

# Monitoring Correctional System Staff Misconduct Investigations

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**Summary.** The Governor's budget proposes additional funding and positions for the California Department of Corrections and Rehabilitation (CDCR) to implement a new system for handling inmate and parolee allegations of staff misconduct and for the Office of the Inspector General (OIG) to independently monitor the new process. We find that the proposed resources for CDCR appear reasonable. However, the proposed resources for OIG may result in a level of monitoring that does not meet legislative expectations for oversight. Accordingly, we recommend that the Legislature determine its specific expectations and adjust the level of resources proposed by the Governor as needed to ensure expectations are met. To assist the Legislature in this process, we identify key issues for consideration.

## BACKGROUND

### OIG Oversees CDCR Handling of Allegations of Staff Misconduct

OIG is as an independent state agency responsible for oversight of CDCR's correctional programs. Currently, OIG is required by statute and court orders to perform certain activities. As part of this responsibility, OIG monitors CDCR's two primary processes for handling allegations of staff misconduct, which we describe in detail below. (See the nearby box for more detailed information on the history of OIG.)

### CDCR Process for Handling Allegations Referred by Hiring Authorities

*OIG Provides Input on and Monitors CDCR Allegation Routing Decisions.* Hiring authorities at CDCR are staff in certain positions—such as

### History of the Office of the Inspector General (OIG)

In the early 1990s, the California Department of Corrections and Rehabilitation (CDCR)—then known as the California Department of Corrections (CDC)—faced a succession of highly publicized cases alleging serious staff misconduct. At the same time, CDC was believed to be ineffective and inefficient in its ability to deter staff misconduct, to investigate misconduct when it did occur, or to discipline those who violated department policy or the law.

In response to these ongoing problems, Chapter 766 of 1994 (SB 1462, Maddy) established OIG within the Youth and Adult Correctional Agency (YACA). The legislation specified that OIG's role was to (1) review departmental policies and procedures for conducting investigations, as well as the department's compliance with them; (2) investigate allegations of personnel misconduct, including complaints of retaliation and other wrongdoing; and (3) recommend related corrective action. In 1998, following continued complaints of staff misconduct within CDC, the Legislature moved OIG out of YACA and established it as an independent state agency responsible for oversight and investigation of correctional programs, reporting directly to the Governor. (We note that, in 2005, YACA and all the departments that reported to it—including CDC—were consolidated into CDCR.)

wardens—who have the authority to hire and discipline employees. Whenever a hiring authority reasonably believes an employee committed misconduct warranting punitive action (such as salary reduction or dismissal), he or she must submit a referral to the Central Intake Panel (CIP). The CIP is a collection of stakeholders—including OIG representatives—led by CDCR’s Office of Internal Affairs (OIA). The CIP reviews any information provided about the allegation by the hiring authority—usually information from an initial inquiry into the matter done by prison or parole staff—and discusses how to route the allegation. For example, the CIP can decide to authorize an administrative or criminal investigation to assess whether the alleged misconduct occurred. Alternatively, if sufficient evidence already exists, the CIP can authorize the hiring authority to take direct disciplinary action without an investigation. The final decision on how to route the allegation is made by the OIA staff who lead the CIP. However, in its public reports to the Legislature and Governor, OIG notes instances when its staff disagree with decisions made by OIA.

***OIG Focuses on Oversight of More Serious Investigations Conducted.*** OIG reports that its staff monitor the quality of about 15 percent of investigations that are conducted and tends to focus its monitoring activities on the department’s more serious investigations, such as cases involving alleged dishonesty, use of force, and criminal activity. In addition to monitoring the quality of the investigatory work, OIG monitors the performance of department attorneys involved in the investigation and discipline process and hiring authorities’ imposition of discipline. OIG includes these findings in its public reports to the Legislature and Governor. We note that because hiring authorities must file a Form 989 in order to refer an allegation to the CIP, this investigation and discipline process is often referred to as the “989 process.”

## **CDCR Process for Handling Allegations Referred by Inmates and Parolees**

***Some Grievance and Reasonable Accommodation Claims Contain Allegations of Staff Misconduct.*** CDCR regulations allow inmates and parolees to file certain claims known

as grievances to contest departmental policies, actions, or conditions that have a negative effect on their welfare. Grievances cover a variety of topics, such as disagreement with disciplinary actions and concerns about housing conditions. (We note that there are two categories of grievances, health care grievances and all other grievances, which we refer to in this post as regular grievances.) For example, an inmate might file a grievance arguing that the temperature inside his or her cell is excessively hot. In some cases, grievances allege that a violation of law, policy, or ethical standards by staff has taken place. For example, an inmate might file a grievance alleging that staff intentionally placed him or her in a particular cell that is known to reach excessive temperatures in retaliation for requesting to be moved to a different housing unit.

Aside from grievances, inmates and parolees who have physical or mental disabilities can submit claims requesting specific reasonable accommodations to enable them to access programs, services, or activities. For example, inmates who are unable to walk can request a cane, walker, or wheelchair. Inmates and parolees can also use this process to report harassment as a result of their disability. In some cases, requests for reasonable accommodation contain allegations of staff misconduct—such as if an inmate is reporting being harassed by staff.

### ***Allegations Referred by Inmates and Parolees Historically Handled by Prison and Parole Staff.***

As we discuss below, the process by which CDCR handles inmate or parolee allegations of staff misconduct made through grievances or requests for reasonable accommodation claims has been undergoing transition in recent years in response to various concerns. Historically, allegations of staff misconduct arising through grievances or requests for reasonable accommodation were typically handled by prison or parole staff. Specifically, staff were responsible for screening claims to identify those that contained allegations of staff misconduct. Staff then conducted inquiries into those allegations and reported the results to hiring authorities. Unless the hiring authority determined that the report warranted a referral to CIP via Form 989, these allegations did not rise to the attention of OIA or OIG.

***OIG Raised Various Concerns About Historical Process.*** In 2018, in response to concerns raised by inmates' rights attorneys, the Secretary of CDCR requested that OIG review the quality of inquiries into inmate allegations of staff misconduct at Salinas Valley State Prison (SVSP) in Soledad. In its report, OIG concluded that such inquiries were inadequate because staff used poor investigation techniques, were inadequately trained, and showed signs of bias in favor of fellow staff members. Moreover, OIG indicated that these problems were likely not unique to SVSP. In a subsequent 2021 report, OIG raised concerns that staff at prisons statewide responsible for screening claims were failing to classify some grievances as containing allegations of staff misconduct. These concerns have been echoed by plaintiffs in an ongoing class action lawsuit (known as *Armstrong v. Newsom*) concerning CDCR's treatment of inmates with disabilities.

***CDCR Currently Implementing New Process.*** In response to these concerns, CDCR has been revising its process for handling inmate and parolee allegations of staff misconduct since 2019. When fully implemented, the process—as outlined in emergency regulations that CDCR filed with the Office of Administrative Law on December 28, 2021—will include allegations of staff misconduct toward inmates and parolees that arise through grievances and requests for reasonable accommodation. In addition, claims filed by third parties (such as members of the public) will be reviewed for allegations of staff misconduct.

Under the new process, all claims will be forwarded by prison and parole staff to a new Centralized Screening Team (CST) within OIA. CST will screen all claims to determine whether they contain allegations of staff misconduct. If CST does not identify any allegation of staff misconduct, the claim will be sent back to the prison or parole staff to be addressed. If CST does identify an allegation of staff misconduct, CST will assess whether the allegation constitutes serious misconduct against inmates or parolees. (Regulations define a specific list of activities that constitute serious misconduct for the purposes of this screening decision, including excessive use of

force, dishonesty, and sexual harassment.) Claims alleging serious misconduct will be referred to a new unit within OIA—the Allegation Investigation Unit (AIU)—for an investigation. Claims containing allegations not determined to constitute serious misconduct will be sent back to local prison or parole staff to conduct an inquiry into the matter. All local inquiry reports will then be reviewed by OIA staff for completeness and independence.

At full implementation, CDCR expects that CST will receive about 220,000 claims per year with about 46,000 (21 percent) containing allegations of misconduct. Of these 46,000 allegations, CDCR expects that CST will refer 8,424 (18 percent) to AIU for an investigation due to the allegations constituting serious misconduct and the remaining 37,576 (82 percent) to be referred back to the prison or parole region for a local inquiry.

***OIG Monitoring of New Process.*** In recent years, the Legislature has expressed interest in OIG oversight of CDCR's handling of staff misconduct allegations arising out of the grievance and request for reasonable accommodation processes. As a result, the 2019-20 budget package provided OIG with five positions and about \$780,000 in ongoing General Fund support to monitor CDCR's handling of inmate and parolee allegations of staff misconduct. However, this funding level was determined based on an earlier iteration of the new process under which it was assumed that fewer allegations would be received by OIA annually.

## **GOVERNOR'S PROPOSAL**

***Funding for CDCR to Implement New Process for Handling Allegations Referred by Inmates and Parolees.*** The Governor's budget provides \$35.6 million General Fund in 2022-23 (increasing to \$37 million in 2023-24, and generally decreasing to \$34.2 million annually in 2026-27) for CDCR to align its process for handling staff misconduct allegations with the emergency regulations filed on December 28, 2021. Under the proposal, CDCR would receive 175 additional positions in 2022-23 (increasing to 192 positions in 2023-24). This includes positions to staff CST and AIU.

**Funding for OIG to Monitor New Process for Handling Allegations Referred by Inmates and Parolees.** The Governor's budget provides \$2.3 million General Fund and 16 positions in 2022-23 (increasing to \$3.6 million and 24 positions in 2023-24) for OIG to monitor CDCR's new process for screening for and investigating staff misconduct alleged in claims submitted by inmates, parolees, and third parties. Under the Governor's proposal, OIG would do the following:

- **Monitor 30 Percent of Regular Grievances Received by CST (\$1.7 Million).** Under the proposal, OIG would receive resources to monitor about 30 percent of the estimated 147,500 regular grievances reviewed by CST. The proposal does not include resources for OIG to monitor the remaining 72,500 claims consisting of health care grievances, requests for reasonable accommodation, and third-party claims. OIG indicates that it plans to focus on regular grievances, rather than other types of claims, because it believes they are more likely to contain allegations of staff misconduct.
- **Monitor 10 Percent of Investigations Conducted by AIU (\$624,000).** Under the proposal, OIG would receive resources to monitor AIU investigations. Along with the resources initially provided in 2019-20, the proposal would allow OIG to monitor about 10 percent of the investigations conducted by AIU.

## ASSESSMENT

**Funding Proposed for CDCR to Implement New Process Appears Reasonable.** We find that the funding proposed for CDCR to align its process for handling inmate and parolee allegations of staff misconduct to its current emergency regulations appears reasonable and would likely help address concerns that have been raised over the years.

**Proposed Level of OIG Monitoring May Not Meet Legislative Expectations.** The goal of monitoring is typically to be able to draw conclusions about an entire system by focusing on an adequately sized sample of cases processed in the system. There is no universally agreed upon

percentage of cases that constitutes a sample size adequate to carry out effective monitoring. Under the Governor's proposal, OIG would be monitoring a relatively small sample size of investigations—and not monitoring the screening of certain claims or quality of local inquiries at all. As such, it is possible that the Governor's proposal may not meet legislative expectations. Specifically, under the Governor's proposal:

**OIG Would Not Monitor Certain Types of Claims Received by CST.** As previously mentioned, under the proposal, CST screening of the annual estimated 68,000 health care grievances, requests for reasonable accommodation, and third-party claims would not be monitored by OIG, based on the assumption that they are less likely to contain allegations of staff misconduct than regular grievances. According to CDCR, based on three months of data, about 22 percent of regular grievances contain allegations of staff misconduct, whereas CDCR estimates that about 19 percent of all other claims will contain allegations of staff misconduct. Accordingly, the frequency with which misconduct allegations are expected to be found in other claims is not substantially lower than for regular grievances.

**OIG Would Monitor Lower Percent of Investigations Than Under 989 Process.** Under the Governor's proposal, OIG would monitor about 10 percent of investigations conducted by AIU. In comparison, OIG reports that it typically monitors about 15 percent of investigations under the 989 process. It is unclear why OIG would monitor a lower percentage in this case.

**OIG Would Not Monitor Local Inquiries.** CDCR expects that CST will annually identify 37,600 claims that contain allegations of less serious misconduct that would not be investigated by AIU. These claims will be sent by CST back to the referring prison or parole staff for a local inquiry into the matter. Reports prepared based on these inquiries will be reviewed for completeness by OIA staff. However, the Governor's proposal does not include resources for OIG to monitor these reports or the quality of review performed by OIA staff. This is notable because concerns about the quality of local inquiries were a key driver for creation of CDCR's new process.

## RECOMMENDATION

**Ensure Level of Monitoring Resources Meets Legislative Expectations.** As noted above, in recent years, the Legislature has expressed interest in OIG oversight of CDCR’s handling of staff misconduct allegations arising out of the grievance and request for reasonable accommodation processes. In reviewing the Governor’s proposal, we recommend that the Legislature determine its specific expectations and adjust the level of resources proposed by the Governor as needed to ensure its expectations are met. Specifically, the Legislature will want to consider the following:

- **Should OIG Monitor All Types of Claims Received by CST?** Under the proposal, OIG would monitor 30 percent of regular grievances screened by CST but would not monitor screening of health care grievances, requests for reasonable accommodation, and third-party claims. If the Legislature wants OIG to monitor 30 percent of *all* types of claims submitted to CST, we estimate that an additional five positions and about \$600,000 annually above the Governor’s proposal would be required.
- **Should OIG Monitor a Larger Portion of AIU Investigations?** Under the proposal, OIG would monitor about 10 percent of AIU investigations. If the Legislature wants OIG to monitor a higher percent of AIU investigations it would need to provide additional resources. For example, we estimate that having OIG monitor 15 percent of AIU investigations—the same as the portion of investigations that OIG monitors in the 989 process—would require an additional seven positions and \$1 million annually at full implementation.
- **Should OIG Monitor Local Inquiry Reports?** The Legislature could consider funding OIG so that it would be able to monitor a portion of the estimated 37,600 local inquiry reports. For example, we estimate that requiring OIG to monitor 20 percent of these reports—similar to the portion of investigations that OIG monitors in the 989 process—would require an additional four positions and \$500,000 above the Governor’s proposed resources. We note, however, that the Legislature could make this change in a relatively cost neutral manner by reducing the portion of these reports monitored by CDCR OIA staff from 100 percent to 80 percent and redirecting savings from CDCR to pay for the increased OIG staff.





## **LAO PUBLICATIONS**

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This post was prepared by Caitlin O'Neil, and reviewed by Drew Soderborg and Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.