and Tracking System (RSTS) Version 1.0 was first implemented on March 1, 2001, for electronic entry of revocation screenings (1104) in monthly for each increment parole region (4 regions total). The RSTS entries for revocation hearings (1103) began sometime during June, 2001. By July, 2001, all institutions and parole regions were completely on the new electronic tracking system. RSTS Version 2.0 was later implemented in December 2001 to modify some of the business rules that were too restrictive, clean up some of the logic bugs and to improve the performance of the system. On October 1, 2002, another RSTS Version (2.5) was implemented to include the tracking of the ADA requirements and Proposition 36 eligible offenders. The latest changes in RSTS took time to modify in order to incorporate these new requirements even though the two new laws became effective months earlier. Before March 2001, when the new system was ready to go, the developers and users knew about the ADA issue and that Proposition 36 was going to be on the ballot. It was decided that it was more important to implement RSTS as soon as possible and provide for the new ADA and Prop. 36 requirements in a later release when the two laws became binding.

The RSTS system has not completely failed. It is up and running as of today. The design of the system for tracking and scheduling parole revocation offenders is based on an excellent concept. Systems such as RSTS do take a long time to refine so that it will run smoothly and produce quick responses. It is a very dynamic system with many hands-on, step-by-step procedures, guided by a set of business-driven rules. If one of the participating groups in the

steps is not performing, it will bog down at that step and create a backlog. It is necessary to train everyone involved so that they can see the entire concept. If the system does not perform, it is frustrating for any user to enter data into a sluggish system. During the "growing pains" and the sluggish response time, field staff and deputy commissioners were told to send their work to central office so that in-house staff could help with the backlog. During the transition period of newer RSTS versions, the field staff and deputy commissioners were again told to switch to the manual paper method until the upgrade was completed. The manual method was not due to the unwillingness of the field staff or deputy commissioners to enter data into a computerized system. In fact, many of the field staff were entering on weeknights and weekends in order to keep the hearing information moving.

Page #23

The accuracy of the information is questionable.

Partially agree. The accuracy of the information is questionable when each region is allowed to process reports by their own procedure. Many of the users do not know there are standard Users Reports in RSTS to get a weekly count of parolees at each business step. A standard report procedure for all parole regions shall be developed for weekly reports. Training shall be required for all parole regions and institutional personnel on how to utilize all types of RSTS User Reports as a tool for validating of reporting numbers, tracking offenders and workload. The previous RSTS versions had more User Reports available, but with the new RSTS Version 2.5, the RSTS database was also upgraded to Oracle 8i. Previous Users Reports in Oracle 7.34 now need to be rewritten to Oracle 8i. As a result, real-time data reports will be made available when the task is completed. Specialized reports can also be requested by anyone if it is found to be useful to all users.

The reference to RSTS having only current information and not having any retroactive records is not entirely true. There is a button on the RSTS screen that allows users to view any retroactive records prior to October 1, 2002. It was decided by the CDC BPT-IT-RSTS staff that the current RSTS Version 2.5 would have new records only commencing October 1, 2002 due to the urgency to implement the new modifications for ADA and Proposition 36. Staff did not have time to convert the prior archived records to the new Oracle 8i version. This method was the next best business practice to allow for viewing of archived records.

Page #23

The report does not include the length of time parolees have waited for hearings.

Partially agree.

In the former BPT Revocation system, the time from date-of-hold to date-of-hearing disposition (some dispositions or charges do not require a hearing, i.e., screening.) was within the required 45-day limit. A hold-to-hearing report was produced monthly by the CDC Research Unit to show the numbers by region. The percentage of late cases beyond the 45-day limit was less than 2 percent. Under the new RSTS system, the percentage of late cases are high because of the delay in getting the proper paperwork completed, especially regarding ADA requirements and Proposition 36 offenders. This portion of the paper process will need much refinement so that the data entry is not delayed.

There were RSTS reports under Version 2.0 that produced "Late Cases" reports by days late and location at various business steps. Under the current RSTS Version 2.5, there are summary and tracking reports that indicate the number of days late or held by individual offenders at various business steps. More of these types of reports are being rewritten from the previous Oracle 7.34 to Oracle 8i and will be available to the users when completed. Again, training is vital for all staff in learning to use these User Reports as a tool to control and organize their workload.

Page #24

Each parole region is using its own tracking process to track parolee status.

Partially agree. The parole regions have resorted to their own method of tracking the status of parolees waiting for their hearings. This is due to the fact that RSTS data was backlogged because of a sluggish system which made data entry frustrating. Union issues and work issues were also a factor. Thus, parole regions resorted to manual methods because they could not trust the system. There are RSTS User Reports available to use as tracking tools, but due to the backlog and sluggish system, the current status of individuals in the RSTS system were not kept up-to-date. The new version 2.5 (implemented October 1, 2002) has improved the performance of the system so the current status of offenders can be reported. It is important that all users return to RSTS as their primary source of data for reporting purposes. In this way, all data reporting will originate from one main source, RSTS, and not parallel systems.

FINDING 4

The Board is not complying with state regulations requiring that Board decisions undergo systematic review to ensure that they are valid and consistent and that they further public safety.

Page #24 & 25

State regulatory requirements for Board of Prison Terms decision review.

Wholly disagree. The criteria for disapproval of a grant of parole through the decision review process as quoted in the OIG Finding #4, page 25, have been superceded by amendments to Penal Code Section 3041 made through Senate Bill 778, effective July 31, 2001. The OIG quoted state regulatory requirements for the Board's decision review from 15 CCR Sections 2041 and 2042. However, on August 30, 2002, the Board submitted amendments to those regulations sections to the Office of Administrative Law to bring them into compliance with those Penal Code amendments.

Page #25

Review of indeterminate sentencing decisions does not meet regulatory intent.

Wholly disagree. As stated in 15 CCR Section 2042, decisions reached by hearing panels are proposed decisions until they have been through the decision review process. The purpose of the decision review process is to assure complete, accurate, consistent and uniform decisions and the furtherance of justice.

Pursuant to Penal Code Section 3041(b), the decision to grant parole is final unless the review finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the Board, any of which when corrected or considered by the Board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. Disapproval and referral for rehearing can be made only by a majority vote of the Board following a public hearing. Proposed decisions in which the hearing panel concludes that a prisoner is suitable for parole are reviewed by the Legal Division.

Proposed decisions in which a hearing panel concludes that a prisoner is *not* suitable for parole are reviewed by a deputy commissioner. Before conducting decision review on a parole consideration hearing, deputy commissioners are trained in hearing procedures.

When reviewing the decisions to deny parole, the deputy commissioner may modify them to correct non-substantive errors. Non-substantive modifications have no effect on the outcome of the hearing, such as a clerical error in the hearing transcript or in the panel's written findings. If the deputy commissioner determines that the record needs to be corrected (e.g., an incorrect minimum eligible parole date is read into the record), the deputy commissioner corrects the record, and the decision becomes final incorporating the correction. The correction is documented, placed in the hearing transcript, and sent to the inmate.

If the review identifies a problem that requires more than a non-substantive modification, the deputy commissioner will refer the case to the Legal Division. For example, if the deputy commissioner determines that a prisoner should have been provided an interpreter, that sufficient reasons for a multiple year denial were stated, that confidential information was incorrectly used, correct procedures were not followed, or that a hearing transcript is incomplete, the case is sent to the Legal Division for further review. In these instances, the Legal Division could recommend to the Decision Review Committee (DRC) that the proposed decision be disapproved and a rehearing conducted.

A deputy commissioner does not have the authority to disapprove a hearing panel's decision. A disapproval of a hearing may only be made by a Decision Review Committee composed of three Commissioners, who may affirm the original proposed decision, order a new hearing, or modify the decision without a new hearing.

If the deputy commissioner determines that the proposed decision comports with CCR Section 2042, the decision is approved and becomes a final decision.

The number of hearings held each year has nearly doubled since 1999. In 1999, there were 1,822 parole denials and 11 parole grants requiring review. In 2001, the number of denials requiring review had grown to 3,092 and the number of grants to 84. The review of parole *grant* decisions is mandated by Penal Code Section 3041(b). It is necessary that the Legal Division conduct decision review on all grant decisions because of the potential risk to public safety posed by the release of a life prisoner. There is no risk to public safety in a parole denial. The sheer number of decisions makes it impossible for the relatively small Legal Division to review cases in which parole was denied.

Deputy commissioners reviewing a parole denial must be cognizant of lifer hearing procedures, current statutory and case law provisions, Board regulations, date calculations, and legal documentation. They have a depth of knowledge and experience, as well as an understanding of the process not usually possessed by staff members working at a much lower pay scale.

Due to the sheer number of denials to be reviewed, it is not possible to conduct an in-depth review of each case, as is performed on the grant cases.

Page #25

The board's parole revocation hearing decisions are not reviewed.

Partially agree. The Board agrees and recognizes the need to reinstate and improve our decision review procedures regarding revocations to ensure that it is in compliance with CCR Sections 2041 and 2042. Until approximately one year ago, 20 percent of revocation decisions were reviewed. Retired annuitant deputy commissioners conducted the reviews and submitted recommendations for corrective actions, when needed, to Associate Chief Deputy Commissioners for review and approval. Although this served as a valuable supervisory quality control and training tool, the function ceased due to increased workload mandated by Armstrong v. Davis Court Remedial Plan and problems in coordinating the process with the newly implemented RSTS. Revocation decisions are now sporadically reviewed when other public agencies refer special cases to the Board and request that they be reviewed. Also, parole revocation hearing decisions are reviewed through the parolee appeal process. It should be noted that the Board has previously sought to staff the decision review process on a full-time basis with permanent positions. It is anticipated that as the Board makes other workload efficiency changes, that review of revocation decisions will again be implemented.

Pages #25 & 26

Parole revocation decisions appear to lack consistency.

Partially agree. The Board agrees that parole revocation decisions have profound implications for parolees and the public and that it is the Board's mission to preserve public safety.

In support of Finding #4, the audit report describes the actions of two different Deputy Commissioners. One dismissed serious charges, apparently because the two cited hearings were held more than 45 days beyond the parole hold. The second Deputy Commissioner revoked parole, although the hearing was evidently held 163 days after hold placement. Although the Board has not been provided the details, it should be noted that many case factors might result in what at first appears to be disparity in decision making. Factors such as a local conviction on one or more of the charges, previous attempts to hold a hearing and the failure and/or likelihood of witnesses appearing may influence decisions to dismiss or find good cause on parole violation charges.

Although the Board strives for consistency in decision making, there have been and will continue to be errors of judgment. The Board agrees that a formalized and permanent decision review process needs to be implemented and that Deputy Commissioners need closer supervision. In order to provide more structure to revocation decision making, the Board codified its revocation assessment guidelines (effective 11/23/2001). DCs need more training and supervisor oversight as well as well-planned staff meetings to review operations and policies. The Board is currently taking affirmative steps to achieve these results by first addressing the supervisor staffing and compensation issues.

Page #26

Mentally disordered offender reviews reflect deputy commissioner inexpertise.

Partially agree. While all deputy commissioners receive an overview of the various mentally disordered offender hearings, not all receive specialized training on the complexities of these types of hearings. The complexity of the hearings are exacerbated by the differing statutory interpretation by other departments involved in the mentally disordered offender process. The Board, by practice, teams experienced deputy commissioners with less experienced deputy commissioners for mentally disordered offender hearing panels. The Board has contracted with a psychiatrist and a licensed psychologist to assist in the development of a specialized training curriculum for the deputy commissioners. Plans are in progress to provide this training in March 2003.

It should be noted that the analysts in offender screening do not have the authority to overturn hearing decisions. The analysts only provide an analysis, a series of options, and recommendations for consideration by Board management. Many of the recommendations reviewed by the Office of the Inspector General were modifications to clarify or correct the clinical errors made during completion of the hearing summaries. The analysts in offender screening are exposed daily to the various nuances and have gained a broad view of the overall functioning of the mentally disordered offender program. Not all deputy commissioners are aware of all the variances in the application of statute. This will be included in the March 2003 deputy commissioner training.

Due to the number of new deputy commissioners, it is difficult to ensure that a deputy commissioner with mentally disordered offender hearing experience is assigned to central office calendar duties where most of the hearing decisions are reviewed. This is complicated by the practice of not having deputy commissioners review their own hearing decisions.

Page #27

The mentally disordered offender decision review process is not monitored.

Partially agree. The Board staff maintains a decision review tracking report for mentally disordered offender (MDO) hearings. This report is maintained to monitor the status of files sent to a deputy commissioner for decision review. The Board acknowledges inadvertent discrepancies were discovered by the OIG in the tracking report. Those discrepancies were corrected immediately by staff and monitoring of the tracking report by the supervisor is not completed on a bimonthly basis.

FINDING 5

Page #27

Scheduling placement hearings only as needed would save resources.

Partially agree. The Board moved toward mandatory hearings in response to Americans with Disabilities Act (ADA) litigation to ensure due process for severely mentally ill parolees. The Board requires further study of this option to determine the impact to severely mentally ill parolees related to the ADA.

Postponing the placement hearing until such time that the parolee's mental illness has stabilized seems logical but does not conform to current statute. Statutory modification of Penal Code Section 9267(b) would be required. In addition, recommending that the hearing be conducted at

the request of the Department of Mental Health may be contrary to legislative intent as the right of the parolee to request a hearing would be removed. Also, it should be noted that the Department of Mental Health has the authority to place a parolee on outpatient status without a Board hearing. Conversely, the Department of Mental Health often waives this authority, choosing instead to wait for an annual review hearing conducted by the Board. This negatively impacts the liberty interest of the parolee and increases the cost of treatment. There are no assurances that the Department of Mental Health would fulfill legislative intent if given the authority to request a hearing in lieu of the parolee.

Page #28

The hearings could be handled by one deputy commissioner instead of two.

Partially agree. The mentally disordered offender hearings are complex due, in part, to the contrary perspectives and statutory interpretations of the state hospitals and conditional release programs. The complexities are not necessarily medical, but require the multi-disciplinary expertise that is gained through a two-person hearing panel. In addition, the two-person panel is a critical training method for training the new deputy commissioners.

FINDING 6

Page #30

Morrisey v Brewer decision established due process rights to a timely hearing.

Agree. The OIG accurately describes the Morrisey decision and CCR guidelines regarding timelines for parole revocation hearings. It should be noted that Morrisey was decided in 1973 and may not be an accurate representation of today's Supreme Court opinion concerning parole revocations. Furthermore, there is pending litigation in federal court on the subject of timely hearings and the need for a pre-revocation hearing (see Valdivia v Davis) that may ultimately be decided by the U.S. Supreme Court. There is evidence suggesting the Valdivia court would be satisfied with either a pre-revocation hearing within a reasonable time after a parole hold has been placed or a unitary hearing within 30 days of a parole hold being placed.

Page #30

Pittman decision provided a 30-day standard for a hearing to be held.

Agree. The OIG accurately describes the Superior Court decision and its ramifications. However, other courts have come to a different conclusion. For example, the California Court of Appeals in In re O'Connor has determined that in the absence of prejudice, a delay of 117 days does not entitle a parolee to relief. Furthermore, the timeliness of a hearing and the need of a pre-revocation hearing are currently the subject of the Valdivia litigation in federal court. As a result, it would be premature to alter current procedures or use state court decisions on timeliness as a guide until the Valdivia litigation is completed.

Page #30

Armstrong v Davis court decision established rights for disabled parolees.

Partially agree. Although the Board was ultimately found to be responsible for ADA violations in relation to parole proceedings, many of the instances of documented violations were actually the result of non-Board staff actions. In the parole revocation arena, the Parole and Community Services Division of the CDC is responsible for the processing and scheduling of parole revocation hearings. In the life prisoner arena, the Classification Services Unit of the CDC is responsible for the processing of events related to the life consideration hearings. Since CDC is a sister agency, the Board does not have the ability to direct CDC in relation to how they conduct their business. CDC management has been very cooperative and responsive to the situation and we are making progress. Unfortunately, we are dealing with an extremely large system that lacks adequate IT infrastructure. The federal courts still hold the Board ultimately responsible for any actions conducted by either CDC or the Board in relation to parole proceedings and we recognize the issues as a State of California problem.

The OIG describes the Board of Prison Terms Armstrong Remedial Plan (ARP II) as being the Board's procedural document in relation to Armstrong. This is an inaccurate statement. The ARP II was created by CDC to provide ADA procedures for CDC employees only. The Board has separate procedural documents that provide ADA procedures for Board employees.

Pages #30 & 31

The Board of Prison Terms has not complied with the 45-day standard.

Partially agree. Although the OIG finding is accurate for the time period used for the report, many factors that existed at the time the data was collected no longer exist.

- First, the **Proposition 36** process had just been implemented and had created an enormous workload increase as well as implementation hurdles that caused an increase in the hold to hearing timeframes. The Proposition 36 process has now been transferred to the Parole and Community Service Division and will no longer affect hold to hearing time frames.

- Second, the **Armstrong** procedures had just been implemented statewide and there were numerous implementation problems and hurdles that caused an increase in hold-to-hearing timeframes. Specifically, there was a significant delay caused by the need to collect ADA documentation for revocation packets. This delay is temporary and will soon be eliminated by the use of the new CDC 611 (revised 05/01) and the collection of all ADA source documentation for those active parolees who do not have the new CDC 611 in their field files. It is estimated that this delay will be eliminated by February, 2003.

- Third, the **Revocation Scheduling and Tracking System (RSTS)** had just been implemented statewide and was also causing delays as the result of implementation hurdles. The system has been revised and recently implemented with favorable results.

Page #31

Identifying parolees requiring accommodation delays the hearing process.

Partially agree. The Office of the Inspector General (OIG) describes the current process of retrieving ADA source documents from Case Records for those cases that do not have a CDC 611-Release Program Study (revised 05/01). This process is temporary and will ultimately be eliminated as more and more parolees will have the newer CDC 611 in their field files. The new

611 process became effective for all initial releases to parole in January 2002. Furthermore, there is a plan to do a one-time review of all active parolees' central files and forwarding all ADA source documentation to the field files. This would immediately eliminate the need for requesting ADA source documents from Case Records and the associated delays.

Page #31

Coordination between the Board and the Department (CDC) causes further delays.

Partially agree. The OIG sites the shared responsibility of the revocation process as the cause for delays based on:

- A lack of an automated case management system and the use of telephones and fax machines to coordinate hearings. The Board and CDC are well on the way to automating the hearing process with the implementation of the Revocation Scheduling and Tracking System (RSTS). Furthermore, there is no evidence that any system where the Board conducts the hearings and CDC coordinates the hearings would be able to eliminate delays in the scheduling of hearings.

- Two different employee classifications performing the same function (DHA and BCPA). As a matter of clarification, there are only a small number of identified "mandatory attorney assignment" cases that are referred directly to the BCPA. All other cases go to the DHA for the initial service of rights and screening offer. All other cases, whether identified as an ADA case or not, are referred to the DHA and then to the BCPA no less than 72 hours later. The 72-hour waiting period is mandated by the Armstrong Permanent Injunction for all class members.

Page #31

Proposition 36 requirements are not being met.

Partially agree. The statement that Proposition 36 parolees may remain in jail for extended periods of time is accurate for the process that was formerly in place. However, it has been corrected by the restructuring that was effective October 1, 2002. Under the new process, the local parole unit determines whether to submit a parolee for drug treatment under Proposition 36. If the decision is affirmative, the parolee is immediately released from custody and is sent to the local drug treatment system, concurrently with a report being forwarded to the screening calendar. This accomplishes the early identification of eligible parolees and also provides for a timely release from custody.

Page #32

A pending court case could further complicate the parole revocation process.

Wholly disagree. The Valdivia litigation could result in an overhaul of the hearing process, however, it is likely the end result would reduce the time between a parole hold to hearing. It is also very probable that any plan implemented to resolve this litigation will actually streamline the revocation process in order to meet the shorter hold to hearing requirements. The resulting increase in staff costs and the need for more resources cannot be ignored.

Page #32

The use of screening offers unnecessarily contributes to hearing delays.

Wholly disagree. Hearing delays are caused by a number of factors distinct from screening offers. First, Armstrong v. Davis imposed a number of due process requirements that severely impacted the process. Every case that goes through the revocation process requires documentation of whether the parolee in question needs reasonable accommodation under the American with Disabilities Act (ADA). The parolee's file and central file are reviewed extensively for all proper source documents available to determine whether each parolee needs a reasonable accommodation. Delays in awaiting this documentation have run consistently as long as ninety (90) days or more. In fact, as of 12/5/02, 1,632 revocation cases are sitting in revocation units statewide waiting for this documentation, which is required before the case can be screened. Screening offers account for approximately 72 percent of all parole revocation dispositions. Full revocation hearings only account for 28 percent of the dispositions. Due to recent cutbacks in staffing, it has become a very slow process to retrieve this required documentation. This is the leading cause of delay in the process presently and occurs before the screening offers are even made.

Armstrong v. Davis also requires that when a parolee is served with the screening offer that they have at least 72 hours to review the offer before making a decision. The parolee is provided with the appropriate documents to review by a District Hearing Agent (DHA) and then seen at least 72 hours later by the BCPA or CC (Correctional Counselor) II Specialist. It is at the second serve that the parolee can make a decision on the screening offer, assuming there is no need for attorney representation. The BCPA/CCI Specialist has as much as eight (8) days to serve the case once the case reaches the mandatory 72 hours waiting period. The service process at this point has reached twelve (12) more days apart from the screening offer. These delays are driven by court ordered injunction, not by the screening process. Prior to Armstrong, the DHA would serve the case usually within a day after screening.

In addition, if it is determined that the parolee requires the assistance of an attorney, the attorney has as much as 11 days to meet with their client and determine whether the parolee is either going to accept the screening offer or reject it. In these cases, due again to Armstrong, there can be as much as a twenty-three (23) day delay in the process. Again, this is not due to time taken in screening but the requirements placed on the system by the court.

Even if screening offers were eliminated, an extensive process would still be required to ensure that the parolee is reasonably accommodated under the ADA. In addition, a DHA or BCPA would still have to meet with the parolee to determine what accommodation the parolee might require. If the parolee needs a reasonable accommodation under the ADA, then the case would be assigned to an attorney who then needs to meet with his client and prepare the case for hearing. If witnesses are required for the hearing, then at least ten (10) days notice must be given to those witnesses.

Other delays occur separate from screening offers. Many of the hearing sites that are utilized, especially local facilities, only allow hearings on certain days of the week, severely limiting when hearings can occur. Finally, the present budget crisis has limited greatly the processing of cases beyond screening offers. These include the number of people who staff revocation units plus the difficulty in maintaining a sufficient number of BCPA/CCI Specialists.

Each stage of the process does create potential for delay. Those delays, however, are not the result of screening offers, but the process that is required for each and every case that goes to a hearing. Prior to Armstrong and the present budget crisis, hold to hearing times were approximately 34 days, well within the required 45 days outlined in the regulations.

Page #32

The Board could complete hearings more promptly if it eliminated screening offers.

Wholly disagree. The Board reviews some 100,000 parole violations per year. The use of screening offers makes the revocation hearing process more efficient for a number of reasons. First the screening offers generated by the deputy commissioners presents an opportunity to resolve charges prior to hearing. Screening offers account for approximately 72 percent of parole revocation dispositions. It serves a number of very important purposes in the revocation hearing process.

The most crucial function for the screening offer is to verify that the Board maintains jurisdiction of the case. A review of the discharge review date, controlling discharge date as well as the maximum controlling discharge dates ensures that the Board determines whether the parolee still is on parole prior to the hearing. It allows for retaining the parolee on parole or extending the parole period for four years pending a revocation hearing, in cases where jurisdiction might otherwise be lost.

Another important function of screening is to review whether the charges alleged by the parole agent are in fact proper. The deputy commissioner can dismiss improper charges to cause the parolee's release or amend charges that are more appropriate to the facts of the case.

Screenings also allow the deputy commissioner to resolve charges at the point of screening by either dismissing the case, continuing on parole, or giving the parolee credit for time served. This is especially critical in the present situation where there are delays prior to the case even arriving at screening. A deputy commissioner sometimes, in consultation with the Associate chief Deputy Commissioner, can resolve charges without going through the extended full revocation hearing process.

Finally, screening provides an early opportunity to determine whether the parolee will require the assistance of an attorney. Without the screening process, the question remains at what point and by what process might it be determined that the parolee would need a reasonable accommodation under the ADA, especially the assistance of an attorney. The removal of the DHA, BCPA/CCI Specialist, and the deputy commissioner from this process would leave a void on how a case is reviewed to ensure an individual is reasonably accommodated for the hearing under the ADA.

It is important to note that with the RSTS utilized today, less time is spent screening cases than is spent entering hearing decisions under the old manual system. The process needs to be reviewed utilizing the present RSTS system, not the old manual system.

The figures quoted in this section of the report indicate that in the FY 2001/02 period, there were 91,349 cases handled by BPT 1104s in the screening process and 35, 067 that were handled in the hearing process on BPT 1103s. What this means is that nearly 72% of the total number of cases handled by the Board in this period were resolved through the screening process. Conducting a hearing takes considerably longer and utilizes many more resources than

screening. The screening process also provides inmates the opportunity to plead guilty to the charges or for the BPT to drop the charges, eliminating the need for a more time-consuming hearing revocation. Screening offers bring efficiency to the revocation hearing process in allowing an earlier resolution of the cases.

Page #34

Partially agree. Please refer to the response provided to Recommendation #1 on Page 25.

Page #34

Adding pre-revocation hearings will not remedy the due process problems.

Wholly disagree. By definition, a pre-revocation hearing process that would be accepted by the court would have to remedy due process problems. The language of *Morrissey* and the district court's summary judgement order in *Valdivia* strongly suggests that prompt pre-revocation hearings are preferred over more distant unitary hearings.

Page #34

A Proposition 36 memorandum of understanding could have additional impact.

Partially agree. This finding refers to the memorandum of understanding (MOU) signed by the Board and CDC in October, 2002, under which the Board delegates to CDC most functions regarding Proposition 36. Under the MOU, the Board also delegates to CDC the authority to determine whether to submit reports to the Board on certain violations committed by parolees whose commitment offenses were serious felonies under Section 1192.7(c) of the Penal Code. The finding by the Inspector General presents the possibility that the provisions of the MOU could significantly reduce the number of parole revocation hearings.

The Board believes that it is highly unlikely that the MOU will result in a reduced number of revocation hearings. With respect to its Proposition 36 provisions, the MOU should have no impact on hearings. Both before and after the MOU, all Proposition 36 referrals must be approved by the Board, as required by Section 3063.1 of the Penal Code. Under the pre-MOU process, only a tiny fraction of all parolees who were offered Proposition 36 treatment by the Board rejected that offer, resulting in a hearing. Under the post-MOU process, parolees are scheduled for a hearing only if CDC refers the case for revocation and the Board deputy commissioner believes that the parolee might be eligible for Proposition 36. This is also likely to be a small number of cases, but it could hardly be smaller than the number of hearings that resulted from parolees rejecting Proposition 36 under the pre-MOU system. It could be more, which would result in a larger number of revocation hearings.

With respect to the provisions of the MOU regarding PC 1192.7(c) cases, it is also unlikely that the new discretion that CDC has gained will result in a reduction in hearings. The new discretion only applies to a relatively small number of cases in which the parolees are charged with committing less serious violations. Prior to the MOU, many of those cases were submitted to the Board with a recommendation that parole not be revoked and the Board usually concurred with those recommendations. Those cases would not have resulted in hearings. It is possible that there will be some cases in which CDC will exercise its new discretion in cases where the Board would have moved to revoke parole. However, the Board believes that the number of such cases will be small, given CDC caution in continuing serious offenders on

parole after they have committed significant violations. Thus, the number of revocation hearings as a result of this provision is not likely to diminish significantly.

Finally, as the Inspector General points out, this provision of the MOU is dependent on the Board gaining approval of a regulatory change, which is an uncertain process. The Board agrees with that observation. Any possible impact on the volume of revocation hearings will not happen if the Board is unsuccessful in its proposal to amend its regulations.

RECOMMENDATIONS

Page #34

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.

The recommendation requires further analysis. The Board agrees consideration should be given to placing full responsibility for more parole revocation process under one organization. This issue is extremely complex. Consideration must be given for the Board's role as a quasi-judicial agency, as well as the CDC's familiarity with the supervision of parolees. Any considered response to this issue will necessarily involve coordination with CDC and the Youth and Adult Correctional Agency (YACA).

Page #35

Develop and implement a time-management system for deputy commissioners.

The recommendation has not yet been implemented, but a tracking system has been developed and is anticipated to be implemented by February 2003.

Deputy commissioners are "Workgroup E" employees and, therefore, exempted from the FLSA (Fair Labor Standards Act). As outlined earlier in this response, the Bargaining Unit 2 Agreement includes the provision, "Employees may be required to record time for purposes such as client billing, budgeting, case or project tracking." The contract language is somewhat restrictive, however, it allows the Board to record deputy commissioner work time for case tracking. Therefore, a reporting instrument is being designed that should be in place early in 2003.

Page #35

Use information from the time management system to support the workload analysis report.

The recommendation has not yet been implemented, but will be in the future, based upon the approval of the Department of Finance.

Page #35

Establish more associate chief deputy commissioner positions based on a ratio of eight deputy commissioners to one associate chief deputy commissioner.

This recommendation requires further analysis. The complement of three ACDC positions overseeing over 60 deputy commissioners in the field is clearly inadequate. Two additional ACDC positions exist. One as Chief of Policy and Appeals and the other is vacant and unfilled. Over the years, the ACDC class has been overwhelmed as a result of litigation coordination, the advent of the Revocation Scheduling and Tracking System and most recently, supervision of the 39 employees in the Board Coordinating Parole Agent class. As Deputy Commissioners are typically dispatched from their homes to conduct hearings or perform other functions in most of California's counties and within all of the state prisons, an ideal supervisory scheme would allow for a supervisor to have the flexibility and time to travel to those locations for frequent, first-hand

observation and supervision. Given the current number of ACDCs and their responsibilities, this is not feasible or possible.

As to the compensation and recruitment issues, the OIG's audit report correctly documents current problems within the supervisory Associate Chief Deputy Commissioner class. Approximately two years ago, Deputy Commissioners bargained for and received safety retirement coverage (2.5% @ 55). However, ACDCs as non-represented employees remain under the Miscellaneous (2.0% @ 55) formula and make only 5% more than the Deputy Commissioner class. Given safety retirement coverage for the Deputy Commissioners, they actually have greater take-home pay (approximately $365) and can conceivably retire earlier at a greater percentage rate than their supervisors. This acts as a noteworthy disincentive for deputy commissioners to promote and diminishes the talent pool from which to draw supervisors.

While the Board certainly concurs with this recommendation, before it comes to fruition, certain obstacles need to be overcome, as well as coordination with the Department of Personnel Administration, Department of Finance and the State Personnel Board to study and propose much needed solutions.

Page #35

Associate Chief Deputy Commissioners who are responsible for supervising Deputy Commissioners should:

a) *Ensure that the deputy commissioners work an average of 40 hours per week.*

This recommendation requires further analysis. The Board agrees that Deputy Commissioners should be working a minimum average of 40 hours per week and believes that they are. The Board has been working with the Department of Personnel Administration staff to develop an instrument to verify the Deputy Commissioner daily work. The resulting tool, coupled with a planned contracted workload study, should validate the Deputy Commissioner's workday.

b) *Systematically conduct reviews of the hearing proceedings and decisions reached to ensure that Deputy Commissioners conduct hearings properly and consistently. Such reviews should be coordinated with similar reviews completed by other staff members.*

This recommendation requires further analysis. The Board concurs that Associate Chief Deputy Commissioners should systematically review hearing proceedings and document decisions of Deputy Commissioners in an effort to ensure consistency and quality of decisions. The Board believes that this can only be obtained with a more realistic ratio of ACDCs to DCs, including appropriate compensation and protection of the ACDCs safety requirement rights.

c) *Require deputy commissioners to use the revocation scheduling and tracking system.*

This recommendation has been implemented. Deputy commissioners currently use RSTS for screening revocation cases. This involves direct entry of data into the system via a computer workstation. The Board is currently negotiating with CASE, the exclusive representative for Deputy Commissioners, over the impact of the planned implementation of RSTS entry during revocation hearings at major hearing sites. It is the Board's intent to proceed with direct entry of hearing data as soon as feasible in early 2003.

Page #35

Refine the revocation scheduling and tracking system to ensure that it proves the information needed to effectively administer the parole revocation process.

This recommendation has been implemented. The Board secured $270,000 in funding to refine the RSTS. The vendor contract work was completed in November of 2001. Beginning in January of 2002, a high level steering committee was established to direct the implementation of the refined application. This effort concentrated on planning, business practices, and union negotiations. The refined application (RSTS 2.5) was implemented on October 1, 2002.

Page #35

Track the status of parolees from the day of arrest to the day the parole revocation hearing is held.

This recommendation has been implemented. The RSTS 2.5 is designed to, and does effectively, track the status of parolees from the date of arrest to the day of the parole revocation hearing. This tracking includes, among other things, date of arrest, the parolee's custody status, charges against him, screening offer, the parolee's decision on the offer, date of hearing, and hearing results.

Page #36

Provide current information regarding the length of time parolees have been awaiting hearings.

This recommendation has been implemented. The RSTS 2.5 was implemented with a number of reports designed to track individual cases and aggregate numbers. The report section of RSTS 2.5 can be updated at any time to reflect new reports as requested. RSTS 2.5 reports do track all interim periods within the parole revocation process, including the length of time parolees have been awaiting a hearing.

Page #36

Provide complete information about the revocation hearing proceedings, including the number of elapsed days between each phase of the hearing process . . .

This recommendation has been implemented. The RSTS requires input from a variety of users who are involved in the phases of the revocation process. To the extent that those people input their information into the application, the application tracks all phases of the revocation process. The system provides a number of reports which track a variety of items including time between phases of the process. Also, reports are continually being developed as managers seek better tools to both manage the system and their employees. The electronic hearing form (1103) requires input regarding the decision reached during the hearing and the basis for the decision.

Pages #36

Ensure that hearing decisions are proper, consistent, and fully documented by establishing formalized training for DCs and ACDCs; reinstating a systematic review process.

This recommendation requires further analysis: A summary of the Board's major decisions and current review procedures is as follows:

- Lifer decisions: 100% of the decisions have traditionally been reviewed and this review is ongoing current practice.

- Revocation decisions: Until approximately one year ago, 20 percent of revocation decisions were reviewed. Retired annuitant deputy commissioners conducted the reviews and submitted recommendations for corrective actions to associate chief deputy commissioners for review and approval. Although this served as a valuable quality control and training tool, the function ceased due to increased workload and problems in coordinating the process with the newly implemented, automated RSTS. Revocation decisions are now sporadically reviewed. It should be noted that the Board has previously sought to staff this process on a full-time basis with permanent positions; however, Budget Change Proposals have been disapproved.

- Mentally Disordered Offender decisions: 100% of these decisions are reviewed.

- Decisions to retain on parole or discharge from parole: These decisions are not routinely reviewed unless there is a difference of opinion between two deputy commissioners on a decision to discharge as such actions require the concurrence of two deputy commissioners. Such differences of opinion are resolved by an associate chief deputy commissioner.

The Board recognizes the need to improve the current decision review process and to ensure compliance with CCR, Sections 2041 and 2042. As noted above, the matter needs further analysis. Possible solutions are as follows, but it must be recognized that fiscal realities impact our ability to do decision review:

- Provided that the OIG recommendation of implementing an ACDC to DC staffing ratio of 8 to 1 were to be implemented and all revocation decisions were readily retrievable from the RSTS computer system, conceivably 100% of the revocation decisions could be reviewed within 10 days as stated in Board regulations. Under this proposal, ACDCs would be solely responsible for decision review so that deputy commissioners would not be reviewing the decisions of their peers. In the event that 100% review is not possible, a sampling technique as suggested by the OIG could be implemented.

- Submit a budget change proposal to staff the Decision Review Unit to review all revocation hearing decisions.

Irrespective of what option is ultimately selected, the Board concurs with the OIG that formalized training will be required for staff assigned the decision review task.

Page #36

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.

The recommendation can not currently be implemented. Placement hearings are mandated by statute. The Board cannot make modifications to procedures without statutory revision. The Board will explore proposing legislation to address this issue.

Page #36

Seek modification of state regulations to allow the Board's mentally disordered offender hearings to be conducted by one deputy commissioner with the expertise needed for the hearings.

The recommendation has been implemented. The Board has drafted modifications to state regulations as requested. Plans to provide specialized training to the deputy commissioners are in progress.

Page #36

Eliminate the parole revocation screening process.

Wholly Disagree. Eliminating the screening process would eliminate the one of the most efficient aspects of our program, which currently resolves approximately 72% of the cases heard by the Board, and would significantly increase hearing times. As discussed extensively elsewhere in this report, many of the delays attributed to the screening process are the result of other factors.

This recommendation, if put into affect, would tremendously increase actual hearing time for the Board, P&CSD, and CDC should every parole violator go to a formal hearing. The requisite steps of the pre-revocation process and the screening offers are essential to accommodate and process the huge number of parole violations referred to the board. It serves to give inmates/parolees a lawful opportunity to accept the proposed sanctions or, in the alternative, proceed to a Morrisey hearing for the alleged violation. The current delays come from the misapplication of ADA procedures, RSTS, and BCPA serve delays. It is worth noting that not all that long ago, before the ADA documentation delays, the requirements of the second term processes, and the advent of RSTS, the hold to hearing timeframe was significantly reduced and in keeping with the 45-day guideline.

Page #36

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.

This recommendation has been implemented. The Board has no direct means through automated systems to identify parolees who were placed in custody prior to October 1, 2002 and who remain in custody. For the six weeks prior to October 1, 2002, the RSTS system was not functioning, so it is not possible for the Board to use RSTS to determine to what extent there are parolees in custody with pre-October 1 arrests.

However, the Board's Proposition 36 Unit routinely receives cases from Revocation Units that have been screened for Proposition 36. For the two weeks prior to this response, there have been very few cases, and for the immediate past week there have been none. This provides an indirect indication that no more such cases may exist.

In conjunction with writing this response, the Board conducted an informal survey of the Revocation Units to determine whether there might be additional parolees in custody who were arrested prior to October 1, 2002, and who are eligible for Proposition 36. Regions 1, II and III, as well as one of the Revocation Units in Region IV, indicated that they had no such cases. The Board's Proposition 36 Unit has identified 16 potentially eligible cases at the other Revocation Units in Region IV, and is proceeding immediately to have them screened. If they are in fact eligible, they will be immediately offered the opportunity to enter drug treatment.

There may still be parolees in custody with arrests prior to October 1, 2002, who will be found eligible for Proposition 36 at hearings. The Board's Proposition 36 Unit is still receiving such cases. There is no way to pre-determine which cases will be found eligible, because such eligibility generally results from the dismissal or modification of one or more charges, so the cases do not appear to be eligible prior to the hearing.

In summary, there appear to be very few such cases, if any, and the Board is actively seeking to identify what cases may exist and to have the parolees afforded the opportunity to be placed in drug treatment.

COMMENTS OF
THE OFFICE OF THE INSPECTOR GENERAL
IN RESPONSE TO THE BOARD OF PRISON TERMS

COMMENTS OF THE OFFICE OF THE INSPECTOR GENERAL IN RESPONSE TO THE BOARD OF PRISON TERMS

FINDING 1

The board's response to this finding misses the mark. The substance of the finding is that the Board of Prison Terms is under-utilizing its staff of deputy commissioners. It does so because it does not provide them with effective supervision. In 15 years it has not tried to determine how much time deputy commissioners need to carry out their functions and, as a result, vastly overestimates how much time they need and allows them much more time than they require. The deputy commissioners themselves have contributed to the problem by regularly misrepresenting in official documents how much time they spend completing tasks. To compound the situation, the board assumes that the deputy commissioners can work only a seven-hour day, instead of the 40 hour-week standard for state employees and required by the deputy commissioners' bargaining contract. On top of that, it assumes that deputy commissioners spend 10 days a year in training and 26 days a year in travel, without ever documenting that they need or use the time for those purposes. Operating under these and other similarly misguided assumptions, the board schedules deputy commissioners to conduct only six parole revocation hearings a day, when a closer examination reveals that they could conduct as many as ten. The upshot is that the six hearings take less than five hours to complete, with the result that a typical workday for a deputy commissioner, who earns an annual salary of between $75,732 and $91,512, is even shorter than the seven hours allotted by the board. And the board, apparently with an eye to its extensive backlog of hearings to be conducted, is left with the conclusion that it must need more deputy commissioners because the work is not getting done.

In its response to the draft report, the board acknowledges that it may have overestimated how much time deputy commissioners need to do their work and that the times reported by the deputy commissioners may not be reliable. But at the same time it appears to excuse these lapses with the argument that the faulty numbers have "been the accepted standard for many years" and have been "agreed to by DOF"— ignoring that during these "many years" the numbers have been accepted because the board has been providing the Department of Finance with wrong information.

The board takes issue with the Office of the Inspector General for drawing conclusions from 171 parole revocation hearing reports about the differences between the hearing times reported by the deputy commissioners and the actual times shown by the hearing tapes, arguing that the sample represented less than 1 percent of parole revocation hearings. But the sample size sufficiently demonstrates a consistent pattern of overstatement by the deputy commissioners of time spent conducting hearings. Inexplicably, the board goes on to present its own conclusions drawn from a sample of 204 hearing reports—also less than 1 percent. And the table the board presents showing its conclusions is contradictory. For example, the table presents a purported difference of 8.13 minutes between the actual and reported length of the average hearing, but a calculation based on the hearing length shown in the table reflects a difference instead of 11.84 minutes. The information in the table also conflicts with the surrounding text. For example, the table shows an average hearing recess length of 13.43 minutes, even though the text says that "the length of the

recess in these cases could not be ascertained from the written or audio record" — begging the question: where did the 13.43 figure come from?

Other discrepancies in the board's response:

- The board declares that the "evolution" of Proposition 36 and the *Armstrong* process will affect the time needed for deputy commissioners to complete tasks, ignoring that the Office of the Inspector General's review began with the April 2002 parole revocation hearings—after the implementation of both *Armstrong* and Proposition 36.

- The board asserts on page 4 that "according to DPA, because DCs go to different work sites and reporting locations every day, their work time begins when they leave home and that must be factored into their day (FLSA rules)," but on page 25 declares, "Deputy commissioners are "Workgroup E" employees and, therefore, exempted from the FLSA (Fair Labor Standards Act)."

- In response to the suggestion that deputy commissioners be required to work more than seven hours a day, the board provides an irrelevant two-page discussion about the work hours of the Department of Corrections case records staff—apparently under the misconception that the Office of the Inspector General meant that hearings should be held 24 hours a day. In fact, the Office of the Inspector General was suggesting only that the deputy commissioners' schedules be lengthened to cover a normal eight-hour workday.

- The board argues that if parole revocation screening offers were discontinued, the number of revocation hearings would increase — ignoring that the Office of the Inspector General fully acknowledged and accounted for that inevitable increase in its analysis, as explained on page 34 of the report.

- Most glaring of all, the board makes the flat assertion that deputy commissioners work more than seven hours a day, even while admitting that it has neither tracked nor documented the deputy commissioners' schedules — and even though that assertion directly contradicts the fact that the workload analysis the board has been using to justify its personnel needs *assumes* that deputy commissioners work only a seven-hour day.

By way of remedy, the board announces its belated intention to provide training and oversight to deputy commissioners and to conduct a workload analysis to determine how they spend their time. Given the board's longstanding failure to provide these most basic administrative functions and the intractability demonstrated by the board's inadequate and contradictory response to this report, the suggestion rings hollow.

FINDING 2

This finding makes a simple point: that the board does not adequately supervise deputy commissioners or account for how they spend their time. In response, the board presents a long recitation of the tasks deputy commissioners are supposed to accomplish; notes the possibility of travel delays from traffic and inclement weather; and lists all the various forms deputy commissioners complete, none of which effectively account for the deputy commissioners' workday. The board then concedes the point: "The board agrees that there is not a

comprehensive and reliable timekeeping system for DCs," and adds: "The Board acknowledges that there is no current mechanism for confirming that DCs are working 40 hours per week." The board also acknowledges its agreement with the statement in the report that deputy commissioners receive little supervision.

The board denies the Office of the Inspector General's assertion that the deputy commissioners refuse to use the computerized tracking system. But in the next breath, the board lists the union's objections to the system — including the "training and learning curve by Deputy Commissioners who are challenged by computer technology, exacerbated by their limited data entry and typing skills" and the dubious argument that a laptop computer in a hearing room might be "used by a parolee in a violent attack."

The board's arguments do nothing more than prove the point: the board is not providing appropriate supervision of its deputy commissioner workforce.

FINDING 3

The message of this finding is that the state has no means of determining how long most of the 7,000 parolees currently incarcerated in California awaiting a parole revocation hearing have been held and therefore cannot ensure that they receive a hearing within the 45-day guideline specified in state regulations or within a "reasonable time period," as specified under federal law. A sample of cases reviewed by the Office of the Inspector General found that 81 percent had been held more than 45 days and that 7 percent had been held for more than 100 days. One reason is that the revocation scheduling and tracking system implemented in October 2002 does not include retroactive information covering parolees incarcerated before that date because the information does not exist.

The board says it "partially agrees" with the finding. But the board also claims it is "not entirely true" that the new revocation scheduling and tracking system does not include retroactive records, asserting that the system screen includes a button that allows users to view records from before October 1, 2002. But the board also acknowledges, paradoxically, that it was decided that the new system would include only new records beginning October 1, 2002 because the staff did not have time to convert earlier archived records. Presumably then, pressing the button on the screen for the thousands of parolees incarcerated before October 1, 2002 would be an exercise in futility.

The validity of the finding remains—the state cannot determine how long these parolees have been waiting to be afforded their due process right to a hearing.

FINDING 4

The Office of the Inspector General found that the Board of Prison Terms is not complying with Title 15 regulations requiring that board decisions undergo systematic review to ensure that they are valid and consistent and that they further public safety. The board disputes the finding, arguing that the Title 15 provisions cited by the Office of the Inspector General have been superceded with the passage of amendments to *California Penal Code* Section 3041 and that the

board's proposed amendments to Title 15 have not yet been adopted. The board also contends that the board's decision review process does comply with Title 15 requirements.

The board's contentions are not valid. Although *California Penal Code* Section 3041(b) has, in fact, been amended, the amendment changes only the timeframe and processes the board must follow in indeterminate sentence hearings in which parole is *granted* — which, according to the board, accounted for only 84 of the indeterminate sentence hearings conducted in 2001, compared to 3,092 in which parole was denied. The change does not affect indeterminate sentence hearings in which parole was denied, nor does it affect parole revocation hearing decisions, mentally disordered offender hearing decisions, or sexually violent predator hearing decisions, which constitute the majority of the board's hearing decisions.

More important, the board's response ignores the point that the board's superficial review of indeterminate sentence hearing decisions—which verifies only the clerical accuracy of the hearing documents—does not comply with the intent of Title 15 for a substantive review of every hearing decision. The board contends that if the deputy commissioner determines from that review that a substantive modification is needed, the case is referred to the Legal Division. But the board also acknowledges that "Due to the sheer number of denials to be reviewed, it is not possible to conduct an in-depth review of each case." That leaves the question: how does the deputy commissioner determine from the cursory review whether a substantive modification is needed? And the statement admits the truth of the finding: that in fact the board is not complying with Title 15 requirements for a meaningful review of these decisions.

Similarly, only the fraction of mentally disordered offender decisions in which the inmate is released from inpatient treatment or from the mentally disordered offender classification undergo substantive review by the board's offender screening section analysts. Decisions in which the mentally disordered offender is retained in treatment or in the mentally disordered offender classification undergo review only by a second deputy commissioner who may lack training in the medical complexities of the hearing decision. Likewise, the 38,000 parole revocation hearing decisions issued by the board each year— which make up the bulk of the board's workload — as a rule are not reviewed at all. In fact, the board acknowledges this reality, declaring that whereas until a year ago 20 percent of revocation decisions were reviewed, now the decisions are reviewed only if another agency requests review of a specific case.

FINDING 5

The Office of the Inspector General noted in this finding that automatically scheduling mentally disordered offender hearings 60 days after the inmate's arrival in custody is unnecessary and inefficient. The reason is that 60 days does not allow enough time for the mental health staff to stabilize the patient and assess suitability for outpatient treatment. As a result of the automatic 60-day scheduling, 99 percent of mentally disordered offender hearings—the purpose of which is to determine the suitability of the inmate for outpatient treatment or release from the mentally disordered classification — result in an order that the patient remain in inpatient treatment.

The board disputes the finding with the argument that holding the hearings at 60 days is required by *California Penal Code* Section 9267(b). But the *Penal Code* contains no such section and no such provision. The applicable section of the *Penal Code*, Section 2964(b), and of the *California*

Code of Regulations, Title 15, Section 2578, provide only that a 60-day placement hearing *may* be requested by the inmate.

The Office of the Inspector General also found that using two deputy commissioners to conduct each mentally disordered offender hearing is unnecessary and that the hearings could be handled by one deputy commissioner. The board says it "partially agrees," but at the same time argues that the complexity of the hearings require the "multi-disciplinary expertise gained through a two-person hearing panel." Yet, the recommendations submitted with the board's response report that the board has drafted modifications to state regulations to allow mentally disordered offender hearings to be conducted by one deputy commissioner.

Holding mentally disordered offender hearings only upon request and allowing the hearings to be conducted by one deputy commissioner instead of two would allow the board to fulfill this function with only one deputy commissioner instead of the five presently budgeted.

FINDING 6

The main point of this finding is that the state is denying inmates and parolees their due process rights to a timely parole revocation hearing and should eliminate parole revocation screening offers, which delay the hearings.

The board says it "wholly disagrees" with this suggestion, arguing that *Armstrong v. Davis* requirements to determine whether a parolee needs reasonable accommodation under the American with Disabilities Act, are the principal cause of delays in the hearing process. But as the board notes, *Armstrong v. Davis* requirements will continue to exist regardless of whether screening offers are eliminated. Under the current process, delays from *Armstrong v. Davis* occur on top of the delays resulting from the screening offers.

The board also contends that the screening offer process provides an opportunity to resolve jurisdictional and other issues. But the board's response does not address the fact that the screening offers add an extra step that extends time the parolee is incarcerated without a hearing. As the other findings in the report demonstrate, the Board of Prison Terms has twice as many deputy commissioners as it needs to handle its hearing workload. It should do away with the screening offers and provide timely parole revocation hearings to all suspected parole violators.

RESPONSE OF
THE CALIFORNIA DEPARTMENT OF CORRECTIONS

State of California

Department of Corrections

Memorandum

Date : January 13, 2003

To : John Chen
Chief Deputy Inspector General
Office of the Inspector General
3927 Lennane Drive, Suite 100
Sacramento, CA 95834-8780

Subject: **REVIEW OF BOARD OF PRISON TERMS**

Attached is the Department of Corrections, Parole and Community Services Division's (P&CSD) response to the Office of the Inspector General's review of the Board of Prison Terms.

Thank you for the opportunity to review your report. If you have any questions regarding this response, you may contact me at 327-0693.

RICHARD A. RIMMER
Deputy Director
Parole and Community Services Division

Attachment

cc: Edward S. Alameida, Jr., Director, Department of Corrections
David Tristan, Chief Deputy Director, Field Operations
Sharon C. Jackson, Assistant Deputy Director, P&CSD

DEPARTMENT OF CORRECTIONS
RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S REVIEW OF THE BOARD OF PRISON TERMS
DECEMBER 4, 2002

Office of the Inspector General's finding (page 22)

"...neither the Board of Prison Terms nor the Department of Corrections has a means of tracking how long parolees have been held to ensure that time limits have been met."

California Department of Corrections' Response:

The California Department of Corrections (CDC) and Board of Prison Terms (BPT) utilize the Revocation and Scheduling Tracking System (RSTS) to track parolees in the revocation process, and to meet the mandated time limits. RSTS is a single, integrated automated system that facilitates the parole revocation work process for CDC and BPT.

The RSTS project began in 1997 and was implemented in phases during 2001. Problems were encountered both from changes to the revocation work processes (primarily Proposition 36 and *Armstrong v. Davis*) and from difficulties in implementing needed changes with the RSTS customer/user groups.

In response, CDC and BPT have implemented interim changes to RSTS and are completing the changes needed for the RSTS customer/user groups. The interim changes to RSTS were implemented on October 1, 2002 and have been extremely valuable in providing valid and reliable data about the revocation process, including facts about where in the work process delays exist. The final change for the customer/user group is being implemented in January 2003, which will ensure timely data is available throughout the entire revocation process. These changes enable RSTS to meet the original mandate for tracking parolees in the revocation process to ensure that time limits are met.

A proposal for the RSTS enhancement to improve the efficiency of RSTS is currently under review.

It may be helpful to understand the impact of the *Armstrong* lawsuit and Proposition 36 on the RSTS tracking system:

- For *Armstrong*, CDC and BPT formulated the *Armstrong v Davis* BPT Parole Proceedings Remedial Plan on January 4, 2002. The plan included creating a second-serve process, and establishing additional ADA documentation in the revocation process. As to the second-serve process, RSTS was designed to capture but a single-serve process, so adding a new process required changes to RSTS before it could function as needed. With the new need for ADA documents in the work process for some cases, RSTS had to be updated to identify the need and to provide tracking of that new process.

- The July 1, 2001 implementation of Proposition 36 impacted RSTS. As a result of this statutory change, a portion of the inmate and parolee population tracked by RSTS would now be diverted from revocation into drug treatment programs, but still tracked as a revocation case. The business process was not included in RSTS and thus RSTS required enhancements to accommodate this work process change.

Office of the Inspector General's finding (page 22)

"An attempt to implement a computerized tracking system failed."

California Department of Corrections' Response:

As noted above, RSTS did not have a system failure but was affected by new changes in the law and court-ordered mandates that required enhancements to the system. The system enhancements did result in delays to the original project schedule. However, we believe that RSTS is now performing well, and the customers/users are increasingly adapting to the updated system.

During the system work for the "RSTS interim enhancements," it was necessary to take RSTS "off-line" for approximately 45 days. The P&CSD implemented a paper-tracking system during the "RSTS down time" that allowed P&CSD and BPT the ability to track parolees in the revocation process. Cases that were in custody were tracked manually and kept on logs for institutions to review prior to releases. Taking RSTS "off-line" was a difficult decision, however it was necessary in order to implement the required changes for the October 1, 2002 enhancements. It will not be necessary to take RSTS "off-line" for future, planned enhancements.

Office of the Inspector General's finding (page 23)

"The accuracy of the information (hold to hearing report) is questionable."

California Department of Corrections' Response:

Prior to RSTS and during RSTS Versions 1.0 and 2.0 , information was collected by the Parole Regions via manual/semi-automated (Rev-Track) processes and P&CSD continued holding weekly conference calls to discuss late cases. This continued with minimal use of the data in the RSTS.

With the October 1, 2002 implementation of RSTS Version 2.5, executive staff receives information from RSTS for the hold-to-hearing conference calls. The weekly hold-to-hearing conference call has been expanded to also discuss how many cases are awaiting ADA documents, as well as cases beyond the 45-day limit. Improvements to RSTS and associated work processes now provide a database with timely and accurate information.

In addition, several new reports are being designed and will be implemented in January 2003 that will give BPT and CDC administration the ability to run reports by query dates without the need for a customized report. One such report will be the Revocation Hearing Coordinator's (RHC) report that will provide hold to hearing data in a concise format.

The P&CSD has developed an ADA database, which will record the ADA status of all parolees utilizing the information obtained from the one-time institution mass screening project, and the Release Program Study. This should improve P&CSD's ability to identify *Armstrong* class members on parole, and to take appropriate action if the parolee enters the revocation process.

Office of the Inspector General's finding (page 23)

"The report does not include the length of time parolees have waited for hearings."

California Department of Corrections' Response:

Under the current revocation process, a Deputy Commissioner (DC) of the BPT cannot screen cases that are awaiting ADA documents, per the *Armstrong* court decision, until it has been verified whether or not the parolee has ADA needs. The RSTS Version 2.5 does track the number of days it takes to complete the revocation process, and accommodates both the BCPA's second serve and Proposition 36.

In regards to the additional concern about Proposition 36 eligible parolees, the eligible parolees in custody during the report study were referred to the BPT via an interim process. On August 8, 2002, BPT and CDC agreed to a revised Proposition 36 referral process, which was implemented October 1, 2002. Effective that date, all Proposition 36 referrals are made by the parole agent to the county assessment center and the parole hold is released prior to submitting the Proposition 36 report to BPT.

Office of the Inspector General's finding (page 24)

"Each parole region is using its own tracking process to track parolee status."

California Department of Corrections' Response:

As was mentioned earlier, P&CSD is now relying on the more timely and accurate data contained in the RSTS database. In addition, steps are being taken to improve the RSTS reports available to Parole offices.

Office of the Inspector General's finding (page 29)

"The office of the Inspector General found that the state's parole revocation process is unnecessarily burdensome and prevents it from affording inmates and parolees their due process rights to a timely hearing."

...Nor has the State been able to successfully implement the version of Proposition 36 allowing nonviolent drug offenders the option of treatment instead of incarceration.

California Department of Corrections' Response:

For P&CSD, once the mass screening of ADA documents has been completed, the burdensome process associated with determining *Armstrong* class members will be rectified. At that point, cases pending revocation will be placed on the screening calendar without delay.

The burdensome process for Proposition 36 has already been rectified with the transfer of the jurisdiction to P&CSD on October 1, 2002.

Office of the Inspector General's finding (page 31)

"Proposition 36 requirements are not being met."

California Department of Corrections' Response:

Currently, Proposition 36 requirements are being met.

On August 8, 2002, BPT and CDC agreed to a revised Proposition 36 process. That new process became effective on October 1, 2002. Effective that date, all Proposition 36 referrals are made by the parole agent to the county assessment center and the parole hold is released prior to submitting the Proposition 36 report to BPT.