SENATE OFFICE OF OVERSIGHT AND OUTCOMES

The First Five Years

JULY 2014

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MISSION

Our mission is to bolster the Senate's ability to scrutinize and critique government operations. To that end, the office will provide objective research and create a written record for Senate committees engaged in oversight activities. The office may offer conclusions and alternatives on issues, but it will not take formal positions on policy. While recognizing that Senators may be divided in their approaches and goals, the office itself will operate in a non-partisan fashion and will serve legislators, regardless of party.

Introduction

The Senate Office of Oversight and Outcomes was created by Senate President pro Tem Darrell Steinberg in 2008 with a mission to improve accountability and transparency in government through original research using the tools of investigative reporting. Our findings are presented in clear, readable reports that become part of the public record and are often the centerpiece of legislative reform. As objective investigators, we strive to separate fact from fiction for policymakers. Recognizing that Senators may be divided in their approaches and goals, the Senate Oversight Office operates in a non-partisan fashion and strives to serve all Senators, regardless of party.

Unlike other Senate offices, the oversight operation is not staffed with policy experts and does not take formal positions on policy. Instead, the office consists of former journalists who bring a set of investigative skills and techniques that is unique in California state government. We mine government databases for information in unconventional ways – comparing, say, a list of home-care aides with court records naming convicted felons. We know how to find sources and conduct interviews that provide insights from those who actually deliver and use state services. Our reports give those people a voice – another feature that sets our work apart. And, if necessary, we understand when to promise anonymity to whistleblowers – and how to protect their identities. We also know how to use the California Public Records Act to obtain documents from government agencies. As newcomers to a field of inquiry, we bring fresh eyes and go where the information takes us.

Many of the ideas for our reports come from Senators themselves. The office also works closely with the Senate's legislative committees, which have long conducted oversight. But time is often at a premium for committee staffers, whose work is driven by strict legislative deadlines. Peter Detwiler, the longtime staff director of the Senate Local Government Committee, recognized this when he described the value of our office for policy staff entrenched in the business of legislating.

"The urgent need to review bills and deadlines makes it difficult to focus sustained attention on research," Detwiler said, "so having very clever and inquisitive people like these ex-reporters over there is a very good thing for us as policy committee staff."

So far, the office's three investigators have produced 27 reports. Their findings have anchored Senate hearings and many have become the basis for legislation. Those outcomes are detailed later in this overview. Most of the reports receive broad media coverage, increasing their impact and reminding the public that the California Senate takes oversight seriously.

The reports' targets reflect the broad spectrum of legislative activity. Among the topics:

- School districts' misappropriation of $170 million meant to feed California's poorest children.
- Callous foreclosures by a state program meant to help homeowners.
- An inspector general who armed his auditors only so they could qualify for lucrative peace officer pensions.
- Hidden costs of public employee furloughs.
- Failure to screen home caregivers, allowing felons and con artists to prey on the elderly.
- The collapse of the State Controller's $373 million computerized payroll system.

The thread connecting all of these diverse subjects is accountability.

Findings and Outcomes

Department of Fair Employment and Housing:
Underfunding and Misguided Policies Compromise Civil Rights Mission

A report prepared for the Senate Rules Committee

December 18, 2013

Prepared by Dorothy Korber and John Adkisson

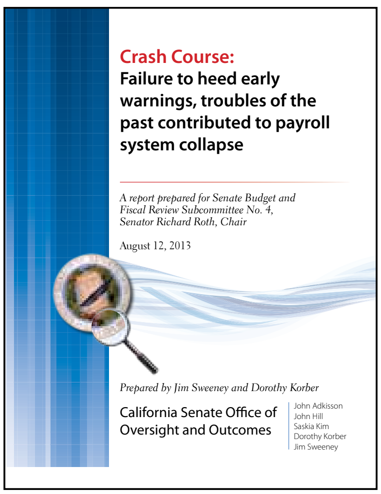
California Senate Office of Oversight and Outcomes

John Adkisson
John Hill
Saskia Kim
Dorothy Korber
Jim Sweeney

CIVIL RIGHTS

This project examined the Department of Fair Employment and Housing, California's civil rights agency. The report concluded that budget cuts have curbed the department's ability to investigate discrimination claims. The Oversight Office also uncovered a secret policy that allows the governor to veto cases against public agencies without explanation or public disclosure. And the report detailed other policies that have led to incoherent written complaints, plummeting staff morale and a training program that does not pass legal muster.

The investigation was cited in several legislative hearings in 2014, with department and agency officials questioned about the report's findings. In July, Senate Oversight Office staff testified before a joint hearing of the Senate and Assembly Public Employment committees. In August, DFEH Director Phyllis Cheng announced the department was making substantive changes – all of them recommended by the report. For example, DFEH consultants will now help people draft their discrimination complaints, ending the practice of sending jumbled and non-jurisdictional claims to employers. Also, Cheng said DFEH now has final say over which cases it will pursue, rather than the governor's office.



Crash Course:
Failure to heed early warnings, troubles of the past contributed to payroll system collapse

A report prepared for Senate Budget and Fiscal Review Subcommittee No. 4, Senator Richard Roth, Chair

August 12, 2013

Prepared by Jim Sweeney and Dorothy Korber

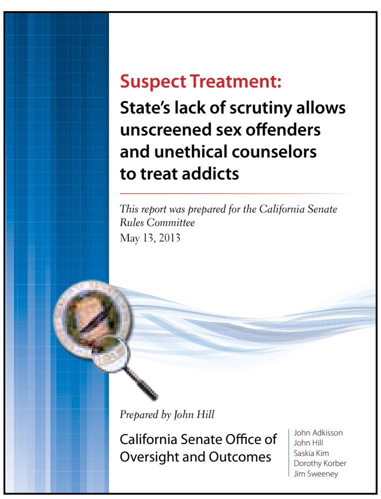
California Senate Office of Oversight and Outcomes

John Adkisson
John Hill
Saskia Kim
Dorothy Korber
Jim Sweeney

CRASH COURSE

Working with the staff of Senate Budget Subcommittee No. 4, the Oversight Office scrutinized events leading up to the failure of the State Controller's new $373 million computerized payroll system. The report found that the project suffered from a failure to resolve core issues raised early and often, chronic leadership turnover and lapses in due diligence. In addition, the report found the Controller's staff was not always candid about difficulties facing the project, delivering upbeat reports to the Legislature that often only hinted at the turmoil churning within the project.

Senator Richard Roth, chair of the budget subcommittee, used the report as a primary background document for an Aug. 15, 2013, hearing on the failed project. A second hearing was held April 10, 2014.



Suspect Treatment:
State's lack of scrutiny allows unscreened sex offenders and unethical counselors to treat addicts

This report was prepared for the California Senate Rules Committee

May 13, 2013

Prepared by John Hill

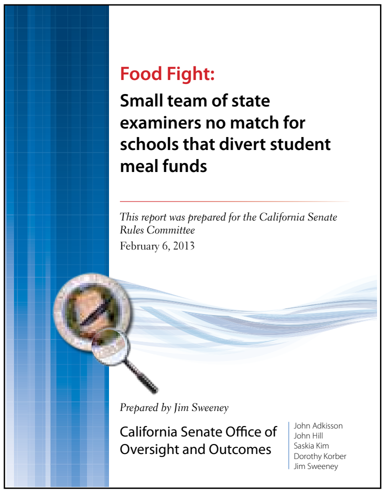
California Senate Office of Oversight and Outcomes

John Adkisson
John Hill
Saskia Kim
Dorothy Korber
Jim Sweeney

SUSPECT TREATMENT

The report found that California allowed people with serious criminal histories, including registered sex offenders, to assume positions of trust as drug and alcohol counselors. Unlike most other states, California made no attempt to learn about criminal histories. The state's system allowed wayward counselors to move between seven private organizations that register and certify them. These organizations had no way of discovering that a counselor on their rolls had been arrested or charged with a new crime that may have reflected on their suitability to work with clients. Counselors could easily flout training and education requirements.

SB 570 (DeSaulnier) would require licensing and criminal background checks for counselors. Another bill, AB 2374 (Mansoor), would prohibit the state from approving a certifying organization that does not check with other such organizations to assure that a counselor's registration or certification has not been revoked. As of July 2014, both were still being considered.



Food Fight:
Small team of state examiners no match for schools that divert student meal funds

This report was prepared for the California Senate Rules Committee
February 6, 2013

Prepared by Jim Sweeney

California Senate Office of Oversight and Outcomes

John Adkisson
John Hill
Saskia Kim
Dorothy Korber
Jim Sweeney

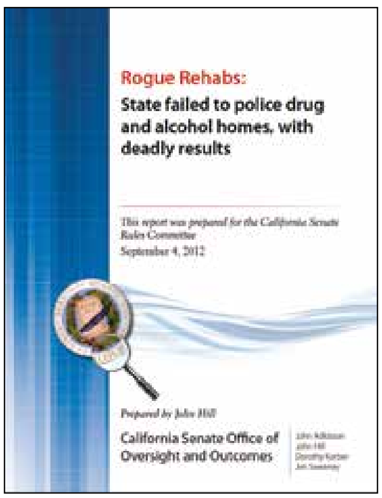
FOOD FIGHT

This report found that school districts around the state were illegally dipping into student meal funds and had misappropriated more than $170 million meant to feed the state's poorest children. The report's findings inspired legislation, a state audit and a broad random review of school cafeteria programs around the state.

Gov. Jerry Brown signed legislation that included some of the report's recommendations. The bill, AB 626 (Skinner), repealed provisions in state law that appeared to give school districts greater flexibility to spend cafeteria funds than federal law allows. Another bill, SB 302 (Canella), incorporated the report's many other recommendations. Canella's measure passed the Senate unanimously before stalling in the Assembly.

The report also was the focus of a Senate hearing that prompted both houses to request a Bureau of State Audits review of cafeteria fund abuse. The audit found that 14 of 18 districts examined did not properly document payroll charges to their cafeteria accounts.

The California Department of Education ordered a separate review of cafeteria records at 30 other districts, selected at random. More than half were found to have improper expenditures, and six were found to have cafeteria fund surpluses that exceeded federal limits.



Rogue Rehabs:
State failed to police drug and alcohol homes, with deadly results

This report was prepared for the California Senate Rules Committee
September 4, 2012

Prepared by John Hill

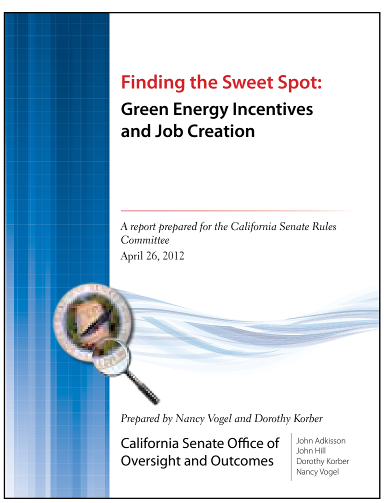
California Senate Office of Oversight and Outcomes

John Adkisson
John Hill
Dorothy Korber
Jim Sweeney

ROGUE REHABS

This report found that the state failed to catch life-threatening problems at licensed residential drug and alcohol treatment facilities and, when it did, neglected to follow up to assure dangerous practices stopped. In one case, the state didn't pursue suspicious circumstances surrounding a client's death and then, after another client died at the same facility, took a year and a half to investigate.

Two bills were introduced in 2013 to implement recommendations in our report. AB 395 (Fox), still under consideration as of July 2014, would allow the state to license residential drug programs that provide limited medical care and take action against programs that fail to report resident deaths within 24 hours. AB 40 (Mansoor), which died in committee, would have assured that deaths at residential programs were reported in a timely manner. Assemblyman Mansoor later introduced AB 2374, which details the actions the state must take when a death occurs in residential treatment.



Finding the Sweet Spot:
Green Energy Incentives and Job Creation

A report prepared for the California Senate Rules Committee
April 26, 2012

Prepared by Nancy Vogel and Dorothy Korber

California Senate Office of Oversight and Outcomes

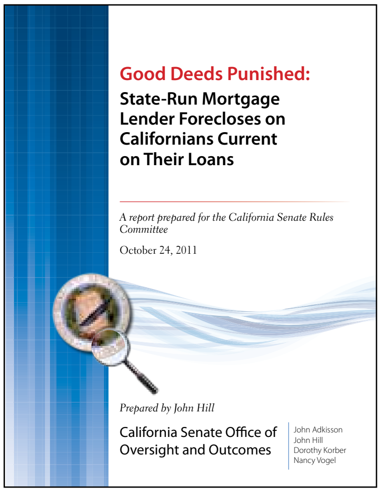
John Adkisson
John Hill
Dorothy Korber
Nancy Vogel

GREEN ENERGY

California should move cautiously, this report recommended, to recast its renewable energy policies to capture more manufacturing jobs. Creating well-paying, steady jobs in green manufacturing is a laudable goal, the report found, but it "may be elusive or fleeting regardless of how much taxpayer money the state invests." Californians pay more than a half-billion dollars a year to foster and subsidize renewable energy.

The report scrutinized three of California's renewable energy subsidy programs. It cataloged the green-energy companies manufacturing in the state. It offered case histories showing how companies manipulated two state programs to win millions of dollars in subsidies. And it explored the reasons that businesses leave California to build their factories.

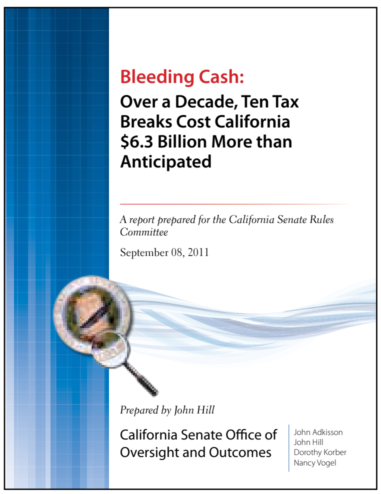
The report recommended that policymakers eliminate any incentive programs that aren't working, assure that all programs are transparent, and install "clawbacks" in programs to ensure taxpayers are compensated if subsidized companies fail to deliver. Finally, the Oversight Office suggested that the state consider creating a public "green bank" to loan money to young companies to boost the odds of their survival.



STATE FORECLOSURES

This report documented how the California Housing Finance Agency was forcing some of its borrowers into foreclosure even though they remained current on their payments. In contrast to housing agencies in other states, CalHFA interpreted Internal Revenue Service rules to require them to foreclose if a borrower no longer occupied the property. Many of these borrowers had moved out because of a change in circumstances – a growing family, for instance – and could not sell the property in the upside-down housing market without absorbing huge losses. Other CalHFA borrowers remained in houses that no longer fit their needs to avoid the state agency initiating foreclosure.

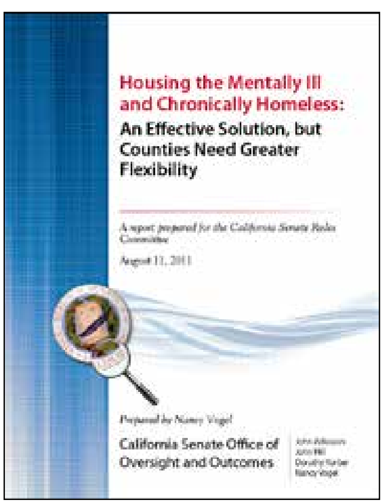
In 2012, faced with legislation written in response to our report, CalHFA agreed to allow borrowers to rent out their properties if they remained current on mortgages, had lived in the residence for a year, and could not sell or refinance without incurring losses. In May 2012, CalHFA liberalized the policy further, requiring only that borrowers who rent out residences live there for at least a year and remain current on their payments. Loan servicers were instructed not to initiate foreclosures unless instructed to by CalHFA.



BLEEDING CASH

This report found that state government routinely underestimates the cost of tax breaks. Over 10 years, major tax breaks cost the state $6.3 billion more than anticipated. In just one year – fiscal year 2010-11 – the tab ran $1.3 billion higher. The report found that the costs of tax breaks swelled because the Legislature relied on stale data, taxpayers changed their behavior to maximize tax savings, and tax breaks were used to cement last-minute budget deals, leaving inadequate time to assess the impact on state coffers.

In 2012, Assemblyman Mike Eng introduced AB 2638 to expand the data included in annual tax expenditure reports. Among the changes was a provision requiring the Department of Finance to compare the original estimate to the present-day cost, adjusted for inflation and other factors. The bill was vetoed by Gov. Brown, who said the additional information could be provided by the Legislative Analyst's Office.

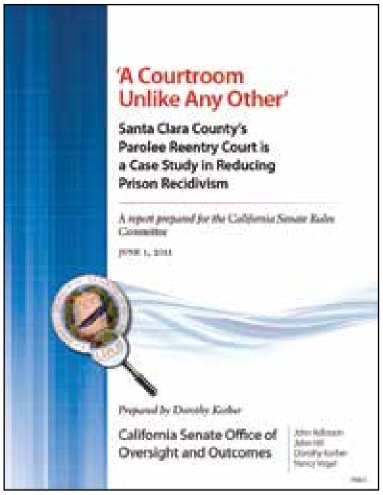


HOUSING THE MENTALLY ILL

The Senate Oversight Office surveyed 50 California counties in this exhaustive study of how $400 million – earmarked for housing for the mentally ill – was actually being spent. The report concluded that some mental health departments were too overwhelmed or lacked the expertise to make the large investments necessary to meet the goal of building or renovating 10,000 apartments statewide by 2027.

Counties fund the housing program through a 2004 initiative that taxes millionaires to pay for mental health services. In 2007, the counties agreed to make a one-time investment of $400 million in housing. In many urban counties, the report found, the housing program has worked well. But in smaller counties, mental health officials faced serious issues: a lack of experience with housing development, the state's rigorous application and approval process, and pressure to use the money to help clients immediately.

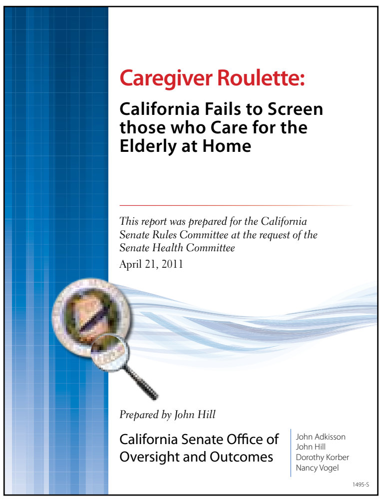
Rural counties expressed the greatest frustration, struggling to attract developers and to comply with the state's rules. The Senate Oversight Office recommended that the state relax the rules for California's 11 smallest counties, which received less than $1 million each.



PAROLEE COURT

"A Courtroom Unlike Any Other" was an unusual report for the Senate Oversight Office. Rather than an investigation, it was a case study that looked at Santa Clara County's Parolee Reentry Courtroom, Judge Stephen Manley presiding. The report took readers through a day in Judge Manley's court, followed by interviews with all the central participants, including a convicted felon. The genesis of the June 2011 report was Gov. Brown's realignment of public safety in California, shifting responsibility for parole violators to local jurisdictions. Judge Manley argued that a statewide system of Parolee Reentry Courts would save millions of dollars and reduce recidivism.

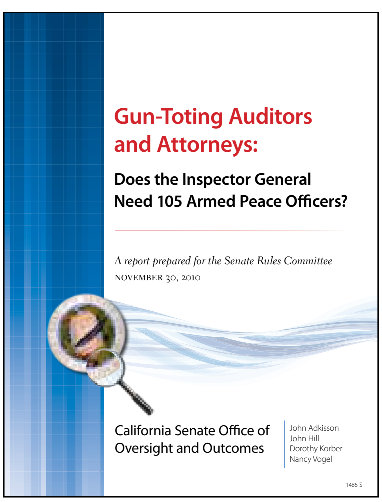
After the report's release, the San Jose Mercury-News ran an op-ed piece, written by the Senate Oversight Office, which summarized the case study. In addition, the report was required reading in a Stanford University law school class taught by Professor Joan Petersilia, a respected expert in criminal justice.



CAREGIVER ROULETTE

This report found that people with serious criminal backgrounds were offering their services on Craigslist as in-home caregivers. It revealed that California was one of the few states that required no background checks of in-home caregivers; that many caregivers convicted of abusing or stealing from their elderly clients had previous criminal backgrounds; and that the quality of "background checks" touted by agencies varied widely, with some relying on cheap, almost useless Internet searches.

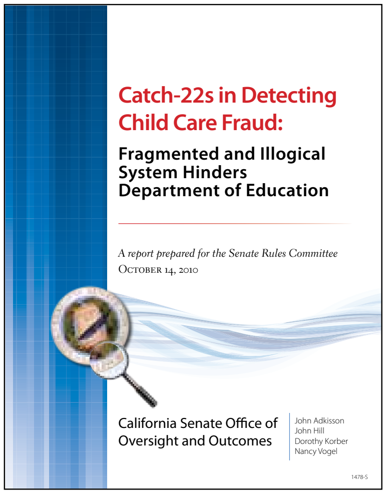
In 2013, Gov. Brown signed AB 1217 (Bonnie Lowenthal) requiring the Department of Social Services to license and regulate home care organizations and certify home care aides. Starting in 2015, aides must receive training and submit to a background check. The legislation also empowers Social Services to investigate serious complaints against aides who are not employed by a home care organization.



ARMED AUDITORS

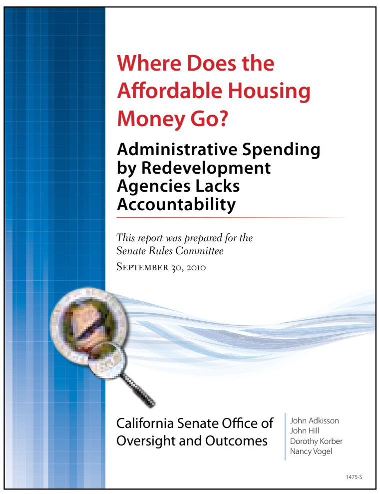
This report questioned the "peace officer" designation for 100 lawyers and auditors in the Office of the Inspector General (OIG), which oversees California's massive corrections system. The designation allowed these officials to qualify for lucrative public-safety pensions and to drive state cars. It also required them to carry guns on the job and to spend hours on the shooting range. The office found that OIG officials had never fired a gun on duty and used their state cars mostly to drive to work and back. The cost to taxpayers of these unnecessary perquisites amounted to $20,000 per OIG employee, the report estimated.

As a result of the report, Inspector General David Shaw conceded that issuing guns to auditors was unnecessary. Soon after, Shaw resigned. But the report's most substantive impact was evident in three Senate budget trailer bills passed in 2011 that reorganized the Office of the Inspector General. The bills – SB 78, SB 87 and SB 92 – ended peace officer status for the office, eliminated its auditing function and cut its budget by $1.15 million. All were signed into law by Gov. Brown.



CHILD CARE FRAUD

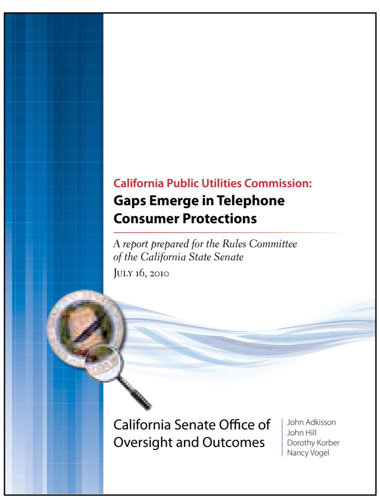
The report found that officials had little incentive to detect fraud or recover improper payments in the CalWORKs child care program overseen by the Department of Education. District attorneys and the Department of Education disagreed about which entity should pay for child care fraud prosecutions, leading to inaction. The department was unable to tap the expertise of county fraud investigators, which focused on improper payments in a different part of the CalWORKs child care program overseen by the Department of Social Services. DAs did pursue cases that involved that part of the program, but our report showed great variability around the state, with some prosecutors unable to identify any recent cases. Fearful that identifying improper payments would trigger a federal demand for the money, even if it had never been recovered, the Department of Education failed to pursue a regulation that would have defined fraud and given state contractors the legal grounds for seeking repayment.



AFFORDABLE HOUSING FUNDS

This report was prepared at the request of members and staff from two Senate committees, Local Government and Transportation and Housing. The Senate Oversight Office was asked to look at spending on low-income and moderate-income housing, required by state law to account for 20 percent of each agency's redevelopment tax increment. Its findings became the foundation of SB 450 (Alan Lowenthal), a complex bill aimed at reforming the agencies' use of dollars earmarked for lower income housing.

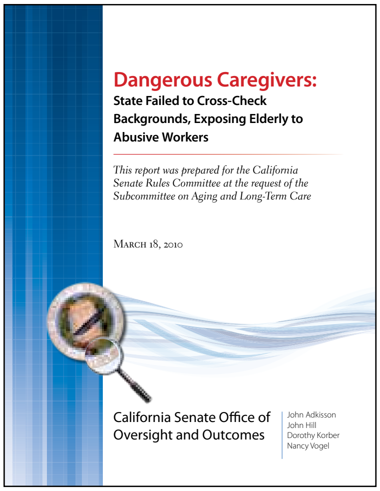
SB 450 was passed unanimously by both houses but vetoed by Gov. Brown on Oct. 4, 2011. In his veto message, the governor wrote: "This measure contains significant legal changes that will affect low and moderate income housing funds managed by redevelopment agencies, but this bill is a little ahead of its time." The Governor indicated that the issue was expected to be settled soon by the Supreme Court.



TELEPHONE DEREGULATION

This report explored the impact on consumers of telephone deregulation by the California Public Utilities Commission (PUC). The report and its findings were cited by the Division of Ratepayer Advocates, an independent consumer advocacy division within the PUC.

The division wrote: "This report accurately presents the burdens that consumers and the economy have faced since the CPUC virtually deregulated all telephone rates in 2006." Three months later, the Division of Ratepayer Advocates issued its own report, "The Failure of Consumer Protection," which quoted extensively from the Senate investigation and addressed each of its findings.



DANGEROUS CAREGIVERS

This report found that two state departments ignored a mandate to cross-check workers to see if they had abused elderly clients, allowing abusers to continue to care for the elderly. Legislation in 2006 required the Department of Social Services to create a centralized database to be used by six state entities to check caregiver backgrounds and screen out those with a history of abuse. Because of budget constraints, Social Services never complied with the law. Our report identified more than 20 abusive workers who fell between the cracks, including one who ignored orders to get help in moving a client to her bath. The client fell, broke her hip and died a short time later, at least partially as the result of the injury. The caregiver was stripped of her nursing assistant certification, but because of the failure to cross-check, was able to find work in a different kind of facility for the elderly.

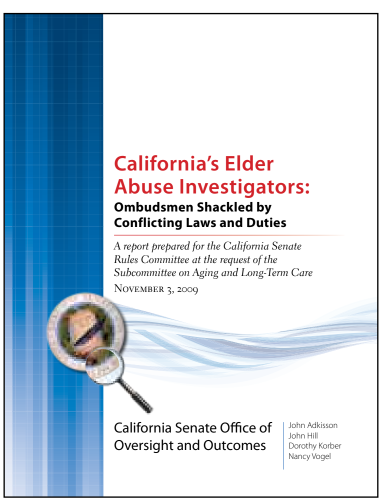
As a result of our report, the departments of Public Health and Social Services and others signed interagency agreements allowing them to share lists of caregivers convicted of crimes or subject to adverse licensing actions. The manual checks are done monthly. This solution falls short of the centralized database mandated by the 2006 law but provides greater protection to vulnerable long-term care residents.

FURLOUGHS

One response to California's budget doldrums in 2009-10 was the wholesale furloughing of state employees three days a month. Senate President pro Tem Steinberg asked the Senate Oversight Office to scrutinize these furloughs, searching for unexpected consequences. In one of four reports on furloughs, the office found that at the Franchise Tax Board the loss to the state was seven times greater than the savings.

The Senate Oversight report was cited in analyses of three bills in 2010. For AB 2008 (Arambula), the Senate Appropriations Committee analysis noted that California has "lost $6.36 for every dollar saved through budget cuts at the Board of Equalization, and has foregone $7.15 of revenue for every dollar saved through furloughs at the FTB."

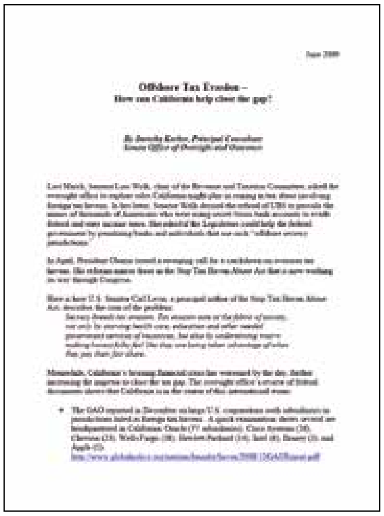
AB 2008 exempted from furloughs employees at both the Franchise Tax Board and the Board of Equalization. The bill passed both houses but was vetoed by Gov. Schwarzenegger on Sept. 23, 2010. In his veto message, the governor wrote: "By statutorily exempting certain employees from furloughs, this bill limits a Governor's discretion to tailor a furlough policy to appropriately meet the needs of the State."



ELDER ABUSE

Our report found that the state program that places ombudsmen in long-term care facilities had strayed far from the intent of the federal legislation that created it. The most pressing problem was that California relied on 1,000 or so ombudsmen to field reports from long-term care workers mandated to alert authorities in cases of abuse. Yet the ombudsmen were required by the federal statute to get residents' permission before forwarding the reports to authorities. Many residents, suffering from dementia or reluctant to anger their caregivers, declined to grant permission, allowing abusers to go unpunished and undeterred.

In 2012, Gov. Brown signed legislation that incorporated the primary recommendation of our report. Assembly Bill 40, by Assemblywoman Mariko Yamada, requires mandated reporters of elder or dependent adult abuse in long-term care facilities to report to both the ombudsman and local law enforcement. Previously, mandated reporters were required to report only to the ombudsman or law enforcement.



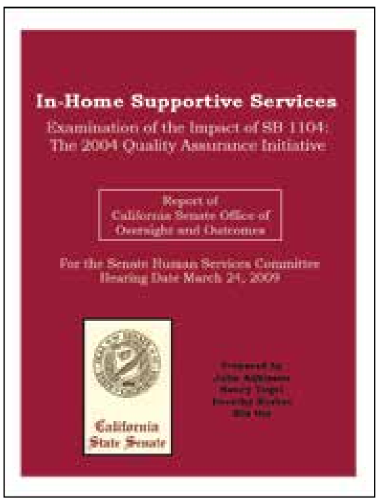
June 2009

Offshore Tax Evasion –
How can California help close the gap?

By Dorothy Korber, Principal Consultant
Senate Office of Oversight and Outcomes

TAX EVASION

This report was prepared in 2009 at the request of Senator Lois Wolk, chair of the Revenue and Taxation Committee. Among its findings was a list of corporations headquartered in California that had subsidiaries in jurisdictions identified as foreign tax havens. The report estimated that California lost about $11 billion annually to offshore tax schemes. The report was cited in the committee's analysis of AB 759 (Ma), which revised state law on taxing foreign profits but was later amended to address a different subject.



In-Home Supportive Services

Examination of the Impact of SB 1104:
The 2004 Quality Assurance Initiative

Report of
California Senate Office of
Oversight and Outcomes

For the Senate Human Services Committee
Hearing Date March 24, 2009

California
State Senate

A Primer on IHSS Fraud –
and Suggestions for Curbing It

Prepared by the Senate Office of Oversight and Outcomes

IN-HOME SERVICES

In early 2009, the first two reports prepared by the Senate Oversight Office focused on the state's In-Home Supportive Services program. One was an examination of the impact of 2004 legislation called "The Quality Assurance Initiative." The second report looked specifically at the potential for fraud within the program and presented suggestions from experts on how to curb it. The reports became part of a general discussion on problems within IHSS that was spurred by Gov. Schwarzenegger's criticisms of the program.

On March 24, 2009, the Senate Human Services Committee held a hearing based on the Senate Oversight Office's first IHSS report. Following that hearing, several bills emerged that cited the Senate Oversight Office investigations in their committee analyses. The big-ticket legislation was the "IHSS Anti-Fraud Initiative" included in a 2009-10 budget trailer bill. The measure incorporated many of the suggestions proposed by the Senate Oversight Office: requiring anti-fraud training for county staff, fingerprinting and criminal background checks of care providers, unannounced home visits and increased data-matching with jail, death and other official records to eliminate fraudulent claims.

Media Coverage

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING:

Underfunding and Misguided Policies Compromise Civil Rights Mission, 12/18/2013

- **Los Angeles Times,** "Secret policy allows governor to veto public job bias cases," 12/18/2013
- **Sacramento Bee,** "Report faults CA governor's office policy for chilling discrimination claims," 12/18/2013
- **San Jose Mercury News,** "Report: Budget cuts, 'secret policy' cripple state civil rights agency," 12/18/2013
- **San Francisco Chronicle,** "Review reveals governor can secretly block bias claims," 12/18/2013
- **San Francisco Chronicle,** "Stop the meddling, Governor," 12/26/2013
- **News10 (Sacramento),** "Secret policy lets governor nix civil rights investigations, says report," 12/18/2013

CRASH COURSE:

Failure to Heed Early Warnings, Troubles of the Past Contributed to Payroll System Collapse, 8/12/2013

- **Los Angeles Times,** "Upgrade to state payroll system hurt by lax oversight," 8/12/2013
- **Los Angeles Times,** "What will state learn from payroll failure?" 8/13/2013
- **Sacramento Bee,** "California payroll overhaul vexed by complexity, poor oversight," 8/12/2013
- **Sacramento Bee,** "State officials blame payroll debacle on contractor, other agency," 8/15/2013
- **Techwire.net,** "Senate office issues critical report on MyCalPays project, sets stage for hearing on Thursday," 8/12/2013
- **News10 (Sacramento),** "State payroll system project 'doomed,' says report," 8/12/2013

SUSPECT TREATMENT:

State's Lack of Scrutiny Allows Unscreened Sex Offenders and Unethical

- **Associated Press,** "California fails to screen substance abuse counselors," 5/13/2013
- **California Watch,** "Hole in California law allows sex offenders to become addiction counselors," 5/13/2013 (published in San Francisco Chronicle)
- **Los Angeles Times,** "Felons allowed to help addicts, a report finds," 5/14/2013
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- **San Jose Mercury News,** "California fails to screen substance abuse counselors," 5/13/2013
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