

Gun-Toting Auditors and Attorneys:

Does the Inspector General Need 105 Armed Peace Officers?

A report prepared for the Senate Rules Committee

NOVEMBER 30, 2010



California Senate Office of
Oversight and Outcomes

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Executive Summary

This report examines the questionable wisdom of categorizing lawyers and auditors in the Office of the Inspector General as peace officers when their actual duties require none of the specialized functions of law enforcement officers employed in other state agencies. To justify this peace officer status, state law and administrative rules offer an elaborate rationale that presumes gun-toting auditors and lawyers will engage in police functions such as hand-to-hand combat and high-speed pursuits.

The Office of the Inspector General (OIG) monitors and investigates wrongdoing in the state's correctional system. Last summer, the Senate Office of Oversight and Outcomes set out to scrutinize the costs and functions of the OIG's sworn peace officers, who account for most of that organization's workforce. We found that the peace-officer designation stems from the unsupported premise that OIG staff must be prepared to stave off violence and wield weaponry. In reality, such actions seldom if ever arise in these job categories. We also found that OIG uses peace officer perquisites – generous pensions and take-home state cars – to attract and retain its professional team of lawyers and auditors.

This report recommends that legislators re-evaluate state law that designates auditors and lawyers as peace officers who carry guns, drive law-enforcement vehicles, and collect pensions designed for police and firefighters.

In response to the Senate investigation, the Office of the Inspector General recently announced a partial concession regarding this report's findings. Although the OIG did not explain how it planned to navigate potential statutory obstacles, the agency conceded that issuing guns to auditors was an excessive and unnecessary expenditure. The new policy, however, did not explain the agency's prior contradictory written and oral statements that an armed force was necessary for safety. Nor did the announcement address the identical policy issues raised by issuing weapons to OIG lawyers -- or the controversial categorization of auditors and lawyers as peace officers in the first place.

The report examines the statutory basis of peace officer status, the increasing number of OIG peace officers, their record of performing law-enforcement duties, and the cost of their vehicles, firearms and other police equipment. It also provides a comparison with other agencies with similar workforces: the County of Los Angeles Office of Independent Review, the California Attorney General's Office, and the U.S. Justice Department's Inspector General.

Most of the data that is the basis for the report was requested through a Public Records Act request delivered to Inspector General David Shaw on August 23, 2010. (*See Attachment #1 for the request letter.*) Shaw's staff members were thorough in gathering relevant documents and very generous in offering their time and expertise to the Senate oversight office.

The Office of the Inspector General is an independent state agency established in 1998 to oversee and investigate alleged wrongdoing within the state corrections department. Among its duties, OIG conducts audits and investigations of the California Department of Corrections and Rehabilitation, oversees the department's internal affairs investigations, collects complaints and tips about the correctional system, evaluates candidates for warden, and inspects facilities.

The OIG workforce has tripled in the last six years, from 48 to 150. At the same time, the proportion of peace officers has also grown: from 44% in 2003 to 70% today. Much of the growth at OIG was the result of the creation in 2004 of a Bureau of Independent Review. The new bureau was part of the state's response to the well-publicized federal court oversight of the prison system in the ongoing *Madrid* litigation, which found that state corrections officials were plagued by inadequate internal policing and insufficient investigation of wrongful behavior, including excessive force.

As currently configured, 105 of the 150 positions in the Office of the Inspector General are sworn peace officers. Their titles are spelled out in Penal Code Section 830.2 (j), a statute amended in 2009 specifically to include the 27 lawyers in the Bureau of Independent Review. The office's auditors have been peace officers since the OIG was established, along with the Inspector General himself.

This report examines the logic and cost of training – and then arming – auditors and attorneys as sworn peace officers. New OIG peace officers put in over 150 hours of law enforcement training. At a cost of \$2,000 per employee, they are outfitted with police gear ranging from semi-automatic handguns and body armor to whistles and fluorescent parkas. Last year, the office spent \$36,000 for ammunition. Yet, in the past five years, no OIG peace officer has fired a gun or made an arrest while on assignment for the Inspector General.

The report's other focus is the OIG's use of state cars, particularly in light of the governor's order last year to reduce the state fleet. Inspector General David Shaw exempted his entire office from this order, stating that his peace officers have "24-hour roll-out responsibilities for critical services." Instead of reducing the fleet, Shaw's office purchased 46 new cars over the past two years.

Each of the OIG's peace officers is assigned a state car with a home-storage permit. The cars are used daily to drive to and from work – their roundtrip commutes total more than 3,000 miles a day – at no cost to the employee. An analysis of the total mileage reported for the OIG's fleet shows that most of the miles logged on the cars is for the home-to-office commute. Staff are exempt from paying income tax on this fringe benefit because they carry their guns with them to the office under IRS rules.

The costs of unnecessary equipment, training and cars all add up. But the biggest potential cost to California taxpayers – by far – is the ongoing expense of providing peace-officer pensions to OIG employees.

In an interview on Oct. 27, Inspector General Shaw met with Senate oversight staff to discuss the findings of this report. He outlined the rationale for peace officers at the OIG, including these main points:

- **Status:** OIG investigators need to be on an equal footing with the correctional officers they monitor in the California Department Corrections and Rehabilitation (CDCR).
- **Access:** Without peace officer status, OIG investigators might be denied unfettered access to observe critical incidents and to interview inmates.
- **Safety:** Correctional facilities are dangerous places, so law enforcement training is valuable. Also, employees the OIG oversees are trained to use firearms – a correctional officer angry about being disciplined might conceivably seek revenge.
- **Recruiting:** The OIG must offer an attractive benefit package (the enhanced peace-officer pension and the take-home cars) to recruit and keep talented professionals. Shaw said the recruitment issue was particularly important to federal court officials monitoring the state's response to the *Madrid* case.

None of the three comparable agencies we studied – Los Angeles Office of Independent Review, the California Attorney General's Office, and the U.S. Justice Department's Inspector General – grants blanket peace officer status to lawyers and auditors. The Los Angeles office, in fact, sees its civilian status as key to its independent operation.

Among our findings:

- OIG staffers from the Inspector General on down are expected to carry a gun and ammunition at all times they're on duty: at the office, on the road, in the air. But one place they always go unarmed is inside a prison. At California correctional facilities, OIG staff must check their weapons at the gate or leave them locked in their cars.
- Those weapons have price tags: \$430 for a Glock semi-automatic pistol, \$35 for a holster, \$75 for ammunition. All told, outfitting each OIG peace officer costs taxpayers \$2,050. Add the take-home state car, and the grand total exceeds \$20,000.
- In the past five years no OIG peace officer has fired a gun on duty, except at the firing range. That itself can be dangerous – one Deputy Inspector General accidentally shot himself while putting in his required hours at the range.
- 70% of the mileage OIG peace officers put on their take-home state cars is for their daily commute to the office. The Senate oversight office asked for all vehicle home-storage permits and was given permits for 71 OIG peace officers. Based on these permits, their home-to-office commutes total 3,230 miles per workday (an average of 45 miles for each worker). Overall, of the 1 million miles logged by the OIG fleet in 2009/10, more than 700,000 miles were for employees' commute to work.
- During 2007, 2008 and 2009, OIG fielded more than 10,000 separate complaints and tips – but only eight cases were referred to a law enforcement agency for possible criminal prosecution during those three years. Another six criminal investigations were closed by the OIG for lack of evidence, for a total of 14 cases, according to quarterly reports. Despite the low number of criminal cases, in 2009 the OIG created a separate Bureau of Criminal Investigation.
- The career paths leading to these peace officer positions indicate how unusual the Office of the Inspector General is in this area. In the two OIG bureaus that house the attorneys and auditors, 98% were *not* peace officers before signing on with the Inspector General.
- The OIG's Bureau of Independent Review was modeled on Los Angeles County's Office of Independent Review, a team of lawyers who monitor the L.A. Sheriff's Department, including county jails. The Los Angeles operation, however, is emphatically a *civilian* group. "We don't feel we need peace officer status – we never asked for it, we never needed it, we don't want it," its chief attorney said.
- California's Attorney General employs 1,150 lawyers. They don't have take-home cars and only a handful – fewer than 5 – are sworn peace officers. Just one carries a gun. None of the AG's 80 auditors are peace officers or get state cars.

Background: OIG's Rationale for Peace Officer Status

The Office of the Inspector General (OIG) is an independent agency established in 1998 to oversee the state correctional system. From the beginning, the office's professional staff – the Deputy Investigator General classification – were designated as peace officers, according to David Shaw, the current Inspector General. The rationale, he said, was to give them parity with the correctional officers they monitor. (Shaw and other OIG officials met with staff from the Senate Office of Oversight and Outcomes on Oct. 27, 2010, to discuss the findings of this report.)

After deep budget cuts in 2003, OIG was virtually shut down – to be resurrected just a year later. The catalyst for the restoration was the federal court's ongoing legal oversight in the *Madrid* litigation, which continued to find constitutional infirmities in the internal investigative process at the California Department of Corrections and Rehabilitation. In a scathing 1995 declaration, the original *Madrid* decision found that state corrections officials had “permitted and condoned” the use of excessive force and were hamstrung due to a longstanding culture of neglect and inability to crack internal impediments – including the so-called “code of silence” among prison staff.

As part of the *Madrid* remedy, the governor's office and the federal court agreed to create a new organization within the OIG called the Bureau of Independent Review (BIR). The OIG's budget was supplemented to reflect this new responsibility, and in early 2005 the office began the work of recruiting a team of investigative lawyers to staff the bureau. According to Shaw, the OIG immediately recognized that existing civil service categories and limitations would make it difficult to recruit the elite corps of investigators (mostly attorneys) to successfully meet the federal court's standards. One method for attracting the best staff possible was to offer an enhanced benefit package by categorizing staff as “peace officers” – even though the jobs in actual practice would not require typical peace officer duties.

Shaw explained that the role of these lawyers was hammered out in a series of meetings with representatives from the federal court, the

administration and the OIG. No court orders or even written notes are available from the meetings. Shaw said it was understood but not required that the newly hired lawyers – dubbed Special Assistant Investigators General – would be sworn peace officers.

Peace officer status was necessary for BIR for several reasons, according to Shaw. First, to recognize that prisons are dangerous places. Second, to prevent the corrections department’s own Office of Internal Affairs from excluding OIG investigators from riots and crime scenes.

“BIR was to break through the code of silence, and to give BIR the power to do that, they were made peace officers,” Shaw said. “We wanted them to be on an equal footing with IA (corrections’ Office of Internal Affairs). There was great concern that if the BIR investigators weren’t peace officers, they could be stiff-armed by Internal Affairs. BIR needed unfettered access to the prisons – walk-alone status – so they could walk in the yard and talk to inmates.”

(On the question of safety inside prison walls, Senate staff who frequently inspect correctional facilities say they often speak to prisoners privately without requiring the presence of a peace officer other than the correctional officers responsible for ensuring safety in prison.)

There was another reason to make the new BIR attorneys peace officers – and probably the most important one. “The court worried about recruiting the staff for the new bureau,” Shaw said. “We all knew you had to pay well and have a good benefit package to attract and keep talented people.” Offering the new recruits the state’s peace officer/firefighter retirement package was a big part of the draw, he said. So were state cars and even the peace officer’s monthly physical fitness incentive pay.

“It all played a part in getting the right people on board,” Shaw said. “The dominant reason was that the court wanted us to be effective.”

In a follow-up letter to the Senate sent Nov. 3, Shaw elaborated on his rationale for peace officer status at the OIG. “The current benefit package is an inducement for current and future recruitment and retention,” he wrote. “It is hard to attract attorneys and auditors to work in a prison and around inmates and parolees without some significant incentives.” (*Shaw’s full letter is reprinted as Attachment #4.*)

Today, the OIG has 150 employees and is organized into three principal bureaus: the Bureau of Audits and Investigations, the Bureau of Independent Review, and the newly created Bureau of Criminal Investigations. The top brass and the professionals who staff the bureaus –

whether auditors, lawyers or criminal investigators – are all classified as peace officers. They are assigned a full complement of police gear, from body armor to whistles, and are expected to wear their guns and ammunition on the road and at the office. At prisons, however, they must check their weapons at the gate or lock them in the car.

From the beginning, the OIG has lumped together auditors and former law enforcement officers in its catch-all Deputy Inspector General classification. (Lawyers are in the Assistant Inspector General category.) But change may be afoot. Shaw said his office is considering whether auditors should continue to be classified as peace officers. He strongly believes, however, that other OIG peace officers should retain that status.

* * * *

The statutory authority for OIG's establishment and operation is found in California Penal Code Section 6125 et seq. (*See Attachment #5 for these code sections.*)

Statutory Basis for Peace Officer Status

Section 830.2 (j) of the Penal Code classifies most Inspector General employees as gun-carrying peace officers. This is the section:

830.2. The following persons are peace officers whose authority extends to any place in the state:

... (j) The Inspector General, pursuant to Section 6125, and the Chief Deputy Inspector General, Chief Assistant Inspector General, Deputy Inspector General In Charge, Senior Deputy Inspector General, Deputy Inspector General, Senior Assistant Inspector General, Special Assistant Inspector General, and those employees of the Inspector General as designated by the Inspector General, are peace officers, provided that the primary duty of these peace officers shall be conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections and Rehabilitation, Division of Juvenile Justice and the Board of Parole Hearings.

That section was amended in 2009 specifically to include the classification of Special Assistant Inspector General. (These are the 27 lawyers in the Bureau of Independent Review.) And it was also amended to take out the word “the” in front of Deputy Inspector General. The amendments were characterized by the OIG as “no-cost technical clean-up changes” to reflect “changes to OIG titles and position classifications.” In his Nov. 3, 2010, follow-up letter to the Senate, Inspector General Shaw noted that the State Personnel Board’s 2007 specifications for the SAIG classification declared it a peace officer position.

But, in the view of the Senate oversight office, the 2009 legislative amendment had the effect of pushing the lawyers (SAIGs) and the deputy inspectors general (DIGs) more firmly into peace officer status. The Inspector General has always had the ability to designate people as peace officers, as needed. The amendment removed his discretion – now they are all peace officers under statute – and some of his accountability.

The career paths leading to these peace officer positions indicate how unusual the Office of the Inspector General is in this area. In the two OIG bureaus that house the attorneys and auditors, 98% were not peace officers before signing on with the Inspector General.

By contrast, 98% of the employees in the smaller third bureau – the Bureau of Criminal Investigation – worked as peace officers before being hired by the OIG. Indeed, their job specifications require five years in law enforcement as a prerequisite.

Shaw, who took over the office in 2008, created the Bureau of Criminal Investigation the following year. According to the office's 2009 annual report, the BCI was established "to help the OIG more effectively concentrate its resources and investigate allegations of administrative and criminal misconduct by CDCR employees in California's prisons."

Growing Percentage of Peace Officers

The OIG’s organizational history shows a growing agency with a dramatically increasing percentage of peace officers in its workforce. In 2003, 44% of the staff were classified as peace officers. Currently, that figure is 70% – that’s 105 out of 150 positions. All 105 carry guns, get take-home cars and qualify for a peace officer retirement.

Growing Percentage of OIG Peace Officers

DATE	TOTAL OIG STAFF	PEACE OFFICERS	NON-PEACE OFFICERS	PERCENT PO	PERCENT NON-PO
Nov-03	48	21	27	44%	56%
Mar-05	52	30	22	57%	42%
May-08	119	66	53	55%	45%
Oct-09	128	74	54	58%	42%
Jun-10	150	105	45	70%	30%

Sources: All years but 2010 are from the Controller’s Office. June 2010 is based on OIG’s organizational chart, which includes vacant positions.

This chart covers a period of dramatic change for the Office of the Inspector General. The tripling of the office between 2003 and 2010 is in large part a result of the creation of the Bureau of Independent Review, which was established in the wake of the Madrid litigation. In 2003, the OIG suffered massive budget cuts and was on the brink of being abolished. In 2005, however, the Bureau of Independent Review was created, the budget was replenished and dozens of new employees – most of them peace officers -- were recruited.

Criminal Cases and Law-Enforcement Activities

OIG peace officers wear a badge, a gun, and qualify for law-enforcement retirements. Some drive state cars with law-enforcement lights and sirens. But how often do OIG peace officers perform law-enforcement duties while on the job? To answer that question, the Senate oversight office asked for an accounting of these activities over the past five years. Here’s a summary of the Inspector General’s response:

Since 2005, how many times has an OIG peace officer:

Made an OIG arrest?	0
Executed a search warrant?	7
Referred a criminal case to a prosecuting agency?	15
Testified in criminal court on an OIG case?	7
Used less-than-lethal force?	0
Fired a weapon on duty?	0
Been involved in a high-speed pursuit?	0
Been the primary respondent to a crime scene?	0

Also noted was an arrest by OIG peace officers on their lunch break. In an incident unrelated to the OIG mission, they apprehended a thief stealing a television as he fled a Sam’s Club near the Inspector General’s headquarters in Natomas. Again, this was the only example of an arrest since 2005.

The Senate oversight office also did its own tally of criminal cases referred to a law enforcement agency for possible prosecution. Based on OIG quarterly reports for 2007-2009, the total was eight cases over the three years. (At least two of those were immediately declined.) There were six other criminal investigations, each closed by the OIG for lack of evidence, for a total of 14 cases. For context, during these three years the OIG fielded more than 10,000 separate complaints and tips.

As in the Sam’s Club arrest, Inspector General Shaw said his peace officers

perform a “collateral benefit to society.” They can respond to accidents and crimes, he said, and they could be called up in a major disaster.

For an independent expert’s view, Senate staff asked retiring Sacramento County Sheriff John McGinness about the value of having these additional peace officers out and about. He was not enthusiastic.

“Realistically, you don’t send a guy in a Brooks Brothers suit to kick down a door,” McGinness said. “The truth is, we really don’t want them in the way. They’re amateurs. Our officers have eight months of peace officer training – not four weeks.”

Fleet of Take-Home State Cars

The Inspector General says that his peace officers need home-storage permits for their state vehicles so they can be ready for action 24 hours a day, seven days a week. The side benefit for the employees is that taxpayers pay for their daily commute to and from the office.

Those miles can add up.

The Senate oversight office examined the home-storage permits for 71 OIG peace officers. Based on the permits, their roundtrip commutes totaled 3,230 miles per workday (an average of 45 miles for each worker). According to current IRS guidelines, the cost of operating a vehicle for business purposes is 50 cents a mile. That puts the cost to the state for each OIG workday commute at about \$1,615.

We found that most of the miles logged on these cars is for the home-to-office commute. In addition to the commute distance, each home-storage permit also shows “official business miles traveled per month.” All but three of the permits show the same distance for business miles: “Approx. 1,000.” This approximation appears to be too generous by far, according to our analysis.

The analysis calculated annual commute miles by multiplying each driver’s daily roundtrip commute by 230 work days. Under this formula, only the Bureau of Independent Review’s business miles matched its home-to-office commute miles. The other two bureaus (and the executive staff) logged far more commute miles in their take-home cars than business miles.

Overall, of the 1 million miles logged by OIG fleet cars in 2009/10, more than 700,000 were for the commute to work, based on this analysis.

At the Senate’s request, the OIG also provided purchase orders for all the vehicles in its fleet. The 85 vehicles included four pool cars: two vans and two Toyota Priuses. The other vehicles – Crown Victorias, Grand Prix, and Impalas – were all issued to individual OIG peace officers with home-

storage permits. These take-home cars cost the state \$1.5 million and averaged \$18,500 per automobile. There are other expenses, as well: 21 cars are equipped with lights, sirens and CHP radios.

Meanwhile, the Inspector General continues to buy new cars for the fleet. OIG's 2010/11 budget request for 16 new cars was approved. The office also bought 15 new cars in 2008/09 and another 15 vehicles in 2009/10. That's \$724,000 for 46 new cars in two years.

The request for so many new cars is especially relevant given the governor's July 2009 executive order to cut the state fleet by 15% and decrease the number of take-home cars by 20 percent. The OIG claimed it was exempt from the order because it doesn't report to the governor and these cars serve a vital law enforcement function. This is what Inspector General Shaw wrote to the Department of General Services to justify the exemption:

With respect to the OIG vehicles, my entire fleet, with the exception of two pool vehicles, is assigned to peace officers with 24-hour roll-out responsibilities for critical services and functions specifically mandated by the federal court and state statutes. Reducing the fleet would affect our ability to perform essential functions and could result in federal liability. *[The full letter is Attachment #3.]*

Actually, however, the "24-hour roll-out" applies mainly to attorneys in the OIG's Bureau of Independent Review, who respond day or night to critical incidents at correctional institutions such as officer-involved shootings and riots.

There are other ways to meet the need for 24-hour response. One promising option would be to schedule a few BIR lawyers to be available after hours on an on-call basis. Only these on-call lawyers would need to take home a state vehicle, which they could sign out from the OIG's fleet of pool cars.

OIG auditors use their take-home cars to drive to correctional facilities – sometimes over long distances -- for scheduled visits. Investigators with the Bureau of Criminal Investigations drive their cars to investigation scenes.

After the Senate's Public Records Act request and interview questions, Shaw said the OIG had been working on a plan to meet the 20% reduction set by the governor.

In his Nov. 3 follow-up letter to the Senate, Shaw said OIG "hopes to have its vehicle reduction plan implemented by December 2010. (See *Attachment #4.*)

Guns and Tax Exemptions

As Section 830.2 peace officers, OIG staffers from the Inspector General on down are expected to carry a gun and ammunition at all times they're on duty: at the office, on the road, in the air. One place they always go unarmed is inside a prison. At California correctional facilities, OIG staff must check their weapons at the gate or leave them locked in their cars.

Inspector General Shaw said his peace officers perform dangerous work that requires them to be armed. He noted that the workforce they oversee is trained to use firearms – a correctional officer angry about being disciplined might conceivably seek revenge. Also, Shaw said, OIG peace officers travel long distances alone, sometimes in remote places. “It’s a safety and security issue,” Shaw said.

Still, in the past five years no OIG peace officer has fired a gun on duty, except at the firing range. And that itself can be dangerous – one Deputy Inspector General accidentally shot himself while putting in his required hours at the range.

Carrying a gun may be a nuisance and occasionally perilous, but it does bring an income tax break. Typically, the IRS calculates the taxable value of using a state car for an employee’s personal commute at a flat \$1.50 per one-way trip. But certain law officers are exempt from this tax. This excerpt from OIG’s administrative policy manual spells out both the tax exemption and the office’s strict policy about carrying firearms:

Driving an Office of the Inspector General vehicle to and from work is exempt from federal income taxes if all of the following conditions are met:

1. You are a law enforcement officer;
2. You are a full-time employee of a governmental unit that is responsible for preventing or investigating crimes involving injury to persons or property;
3. You are authorized by law to carry a firearm;
4. You are authorized to execute search warrants;
5. You are authorized to make arrests;
6. You regularly carry a firearm, except when it is not possible to do so while on an undercover assignment; and
7. Your need to take your assigned vehicle home is incident to law enforcement functions, such as driving directly to a CDCR institution as part of an investigation, an audit, or in response to an emergency situation.

Office of the Inspector General sworn staff is expected to travel directly from home to California's various correctional institutions as needed to perform audits and investigations and to respond to emergency situations at those institutions. However, if you are not regularly carrying your Office of the Inspector General-assigned firearm while on duty, you will need to report each one-way commute to the State and on your federal tax return(s). This scenario is unlikely to occur because all Office of the Inspector General sworn staff members are required to be personally armed with a handgun during work hours and while traveling to and from home and work.

This section of the manual is designed simply to explain tax liability to the staff, according to Barbara Sheldon, the OIG's general counsel.

The policy manual also notes another requisite of being a peace officer: Physical Fitness Incentive Pay of up to \$130 a month.

Note on Legal Ramifications

Although beyond the scope of this investigation, the oversight office notes that the OIG hires lawyers and auditors as peace officers – even though their essential functions, as established by this report, usually do not include the physical qualifications and demands of bona fide peace officers.

This office has not found or sought any example of an otherwise qualified auditor or lawyer being turned down for a job or assignment due to a physical impairment. Nor have we sought or stumbled upon any example of an otherwise qualified disabled employee who has been refused a reasonable accommodation. However, we recommend that a legal review be conducted of the practice of demanding peace officer qualifications from applicants and employees who plainly do not need to possess such qualifications and which are not required of other state employees in the same category.

One example is found in the civil service classification for the position of Special Assistant Attorney General. This position is classified as a peace officer even though the evidence plainly indicates that these practicing lawyers would not be peace officers at the Attorney General's Office or in any other State of California office employing lawyers. Also, they are not in fact called upon to serve as law enforcement officers. Nevertheless, the written classification for these OIG attorneys includes a long list of duties which appears to be designed to justify the peace officer designation, including the requirements to "use defensive tactics in the event of an assault by inmates," and to "use force as necessary."

Peace Officer Training and Equipment

Much has been written lately about the mounting state cost of funding Peace Officer/Firefighter (POFF) retirements. This benefit, which applies to OIG peace officers, allows retirement at age 50 with a pension of 3% of annual pay, multiplied by the number of years worked. (The typical retirement formula for current state workers is 2% at age 55.)

But there are other taxpayer costs of maintaining a workforce of peace officers, both in time and equipment.

Training

Newly hired OIG peace officers, whatever their assignment, put in over 150 hours of law enforcement training, including classes on firearms (28 hours), chemical agents (2 hours), use of baton (8 hours), and “Arrest, Search & Seizure” (40 hours). Those with Code 3 vehicles also are trained in emergency vehicle operations (20 hours).

Ongoing training includes 16 hours on the firing range every three months and refresher courses on the baton and defensive tactics annually. (All that time at the range consumes a lot of bullets: The OIG spent \$36,000 on ammunition last year.)

The hourly pay for a Special Assistant Inspector General is about \$59. At that rate, the cost of law-enforcement training for an employee’s first year comes to \$8,850.

Equipment

The policy manual describes in detail the array of law enforcement equipment issued to all OIG peace officers. From the manual:

Each Office of the Inspector General peace officer shall be issued a standard complement of equipment:

Duty weapon and holster	Three magazines for each firearm
Handcuffs and case	Magazine case
Handcuff key	Dome badge with holder
OIG windbreaker	Flat badge in wallet
Camera*	Peace officer ID credentials
Hearing protectors	Protective eye wear
Equipment bag	Clip-on OIG identification card
Gun cleaning kit	Cell phone or Blackberry
Flashlight and holder	OC aerosol canister and holder
Home gun safe	Protective vest
Reflective jacket	Collapsible baton with holder
Binoculars*	Whistle

**Bureau of Criminal Investigation only.*

According to the manual, everything but the hearing protectors, gun cleaning kit and home gun safe “shall be available at all times while on duty...”

The Senate oversight office requested the individual cost for every item in the “standard complement of equipment.” The total came to \$2,050 per employee. Add to that the price of a take-home state car and the bill for outfitting an OIG peace officer exceeds \$20,000.

Itemized Costs of OIG Peace Officer Equipment, 2009/10		
ITEM	COST	NOTES ON RECENT PURCHASES
Gun	\$430.50	Ordered 32 Glock 23 semi-automatic pistols on 4/21/2010 for \$14,981*
Holster	\$35.00	Ordered 43 Blackhawk holsters for Glock 23 pistols on 10/22/2009 for \$1,505.00
Handcuffs	\$29.99	
Handcuff Case	\$29.99	
Handcuff Key	\$8.99	
OIG Windbreaker	NA	OIG cost not available
Hearing Protectors	\$19.00	OIG cost not available; estimated
Equipment Bag	NA	OIG cost not available
Gun Cleaning Kit	\$60.00	OIG cost not available; estimated
Flashlight	\$17.00	
Flashlight Holder	\$17.00	Ordered 50 on 11/17/2009 for \$924.38
Reversible Parka	\$129.99	Ordered 105 parkas on 12/30/2009 for \$14,843; 8 more on 3/11/10 for \$1,157
Collapsible Baton	\$75.00	OIG cost not available; estimated
Baton Holder	\$16.88	
3 Magazines per gun	\$75.00	
Magazine Case	\$24.98	
Dome Badge	\$65.00	
Dome Badge Holder	\$22.00	
Flat Badge	\$65.00	
Flat Badge Holder	\$35.00	
Protective Eye Wear	\$12.65	
Blackberry or Cell Phone	\$148.11	
Body Armor	\$580.00	
Home Gun Safe	\$110.00	OIG cost not available; estimated
OC Aerosol Canister	\$11.00	OIG cost not available; estimated
OC Holder	\$13.95	Ordered 30 on 8/12/2009 for \$418.50
Whistle	\$15.00	OIG cost not available, estimated
Embroidered Police Badge	\$3.20	Ordered 350 on 1/27/2010 for a total of \$1,120
Total	\$2,050.23	Total for 105 peace officers: \$215,274.15

**Traded in 30 Springfield XD guns for a credit of \$7,440. Net cost of the new Glocks: \$7,541.40. In other gun trading last year, 21 "Sig Sauer" handguns were ordered on Sept. 29, 2009. Cost was \$10,644.89; credit was given of \$8,150 for trading in 22 Walther guns. Net cost: \$2,494.89. The Springfields and Walthers were defective, according to Inspector General David Shaw.*

DIG: Same Job Category for Auditors and Police Officers

Under Penal Code Section 830.2, staff in the OIG's "Deputy Inspector General" classification are all peace officers. The organizational chart shows 46 of these DIGs.

The DIG class encompasses two fundamentally different jobs with dissimilar career paths: police officer and auditor. According to State Personnel Board specifications, DIG job candidates may either have five years of experience as a peace officer OR five years of experience "conducting complex investigative, performance, compliance, financial, internal or fraud audits."

One thing the two types of DIGs must have in common is the "willingness to utilize a variety of weaponry, including shotguns and tear gas."

The OIG's "duty statement" for a DIG in the audit bureau lists typical auditor functions such as review and analysis of records, organizing documents, writing reports, and inspecting facilities. That accounts for 95% of a DIG auditor's time. No police-type duties are listed, except for "undergo peace officer training."

Asked why auditors and former police officers are lumped together in one category, one OIG official summed up the current situation: "a DIG is a DIG is a DIG is a DIG." But perhaps not for long.

Under questioning from Senate staff, Inspector General Shaw said he is now considering splitting the DIG class and removing the auditors from gun-carrying peace officer status. "It won't be popular," Shaw said in the Oct. 27 interview. "It will affect us in recruiting and retention. My guess is we'd lose some."

In his Nov. 3 follow-up letter to the Senate, Shaw conceded that the duties of auditors and police officers are indeed different. He wrote: "Although theoretically a DIG can conduct either an audit or an investigation, the reality is that DIGs hired under the auditor qualifications perform audits

while those hired to conduct investigations conduct investigations... I recognized that it may make better sense and be more cost effective to move to a vehicle pool situation for the auditors and reexamine the requirement of carrying a weapon. These cost-saving measures will not only save money on the vehicles, but also on the cost of training.” (*See Attachment #4 for the full letter.*)

Comparison with Other Agencies with Similar Missions

Office of Independent Review, County of Los Angeles

The Office of Independent Review is a civilian oversight group created by the Los Angeles County Board of Supervisors to monitor the county's Sheriff's Department. According to the office mission statement, it provides legal advice to ensure that allegations of officer misconduct involving the Sheriff's Department "are investigated in thorough, fair, and effective ways." There is a direct parallel with the state Office of the Inspector General, since the Los Angeles office oversees the county's massive jail system as part of its oversight function.

In fact, the OIG's Bureau of Independent Review was *modeled* on the Los Angeles County office. In a 2005 report, Matthew L. Cate, then Inspector General, wrote this about the L.A. County office: "Having the Office of Independent Review model in place has provided the bureau with an excellent roadmap to follow as we began monitoring Department of Corrections and Rehabilitation's internal affairs operations."

There is a significant difference between the two offices. None of the Los Angeles lawyer/investigators are sworn peace officers – and that's how Chief Attorney Michael Gennaco wants it. Gennaco, who heads the L.A. team, was interviewed by Senate staff.

"The distinction between us and the state OIG is this: We don't work for anybody, and that independence is key for us. We don't have peace officer status," Gennaco said. "We don't feel we need peace officer status – we never asked for it, we never needed it, we don't want it."

Gennaco noted that the lawyers in his office are private contractors, not public employees: "We each have a contract with the Board of Supervisors to assist the county in overseeing the Sheriff's Department. We are provided cars – we go out to crime scenes and to homicides and suicides at the five jails and dozens of sheriff's stations across Los Angeles County. I don't know how we'd handle it without cars."

Asked if his team needs weapons for self-protection, Gennaco said no, even though they respond to crime scenes across the county at all hours to monitor officer conduct.

“Driving there *can* get scary – particularly when you’re responding to a crime scene in a tough neighborhood at 3 a.m.,” he said. “But once you’re inside the yellow tape, you’re pretty safe.”

State Attorney General’s Office

California’s Attorney General employs 1,150 lawyers. They don’t have take-home cars and just a handful – fewer than 5 – are sworn peace officers, according to Dave Harper, assistant director, Department of Justice Administrative Services Division. Harper said only one of the department’s lawyers carries a gun: the chief of the gambling bureau.

The 80 auditors who work for the Attorney General do not get take-home cars and are not peace officers. In fact, Penal Code Section 830.13 specifically states that the AG’s auditors are *not* peace officers and shall not carry firearms. They may, however, “exercise the power to serve warrants.”

The Attorney General’s 538 special agents are sworn peace officers who are armed and get take-home state cars under their labor agreement. Their job description requires them to be strong, fit and agile. Often teamed with a non-sworn deputy attorney general, a special agent might investigate illegal drug activity or go undercover to infiltrate organized crime. In 2009/10, the Attorney General budgeted \$32,000 a year for each special agent’s Code 3 car.

Office of the Inspector General, U.S. Department of Justice

The federal Office of the Inspector General monitors the U.S. Department of Justice nationwide, including the FBI and federal prisons. The office’s nationwide workforce of 445 employees includes auditors, program analysts, criminal investigators, attorneys, and administrative and support personnel.

Its criminal investigators are law enforcement officers who carry guns. The auditors and analysts do not. “A few of our attorneys do have guns,” a spokesman told Senate staff, “but they are kept in the office.”

Attachments

- 1) Public Records Act request from the Senate Office of Oversight and Outcomes
- 2) Office of the Inspector General organizational chart
- 3) September 2009 letter from Inspector General David Shaw declining to reduce the OIG vehicle fleet
- 4) November 2010 follow-up letter from the Inspector General responding to Senate questions
- 5) Relevant Penal Code sections
- 6) Duties of the Inspector General

California Senate Office of Oversight and Outcomes
Legislative Office Building, Room 560
1020 N Street
Sacramento CA 95814

Inspector General David R. Shaw
Office of the Inspector General
3927 Lennane Drive, Suite 220
Sacramento, CA 95834

August 23, 2010

– *time sensitive* –

**Request for Information under the California Public Records Act
Government Code §6250 et seq.**

Dear Mr. Shaw,

This request is from the Senate Office of Oversight and Outcomes. We are a non-partisan office created to bolster the Senate’s scrutiny of government performance.

Our office is examining the use of state cars – particularly in light of the governor’s Executive Order S-14-09 to reduce the state fleet and to decrease the number of home-storage permits. Our understanding is that the Office of the Inspector General is one of 18 state agencies that sought and received an exemption from this order. This letter requests current information about the OIG’s use of state cars and home-storage permits.

We are also reviewing other issues regarding the peace officers employed at the OIG, including costs, functions, and benefits to California taxpayers. We are seeking information about the number and duties of peace officers in your workforce – and the law enforcement training and equipment they receive. We are not concerned with the performance of any individual employee.

Pursuant to the Public Records Act (Government Code §6250 et seq.), I am requesting that you provide me with access to or copies of the records described below. Please respond within the requisite 10 days.

We are looking for information that is current to June 30, 2010. Please be informed that the reference in this request to “records” means “public records” as defined by Government Code §6252 (e) and includes all “writings” as defined in §6252 (g).

Please provide OIG's policies and records that contain all or part of the following information:

Workforce:

1. Number of budgeted personnel and annual cost of their salaries.
2. Number of temporary, non-budgeted personnel and annual cost of their salaries.
3. Number of peace officers employed at OIG and annual cost of their salaries.
4. Employee classifications and the number of employees in each.
5. Classifications with peace officer status and the number of peace officers in each classification.

Law enforcement training:

1. List training courses required for each OIG peace officer.
2. Number of hours of training required annually of each peace officer.
3. Total cost of law enforcement training for OIG peace officers in fiscal year 2009-10. Also, please provide the cost of training by third parties versus in-house.
4. Travel-related costs for law enforcement training in fiscal year 2009-10.

Law enforcement equipment (non-vehicular):

1. List of law enforcement equipment assigned to each OIG peace officer, including all clothing, weaponry, ammunition, and safety equipment.
2. Total cost of this equipment per officer in 2009-10.
3. Total cost of ammunition for the OIG in 2009-10.

Peace officer duties: Since 2005, how many times has an OIG peace officer:

1. Executed a search warrant for OIG.
2. Made an OIG arrest.
3. Referred a criminal case to a prosecuting agency.
4. Testified in criminal court on an OIG case.
5. Used less-than-lethal force.
6. Fired a weapon on duty.
7. Been involved in a high-speed pursuit on an OIG case.
8. Been the primary respondent to a crime scene.

Retired peace officers:

1. Number of peace officer retired annuitants working in each of OIG's bureaus.
2. Number of OIG employees who became peace officers for the first time when hired by your office.
3. Number of OIG employees who worked as peace officers prior to being hired by your office.
4. Number of retired peace officers at OIG who received salary increases of 10% or more compared to their previous pay at retirement.

State vehicles:

1. Total number of state vehicles in the OIG automotive fleet. Also:
Number owned by the OIG and the number leased through DGS.
2. Purchase cost of vehicles owned by OIG.
3. Total cost to maintain vehicles during fiscal year 2009-2010.
4. Number of vehicles assigned to OIG peace officers.
5. Number of vehicles equipped with emergency lights and sirens.
6. Number of vehicles equipped with law enforcement radios.
7. List law enforcement equipment assigned to each OIG vehicle.
Please provide the total cost of this equipment per car.
8. Number of personnel responsible for providing or maintaining state vehicles.

Home-storage permits for state vehicles:

1. OIG's general policy on home storage of state vehicles.
2. Number of vehicular home-storage permits authorized by the OIG.
3. Number of home-storage permits authorized for OIG peace officers.
4. Number of home-storage permits authorized for each bureau:
Independent Review, Audits and Investigations, and Criminal Investigations.
5. Total distance in miles that OIG peace officers logged in their take-home state vehicles during 2009-10. Also, please provide this total for each bureau.
6. Total distance in miles from home to office for OIG peace officers with take-home state cars. Also, please provide this total for each bureau.

Governor's Executive Order S-14-09 of July 17, 2009:

1. Measures taken to comply with the order to reduce the overall size of the vehicle fleet and to reduce the number of vehicular home-storage permits.
2. Documents regarding OIG's exemption from Executive Order S-14-09.
3. Records documenting or explaining the reasons or justifications for the OIG's exemption from the executive order.

If I can clarify our request to help speed the availability of the records, please call me at (916) 651-1660 or e-mail me at dorothy.korber@sen.ca.gov.

Thanks for your time and attention. I hope to hear from you as soon as possible.

Sincerely,

Dorothy Korber,
Principal Consultant

David R. Shaw, Inspector General



Office of the Inspector General

September 30, 2009

RECEIVED
SEP 30 2009
DEPT OF GENERAL SERVICES
EXECUTIVE OFFICE

Will Bush, Director
Department of General Services
707 3rd Street
West Sacramento, CA 95605

Dear Mr. Bush:

Executive Order S-14-09 requires all state agencies under the Governor's direct executive authority to submit a vehicle reduction plan to the Department of General Services by October 1, 2009. The Office of the Inspector General (OIG) is a statutorily created independent office that is not a subdivision of any other governmental entity and as such does not report directly to the Governor. Therefore, the OIG is not submitting a vehicle reduction plan to you. Additionally, I have discussed this issue with the Governor's Office and have received concurrence from Cabinet that all law enforcement vehicles assigned to peace officers at the OIG would, in any case, be exempt from the Executive Order.

With respect to the OIG vehicles, my entire fleet, with the exception of two pool vehicles, is assigned to peace officers with 24 hour roll-out responsibilities for critical services and functions specifically mandated by the federal court and state statutes. Reducing the fleet would affect our ability to perform essential functions and could result in federal liability.

If you have questions about the OIG fleet, please call Laura Hill, Special Advisor, at (916) 830-3600.

Sincerely,

A handwritten signature in blue ink that reads "David R. Shaw".

David R. Shaw
Inspector General

David R. Shaw, Inspector General



Office of the Inspector General

November 3, 2010

via Facsimile # (916) 324-5927
& email: Dorothy.Korber@sen.ca.gov

Dorothy Korber, Principal Consultant
Senate Office of Oversight & Outcomes
1020 N Street, Room 560
Sacramento, CA 95814

RE: Senate Oversight & Outcomes' Review of the Office of the Inspector General

Dear Ms. Korber:

The Office of the Inspector General (OIG) welcomes the opportunity to respond to the concerns of the Senate Office of Oversight & Outcomes' (SOOO) review of the OIG, in particular use of state cars and issues regarding peace officers. The initial request for information was in the form of a Public Records Act request that was narrowed to a specific time frame. In compliance with the law, the OIG provided all documents responsive to the request. The SOOO had follow-up questions that included a broader time frame and required descriptive responses. For that reason, the OIG gladly takes this opportunity to explain plans that are currently in the works to streamline and make the office more cost effective given the state's current budget situation as well as justification for peace officer status.

1. Plan to reduce the OIG fleet to comply with Governor's Order S-14-09

The SOOO requested documentation to support the number of vehicles owned by the OIG, monthly mileage, and home storage permits. In response to the document production and after meeting with the Inspector General, the SOOO requested additional information regarding the OIG plans to further reduce its fleet.

Pursuant to Executive Order S-14-09, the Governor ordered that all state agencies reduce their fleets by 15%. Any exemption must be approved by the secretary of the State Consumer Services Agency and the Cabinet Secretary. I briefed former Chief Deputy Cabinet Secretary Paul Feist regarding the OIG fleet, which is assigned to peace officers with 24-hour roll-out responsibilities. Secretary Feist agreed that law enforcement vehicles, including the OIG's, would be exempt from the order. Subsequently and on several occasions, I have briefed the current Chief Deputy Cabinet Secretary, Scott Reid, on the OIG's vehicle reduction plan.

In spite of the exemption, I told the Governor's office that the agency would not buy any new cars and would nevertheless meet the 15% by attrition. The OIG received approval through the budget process to hire new employees to implement constitutional remedies ordered by the federal court, including medical inspections and monitoring use of force. Although the salary

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package for those new employees included vehicles, the OIG decided to not purchase any new vehicles and meet the 15% reduction by having 15% more employees than vehicles on hand. Through the hiring process this plan has almost been implemented in its entirety, resulting in the OIG being in compliance with Executive Order S-14-09.

In addition, for the past year and a half, the OIG has been working on a reorganization of its existing structure and staffing in light of its expanded duties resulting from demands from the federal courts, the Legislature, and the Governor's Office. In 1999, after the Legislature made the OIG an independent agency, the Deputy Inspector General (DIG) civil service classification was created with the understanding that DIGs would serve as audit and investigative personnel. Despite the fact that audit and investigative skills are ordinarily viewed as distinctly different skill sets, the official DIG civil service classification did not differentiate between the two.

All the DIGs are designated as peace officers under Penal Code section 830.2. In recognition of this statewide, continuous on-call peace officer status, all DIGs, regardless of skill set, are assigned vehicles.

Once that the OIG's missions had been expanded and better defined, the time arrived for the organization to reassess its existing structure. Although theoretically a DIG can conduct either an audit or an investigation, the reality is that DIGs hired under the auditor qualifications perform audits while those hired to conduct investigations conduct investigations. With that in mind, in early 2009, the OIG separated the auditors from the investigators and created the new Bureau of Criminal Investigation (BCI). (See OIG 2009 Annual Report, Organizational Overview, p.4.) The auditors remain in the Bureau of Audits and Investigations while the investigators are in BCI.

Along with this change, I recognized that it may make better sense and be more cost effective to move to a vehicle pool situation for the auditors and reexamine the requirement of carrying a weapon. These cost-saving measures will not only save money on the vehicles, but also on the cost of training. The OIG hopes to have its vehicle reduction plan implemented by December 2010.

2. Importance of peace officer positions in the OIG

The SOOO questioned the impact of peace officer status on recruitment and retention, particularly with regard to the Special Assistant Inspectors General (SAIG) assigned to the OIG's Bureau of Independent Review (BIR) and the DIG auditors. There are several reasons for the peace officer status, including recruitment and retention.

The SAIGs and DIGs primarily monitor or audit other peace officers. Office of Internal Affairs (OIA) special agents are peace officers under Penal Code section 830.2(d)(2). They carry weapons and are assigned vehicles. Agents in the California Department of Corrections and

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Rehabilitation (CDCR) Office of Correctional Safety are also peace officers under Penal Code section 830.2(d)(1) as well. In addition, parole agents and prison staff are peace officers under Penal Code section 830.5. The former carry weapons on-duty and the latter use guns when assigned to a gun post and are allowed to carry of firearms off-duty as well. Peace officer status also allows the SAIGs and DIGs unfettered access to crime scenes and other places and situations throughout correctional facilities, and puts them on equal footing with the peace officer management and staff whom they oversee.

As noted below in section 4, SAIGs engage in unique duties that are enhanced by their peace officer status. They monitor criminal and administrative investigations conducted by the OIA, who frequently engage in search warrant executions, arrests, and surveillance. Peace officer status ensures that the SAIGs receive adequate training and develop the essential skills to monitor these functions and participate when required.

Similarly, the DIG auditors' core function is conducting audits and inspections in prisons. DIGs cross through prison yards to perform audits that may expose the mismanagement /misconduct of other peace officers. They interview staff and inmates, individually and through the men's advisory committee representatives. Peace officer status ensures cooperation of CDCR staff and managers, especially when securing evidence marked for an audit or other function.

The current benefit package is an inducement for current and future recruitment and retention. It is hard to attract attorneys and auditors to work in a prison and around inmates and parolees without some significant incentives. Both attorneys and auditors have other job options inside and outside state service in more desirable settings. Peace officer status, and the attendant benefit package, recognizes the inherent hazard of spending significant time in prisons – walking the yards, interviewing inmates and parolees, and dealing with potentially hostile staff subject to discipline for acts of criminal or administrative misconduct and mismanagement. The ultimate effect of a less competitive benefit package cannot be predicted with any certainty, but it is indisputable that the job will be viewed less favorably, especially by the most desirable applicants.

Virtually all other state jobs related to CDCR have similar enhanced benefit packages to account for the work environment. After being unable to attract employment law attorneys and at the urging of the federal court, the employment law section at CDCR pays its attorneys \$900 more a month to work at CDCR than similar classification of attorneys both at CDCR and other state agencies. The California Correctional Peace Officers Association recognizes the same problem in recruiting people to work in a prison as correctional officers and has fought hard to obtain a benefit package that recognizes the inherent problems in attracting people to work in a prison. The federal court also had the salary of nurses and doctors in prisons significantly increased recognizing the difficulty in recruiting medical personnel to work in a prison. Other non-sworn employees who work in prisons are given safety retirement as an enticement to work in a prison and around inmates. Thus, it is a commonly known fact based on recruitment difficulties that

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people who work in a prison, especially around and with inmates, must be paid more, given enhanced retirements, or some other enticement to work in a prison environment.

3. Legislative history on POFF retirement for OIG peace officers

The SOOO mistakenly thought that a statute or legislative history stated that BIR SAIGs were required to be peace officers. What the OIG meant to convey is that there are legislative counsel digest notes, which indicate the legislative intent that peace officers at the OIG are to be given enhanced peace officer retirement.

In 1999, an independent Office of the Inspector General existed. Pursuant to SB 868, the responsibilities, duties, and authority of the OIG were revised. At the same time, additional changes were made to Penal Code section 830.2, adding subsection (j) specifying that the Inspector General, the Chief Deputy Inspector General, and the Deputy Inspector General classification, as well as employees designated by the IG, are peace officers provided their primary duties were conducting audits and investigations of what is now known as the CDCR.

In the Legislative Counsel's Digest to SB 868, the following intent of the legislature was stated with regard to enhanced retirement of OIG employees designated as peace officers:

* * * *

“(4) Existing law provides that specified persons are peace officers whose authority extends to any place in the state provided that the primary duty of the peace officers is the enforcement of the law, as specified.

This bill would revise that provision to provide, in addition, that a peace officer, as specified above, includes deputies of the Inspector General, as specified, and any employee under the authority of the Inspector General as designated by the Inspector General provided that the primary duty of these peace officers shall be conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections. . . .

* * * *

“(11) The Public Employees Retirement Law provides for benefits and contribution rates for peace officer members that are higher than those provided for state miscellaneous members. The state's employer contributions to the Public Employee Retirement Fund are continuously appropriated from the General Fund and other funds in the State Treasury.

“Because this bill would provide that any employee under the authority of the Inspector General as designated by the Inspector General is a peace officer,

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thereby including these employees within the category of peace officer members, it would make an appropriation from the General Fund and other funds to the State Treasury by increasing the state's contribution to the Public Employees' Retirement Fund for these new state peace officer members."

(See attached Legislative Counsel's Digest to SB 868, p.3.)

Thus, the Legislature declared that the peace officer positions within the OIG are 830.2 peace officers and provided that the Inspector General (IG) has the authority to designate other employees as 830.2 peace officers. In addition, the Legislature stated that money would be appropriated to increase the state's contribution to the retirement fund for these new state peace officer members in the OIG. Thus, the Legislature declared its intent that peace officers within the OIG are to have enhanced peace officer retirement identical to all other peace officers in the 830.2 category of peace officers. In other words, the peace officers within the OIG would have POFF or Peace Officer/Fire Fighter retirement which until recently was three (3) percent at age fifty.

4. Clean-up amendment to Penal Code section 830.2 with the creation and addition of the Bureau of Independent Review within the OIG

The SOOO questioned the addition of the SAIG classification to Penal Code section 830.2. Rather than a clean up amendment, SOOO viewed it as a significant change in the statute. Because the SAIG classification was already designated as peace officers, the OIG viewed the amendment as clean up for the reasons discussed below.

In 2004 pursuant to SB 1400, authored by Senator Gloria Romero along with support by then Senator Jackie Speier, the BIR was created within the OIG in response to the federal courts' finding that CDCR internal affairs investigations into excessive use of force in prisons were "counterfeit" and "were pursued in order to avoid finding officer misconduct as often as possible." *Madrid v. Gomez*, 889 F. Supp. 1146 (N. D. Cal. 1990). To remedy the violations, the special master recommended the creation of the BIR to perform "real time monitoring" of internal affairs cases related to abuse of force and violations of employee ethics.

Because the court wanted the new bureau up and running immediately and the Legislature had enacted the statute creating the BIR effective immediately, the Governor appointed people into positions to perform the duties set forth in Penal Code section 6133. The new employees were called SAIGs. The thought was that a new civil service classification would be created but, because the process would take several months and possibly more than a year, using appointed positions was the only way to comply with the Legislature's statutory intent and the court's desire to implement corrective remedies as soon as possible.

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The SAIGs were designated peace officers who were required to have law degrees because they would monitor the disciplinary system from cradle to grave, i.e. from the initiation of the investigation through the disciplinary process before the State Personnel Board. In short, these new inspectors would be monitoring peace officers and attorneys in the performance of their job duties and assessing their compliance with new department policies and procedures adopted to correct constitutional violations found by the federal court. It should be noted here that the SAIG classification is not an attorney classification, but rather a peace officer classification.

Indeed it took over two years for the civil service class of SAIG to be approved and implemented. In January of 2007, the Department of Personnel Administration and the State Personnel Board approved the creation of the civil service classification of Special Assistant Inspector General. The job specifications stated that the SAIGs “are peace officers whose authority extends to any place in the state and are active members of the California State Bar.” Among other things, the job description includes:

“perform duties unescorted within assigned correctional institutions; monitor the presentation of criminal cases to DA’s for filing; respond at all hours to critical incidents at institutions, including responding to riots, shootings, stabbings, and hostage situations; respond to emergency situations at institutions in an expedited manner; accompany and monitor the service of criminal search warrants, as well as consent searches in criminal cases; participate in covert surveillance operations with Office of Internal Affairs agents of narcotics trafficking and other criminal activity; daily exposure to potential physical harm while working at prisons with other peace officers (e.g., gassing, assault, etc.); use defensive tactics in the event of an assault by inmates; observe and monitor arrests by internal affairs agents; arrest, use force as necessary, or defend themselves in dealing with uncooperative and/or armed suspects and other individuals; assist other law enforcement agencies to conduct complex investigations, use weapons in the event of a riot; participate in hostage negotiations with inmates holding hostages, monitor and oversee high risk parolee apprehensions conducted by CDCR parole regions; and work with riot agents and other hazardous chemicals.”

Thus, the SAIGs are required to perform the duties of a peace officer in addition to having knowledge of legal aspects of investigations, administrative discipline and criminal prosecution.

To conform the OIG statute to include the addition of the BIR, in 2009 several places in the statute were amended to, among other things, include the added duty of contemporaneous oversight of internal affairs investigation and the related disciplinary process by the OIG. (See Penal Code section 6126, 6126.3(a)(5), and 6126.5(b).) In addition, and for the same reason, Penal Code section 830.2 was amended to include the SAIGs, the new classification of peace officers within the OIG.

The SOOO expressed concern that this latter amendment somehow took the IG’s discretionary authority away to designate the SAIGs as peace officers. With regard to the SAIGs, however, the IG had no discretion with respect to whether individuals appointed to the classification will

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be designated peace officers. The civil service classification of SAIGs was designated as peace officers, therefore, the IG had no discretion in designating those employees as anything other than peace officers. Assuming the SAIG candidates meet the classification requirements, in order to comply with the job specifications, the IG is required to swear them in as peace officers.

The discretion referenced in the statute concerns “those employees of the Inspector General *as designated by the Inspector General*” as peace officers. For example, if as did happen, an employee who was a peace officer was called away on active military duty for an extended period of time, the IG could hire a Retired Annuitant or limited term employee to temporarily fill the position. Pursuant to Penal Code section 830.2, the IG has the authority to designate that person as a peace officer. Or, if additional investigators were required for an unexpectedly large investigation of a prison riot or a highly publicized crime by a parolee, the IG has the authority to hire a Retired Annuitant and give them peace officer authority. The statutory discretion is not to decide whether or not to designate a permanent employee as peace officer who is in a civil service position that requires the employee to be a peace officer. Rather the discretion is for the IG to designate employees who may be employed on a temporary basis as a peace officer when they otherwise meet the requirements to be a peace officer.

I hope the above fully explains the remaining questions that the SOOO has with regard to the operation of the OIG. If, however, there are additional concerns, please feel free to contact me.

Sincerely,



David Shaw
Inspector General

Enclosure

6125. There is hereby created the independent Office of the Inspector General which shall not be a subdivision of any other governmental entity. The Governor shall appoint, subject to confirmation by the Senate, the Inspector General to a six-year term. The Inspector General may not be removed from office during that term, except for good cause.

6126. (a) (1) The Inspector General shall review departmental policy and procedures, conduct audits of investigatory practices and other audits, be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process, and conduct investigations of the Department of Corrections and Rehabilitation, as requested by either the Secretary of the Department of Corrections and Rehabilitation or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General. The Inspector General may, under policies developed by the Inspector General, initiate an investigation or an audit on his or her own accord.

(2) The Inspector General shall audit each warden of an institution one year after his or her appointment, and shall audit each correctional institution at least once every four years. Each audit of a warden shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. Each four-year audit shall include an assessment of the maintenance of the facility managed by the warden. The audit report shall include all significant findings of the Inspector General's assessment of facility maintenance. These audit reports shall be provided to the Legislature and shall be made public. The requirements of this paragraph shall be phased in by the Inspector General so that they are fully met by July 1, 2009.

(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.

(c) The Inspector General shall, during the course of an investigatory audit, identify areas of full and partial compliance, or noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies, additional policies, or changes in policy, as well as any other findings or recommendations that the Inspector General deems appropriate.

(d) The Inspector General, pursuant to Section 6126.6, shall review the Governor's candidates for appointment to serve as warden for the state's adult correctional institutions and as superintendents for the state's juvenile facilities.

(e) The Inspector General shall, in consultation with the Department of Finance, develop a methodology for producing a workload budget to be used for annually adjusting the budget of the Office of the Inspector General, beginning with the budget for the 2005-06 fiscal year.

6126.1. (a) The Inspector General shall establish a certification program for peace officers under the Inspector General's jurisdiction. The peace officer training course shall be consistent with the standard courses utilized by the Commission of Peace Officer Standards and Training and other major investigative offices, such as county sheriff and city police departments and the California Highway Patrol.

(b) Beginning January 1, 1999, peace officers under the Inspector General's jurisdiction conducting investigations for the Office of the Inspector General, shall complete investigation training consistent with standard courses utilized by other major law enforcement investigative offices and be certified within six months of employment.

(c) Beginning January 1, 1999, all peace officers under the Inspector General's jurisdiction shall successfully pass a psychological screening exam before becoming employed with the Office of the Inspector General.

6126.2. The Inspector General shall not hire as a peace officer any person known to be directly or indirectly involved in an open internal affairs investigation being conducted by any federal, state, or local law enforcement agency or the Inspector General.....

...6126.4. It is a misdemeanor for the Inspector General or any employee or former employee of the Inspector General to divulge or make known in any manner not expressly permitted by law to any person not employed by the Inspector General any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition is also applicable to any person or business entity that is contracting with or has contracted with the Inspector General and to the employees and former employees of that person or business entity or the employees of any state agency or public entity that has assisted the Inspector General in the course of any audit or investigation or that has been furnished a draft copy of any report for comment or review.

6126.5. (a) Notwithstanding any other provision of law, the Inspector General during regular business hours or at any other time determined necessary by the Inspector General, shall have access to and authority to examine and reproduce any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property of the Department of Corrections and Rehabilitation for any audit, investigation, inspection, or contemporaneous oversight. Any officer or employee of any agency or entity having these records or property in his or her possession or under his or her control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Inspector General or his or her authorized representative.

(b) For the purpose of conducting any audit, investigation, inspection, or contemporaneous oversight, the Inspector General or his or her authorized

representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited, investigated, or overseen to the same extent that employees or officers of that agency or public entity have access. No provision of law or any memorandum of understanding or any other agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure pursuant to subdivision (a). Access, examination, and reproduction consistent with the provisions of this section shall not result in the waiver of any confidentiality or privilege regarding any records or property.

(c) Any officer or person who fails or refuses to permit access, examination, or reproduction, as required by this section, is guilty of a misdemeanor.

(d) The Inspector General may require any employee of the Department of Corrections and Rehabilitation to be interviewed on a confidential basis. Any employee requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. The Inspector General shall have the discretion to redact the name or other identifying information of any person interviewed from any public report issued by the Inspector General, where required by law or where the failure to redact the information may hinder prosecution or an action in a criminal, civil, or administrative proceeding, or where the Inspector General determines that disclosure of the information is not in the interests of justice. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. If it appears that the facts of the case could lead to punitive action, the Inspector General shall be subject to Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code as if the Inspector General were the employer, except that the Inspector General shall not be subject to the provisions of any memorandum of understanding or other agreement entered into between the employing entity and the employee or the employee's representative that is in conflict with, or adds to the requirements of, Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code.

6126.6. (a) Prior to filling a vacancy for warden by appointment pursuant to Section 6050, or superintendent pursuant to Section 1049 of the Welfare and Institutions Code, the Governor shall first submit to the Inspector General the names of candidates for the position of warden or superintendent for review of their qualifications.

(b) Upon receipt of the names of those candidates and their completed personal data questionnaires, the Inspector General shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the duties of the office to which the appointment or nomination is made. Within 90 days of submission by the Governor of those names, the Inspector General shall advise in

confidence to the Governor his or her recommendation whether the candidate is exceptionally well-qualified, well-qualified, qualified, or not qualified and the reasons therefore, and may report, in confidence, any other information that the Inspector General deems pertinent to the qualifications of the candidate.

(c) In reviewing the qualifications of a candidate for the position of warden or superintendent, the Inspector General shall consider, among other appropriate factors, his or her experience in effectively managing correctional facilities and inmate or ward populations; ability to deal effectively with employees, detained persons and other interested persons in addressing management, confinement, and safety issues in an effective, fair, and professional manner; and knowledge of correctional best practices.

(d) The Inspector General shall establish and adopt rules and procedures regarding the review of the qualifications of candidates for the position of warden or superintendent. Those rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's reputation and integrity which, unless rebutted, would be determinative of the candidate's unsuitability for appointment. No rule or procedure shall be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process which would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(e) All communications, written, verbal or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the Inspector General in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the Inspector General with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(f) When the Governor has appointed a person to the position of warden or superintendent who has been found not qualified by the Inspector General, the Inspector General shall make public that finding, after due notice to the appointee of his or her intention to do so. That notice and disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the Inspector General concerning the qualifications of the appointee.

(g) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefore.

(h) As used in this section, the term "Inspector General" includes employees

and agents of the Office of the Inspector General.

(i) At any time prior to the receipt of the review from the Inspector General specified in subdivision (b), the Governor may withdraw the name of any person submitted to the Inspector General for evaluation pursuant to this section.

(j) No candidate for the position of warden or superintendent may be appointed until the Inspector General has advised the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the Inspector General, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in the position of warden or superintendent occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies, the Governor shall be required to submit any candidate's name to the Inspector General in order to provide him or her an opportunity, if time permits, to review and make a report.

(k) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to the position of warden or superintendent, nor shall anything in this section be construed as adding any additional qualifications for the position of warden or superintendent.

(l) Wardens who have been appointed but not yet confirmed as of July 1, 2005, need not be reappointed to the position after that date, but are subject to the review process provided in this section.

6127.1. The Inspector General shall be deemed to be a department head for the purpose of Section 11189 of the Government Code in connection with any investigation or audit conducted pursuant to this chapter. The Inspector General shall have authority to hire or retain counsel to provide confidential advice during audits and investigations. If the Attorney General has a conflict of interest in representing the Inspector General in any litigation, the Inspector General shall have authority to hire or retain counsel to represent the Inspector General.

6127.3. (a) In connection with an audit, investigation, or inspection pursuant to this chapter, the Inspector General, or his or her designee, may do any of the following:

(1) Administer oaths.

(2) Certify to all official acts.

(3) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, or documents in any medium, or for the making of oral or written sworn statements, in any investigative interview conducted as part of an audit or investigation.

(b) Any subpoena issued under this chapter extends as process to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the Inspector General, or his or her designee. The person serving this process may receive compensation as is allowed by the Inspector General, or his or her designee, not to exceed the fees prescribed by law for similar service....

...6128. (a) The Office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe an improper governmental activity, as that term is defined in subdivision (b) of Section 8547.2 of the Government Code. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(b) In order to properly respond to any allegation of improper governmental activity, the Inspector General shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the Department of Corrections and Rehabilitation. This telephone number shall be posted by department in clear view of all employees and the public. When appropriate, the Inspector General shall initiate an investigation or audit of any alleged improper governmental activity. However, any request to conduct an investigation shall be in writing.

(c) All identifying information, and any personal papers or correspondence from any person who initiated the investigation shall not be disclosed, except in those cases where the Inspector General determines that disclosure of the information is necessary in the interests of justice.

6129. (a) (1) For purposes of this section, “employee” means any person employed by the Department of Corrections and Rehabilitation.

(2) For purposes of this section, “retaliation” means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done any of the following:

(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.

(B) Has cooperated or is cooperating with any investigation of improper governmental activities.

(C) Has refused to obey an illegal order or directive.

(b) (1) Upon receiving a complaint of retaliation from an employee against a member of management at the Department of Corrections and Rehabilitation, the Inspector General shall commence an inquiry into the complaint and conduct a formal investigation where a legally cognizable cause of action is presented. All investigations conducted pursuant to this section shall be performed in accordance with Sections 6126.5 and 6127.3. The Inspector General may refer all other matters for investigation by the appropriate employing entity, subject to investigative oversight by the Inspector General. In a case in which the employing entity declines to investigate the complaint, it shall, within 30 days of receipt of the referral by the Inspector General, notify the Inspector General of its decision. The Inspector General shall thereafter, conduct his or her own inquiry into the complaint. If, after reviewing the complaint, the Inspector General determines that a legally cognizable cause of action has not been presented by the complaint, the Inspector General shall

thereafter notify the complaining employee and the State Personnel Board that a formal investigation is not warranted.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General or the employing entity shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) In a case in which the complaining employee has also filed a retaliation complaint with the State Personnel Board pursuant to Sections 8547.8 and 19683 of the Government Code, the State Personnel Board shall have the discretion to toll any investigation, hearing, or other proceeding that would otherwise be conducted by the State Personnel Board in response to that complaint, pending either the completion of the Inspector General's or the employing entity's investigation, or until the complaint is rejected or otherwise dismissed by the Inspector General or the employing entity. An employee, however, may not be required to first file a retaliation complaint with the Inspector General prior to filing a complaint with the State Personnel Board.

(A) In a case in which the complaining employee has filed a retaliation complaint with the Inspector General but not with the State Personnel Board, the limitation period for filing a retaliation complaint with the State Personnel Board shall be tolled until the time the Inspector General or the employing entity either issues its investigative report to the State Personnel Board, or until the complaint is rejected or otherwise dismissed by the Inspector General or the employing entity.

(B) In order to facilitate coordination of efforts between the Inspector General and the State Personnel Board, the Inspector General shall notify the State Personnel Board of the identity of any employee who has filed a retaliation complaint with the Inspector General, and the State Personnel Board shall notify the Inspector General of the identity of any employee who has filed a retaliation complaint with the State Personnel Board.

(c) (1) In a case in which the Inspector General determines, as a result of his or her own investigation, that an employee has been subjected to acts of reprisal, retaliation, threats, or similar acts in violation of this section, the Inspector General shall provide a copy of the investigative report, together with all other underlying investigative materials the Inspector General determines to be relevant, to the appropriate director or chair who shall take appropriate corrective action. In a case in which the Inspector General determines, based

on an independent review of the investigation conducted by the employing entity, that an employee has been subjected to acts of reprisal, retaliation, threats, or similar acts in violation of this section, the Inspector General shall submit a written recommendation to the appropriate director or chair who shall take appropriate corrective action. If the hiring authority initiates disciplinary action as defined in Section 19570 of the Government Code, it shall provide the subject with all materials required by law.

(2) The Inspector General shall publish a quarterly summary of investigations, with personal identifying information removed, including, but not limited to, the conduct investigated, any recommended discipline, and any discipline actually imposed.

(3) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by the employing entity by adverse action as provided in Section 19572 of the Government Code. The disciplinary action shall require, at a minimum, a suspension for not less than 30 days without pay, except in a case in which the employing entity determines that a lesser penalty is warranted. In that case, the employing entity shall, within 30 days of receipt of the investigative report, provide written justification for that decision to the Inspector General. The employing entity shall also, within 30 days of receipt of the written report, notify the Inspector General in writing as to what steps, if any, it has taken to remedy the retaliatory conduct found to have been committed by any of its employees.

(d) (1) In an instance in which the appropriate director or chair declines to take adverse action against any employee found by the Inspector General to have engaged in acts of reprisal, retaliation, threats, or similar acts in violation of this section, the director or chair shall notify the Inspector General of that fact in writing within 30 days of receipt of the investigative report from the Inspector General, and shall notify the Inspector General of the specific reasons why the director or chair declined to invoke adverse action proceedings against the employee.

(2) The Inspector General shall, thereafter, with the written consent of the complaining employee, forward an unredacted copy of the investigative report, together with all other underlying investigative materials the Inspector General deems to be relevant, to the State Personnel Board so that the complaining employee can request leave to file charges against the employee found to have engaged in acts of reprisal, retaliation, threats, or similar acts, in accordance with the provisions of Section 19583.5 of the Government Code. If the State Personnel Board accepts the complaint, the board shall provide the charged and complaining parties with a copy of all relevant materials.

(3) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have

intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.

6131. (a) Upon the completion of any audit conducted by the Inspector General, he or she shall prepare a written report, which shall be disclosed, along with all underlying materials the Inspector General deems appropriate, to the Governor, the Secretary of the Department of Corrections and Rehabilitation, the appropriate director, chair, or law enforcement agency, and the Legislature. Copies of all those written reports shall be posted on the Inspector General's Web site within 10 days of being disclosed to the above-listed entities or persons.

(b) Upon the completion of any investigation conducted by the Inspector General, he or she shall prepare a complete written report, which shall be held as confidential and disclosed in confidence, along with all underlying investigative materials the Inspector General deems appropriate, to the Governor, the Secretary of the Department of Corrections and Rehabilitation, and the appropriate director, chair, or law enforcement agency.... 6132. The Inspector General shall report annually to the Governor and the Legislature a summary of his or her investigations and audits. The summary shall be posted on the Inspector General's Web site and otherwise made available to the public upon its release to the Governor and the Legislature. The summary shall include, but not be limited to, significant problems discovered by the Inspector General, and whether recommendations the Inspector General has made through audits and investigations have been implemented by the subject agency, department, or board.

6133. (a) There is created within the Office of the Inspector General a Bureau of Independent Review (BIR), which shall be subject to the direction of the Inspector General.

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

(c) (1) The BIR shall issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of the Department of Corrections and Rehabilitation allegations of

internal misconduct and use of force. The BIR shall also issue regular reports, no less than semiannually, summarizing its oversight of Office of Internal Affairs investigations pursuant to subdivision (b). The reports shall include, but not be limited to, the following:

(A) Data on the number, type, and disposition of complaints made against correctional officers and staff.

(B) A synopsis of each matter reviewed by the BIR.

(C) An assessment of the quality of the investigation, the appropriateness of any disciplinary charges, the BIR's recommendations regarding the disposition in the case and when founded, the level of discipline afforded, and the degree to which the agency's authorities agreed with the BIR recommendations regarding disposition and level of discipline.

(D) The report of any settlement and whether the BIR concurred with the settlement. (E) The extent to which any discipline was modified after imposition.

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

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

- Conduct investigations, audits, and special reviews of the state correctional system at the request of the governor, members of the Legislature, the secretary of the California Department of Corrections and Rehabilitation (CDCR) and upon the initiative of the inspector general.
- Perform real-time oversight of internal affairs investigations into alleged misconduct by CDCR employees.
- Assess the quality of representation provided by CDCR legal staff in disciplinary matters.
- Conduct audits of correctional institutions and baseline audits of each warden or superintendent one year after appointment.
- Provide advisement to CDCR regarding its policies and procedures to ensure they meet or exceed industry standards.
- Maintain a toll-free public telephone number to allow reporting of administrative wrongdoing, poor management practices, criminal conduct, fraud, or other abuses in CDCR.
- Investigate complaints of retaliation against those who report misconduct by CDCR and its employees.
- Evaluate and report to the governor the qualifications of the governor's candidates for warden and superintendent positions for the state's adult and juvenile correctional institutions.
- Refer matters involving criminal conduct to law enforcement authorities in the appropriate jurisdiction or to the California attorney general.
- Investigate the mishandling of sexual abuse incidents within correctional institutions, maintain the confidentiality of sexual abuse victims, and ensure impartial resolution of inmate and ward sexual abuse complaints through the Sexual Abuse in Detention Elimination Ombudsperson.
- Examine CDCR's various mental health, substance abuse, educational, and employment programs for inmates and parolees through the California Rehabilitation Oversight Board (C-ROB).
- Conduct semiannual inspections of adult and juvenile correctional institutions to examine systemic issues, identify problem areas that may lead to investigations or audits, and follow up on prior complaints.
- Report on the California Prison Health Care Receivership Corporation's expenditures to ensure transparency and accountability.
- Respond 24/7 to critical incidents, including officer-involved shootings, large-scale riots, suicides, and staff member deaths caused by inmates.
- Perform medical inspections to provide independent and objective information regarding the delivery of medical care to inmates at adult correctional institutions.
- Monitor CDCR's use-of-force committee meetings conducted by wardens, superintendents, and parole administrators across the state.

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