

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
ON PUBLIC SAFETY

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

MONDAY, MARCH 4, 2019

UPON ADJOURNMENT OF SESSION – STATE CAPITOL, ROOM 437
(PLEASE NOTE TIME CHANGE)

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

ISSUE 1: CDCR POPULATION OVERVIEW, OUT OF STATE PRISON BEDS, PROPOSITION 57 UPDATE

The California Department of Corrections and Rehabilitation (CDCR) will open this issue with an overview of population trends, the status of out of state prison beds and a progress update on Proposition 57.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Proposed Funding

The Governor's budget includes \$12.6 billion (\$12.3 billion General Fund and \$303 million other funds) for CDCR in 2019-20.

Total Expenditures for the California Department of Corrections and Rehabilitation

(Dollars in Millions)

	2017-18 Actual	2018-19 Estimated	2019-20 Proposed	Change From 2018-19	
				Amount	Percent
Adult Institutions	\$10,434	\$11,029	\$11,022	-\$7	—
Adult Parole	637	706	729	23	3%
Administration	500	560	553	-8	-1
Juvenile Institutions	193	208	217	9	4
Board of Parole Hearings	48	51	61	10	19
Totals	\$11,813	\$12,555	\$12,582	\$28	0.2%

Source: LAO

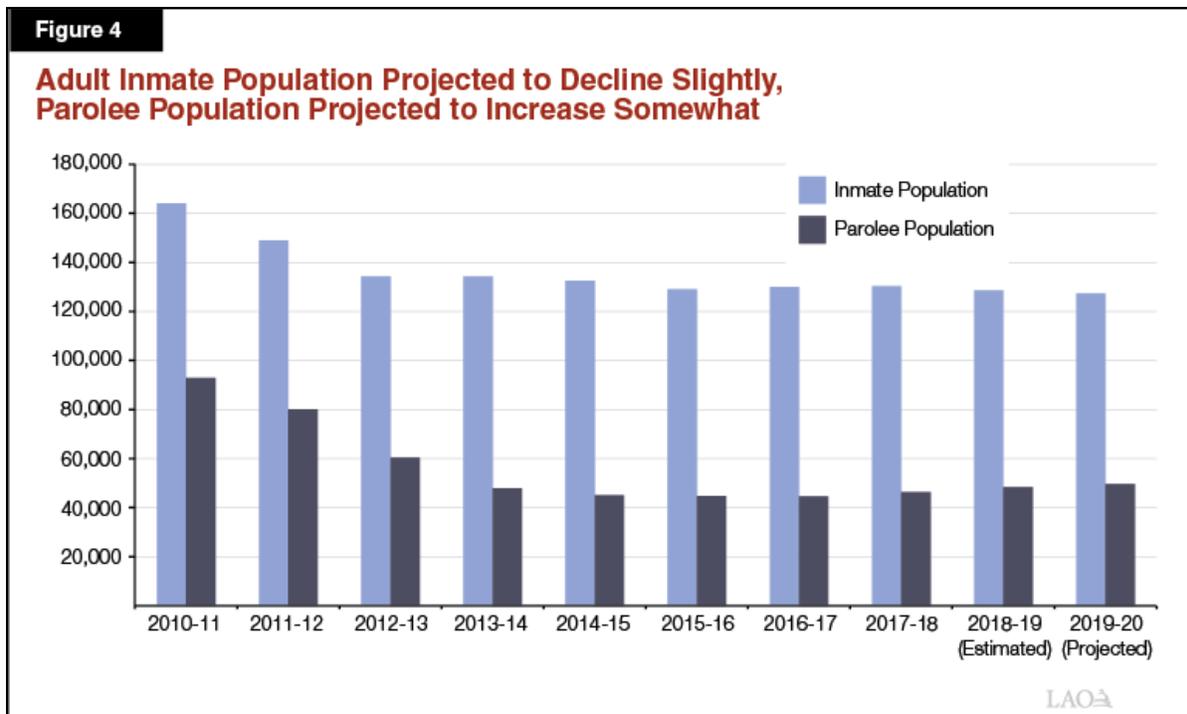
Population Projections

CDCR Adult Institution Population. The adult inmate average daily population is projected to decline from 128,334 in 2018-2019 to 126,971 in 2019-2020. It is projected that 121,175 inmates in 2018-19 and 121,300 inmates in 2019-20 will be housed in CDCR adult institutions.

CDCR Parolee Population. The average daily adult parolee population is projected to increase from 48,701 in the current year to 49,945 in the budget year, which is an increase of 166 for 2018-19 and an increase of 1,410 for 2019-20 when compared to the 2018 Budget Act.

Mental Health Program Caseload. The population of inmates requiring outpatient mental health treatment is projected to be 36,086 in 2018-19 and 35,796 in 2019-20. This is a decrease of 489 inmates in 2018-19 and an increase of 130 inmates in 2019-20. Based on the Mental Health Staffing Ratios, these changes will result in a reduction of \$2.7 million General Fund in 2018-19 and an increase of \$1.9 million in 2019-20.

CDCR, Division of Juvenile Justice Population. The average daily juvenile population is 662 in the current year and 759 in the budget year which is an increase of 40 for 2018-19 and increase of 113 for 2019-20 when compared to the 2018 Budget Act. The increase in 2019-20 is driven by policy changes that were not incorporated in the prior projection, including the activation of the new Young Adult Program, raising the age of jurisdiction for juvenile court commitments from 23 to 25, and raising the age of confinement for adult court commitments from 21 to 25. These changes result in General Fund increases of \$2.9 million in 2018-19 and \$8.3 million in 2019-20.



Proposition 57

Proposition 57 provided CDCR with the authority to reduce inmates' terms by awarding credits for good behavior or participation in rehabilitative programming. CDCR proposed new changes to its credit regulations in December of 2018. The changes include:

- Allowing youth parole hearing dates to be advanced by credits.
- Allowing credit awards or restorations to advance a release date to up to 15 days from the date of award or restoration. This is a decrease of the current policy which is 60 days. Individuals convicted of certain offenses face longer time periods.
- Increasing the rate at which Rehabilitative Achievement Credits (RAC) can be earned and the maximum that can be earned in one year.
- Allowing inmates who earn more the maximum of 40 calendar days in RAC credits per year to roll the excess over to the next year.
- Increasing credits earned for completion of high school diploma or high school equivalency from 90 to 180 days.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO notes that CDCR's annual population related requests typically do not account for recent policy changes. CDCR releases projections of the inmate and parolee populations in the fall and spring of every year in order to make funding adjustments to both the current and budget years. These projections are based on historical trend data and typically do not include the effects of very recent policy changes or those planned for the near future. In certain circumstances, CDCR has adjusted its population projections to account for planned policy changes such as the implementation of Proposition 57. There are policy changes that are being currently implemented, including the aforementioned changes to Prop 57 credit earning guidelines and resources allocated in the 2018-19 Budget Act, for CDCR to refer inmates to courts for possible sentence reduction due to sentencing errors or exceptional behavior. As such, the LAO makes the following recommendations to the Legislature:

- Require the population projections and budget requests account for recent policy changes to avoid approving resources that CDCR may not ultimately need.
- Due to CDCR's ability to make adjustments to credit earning under Prop 57 that will likely impact the institutional and parolee population, require that CDCR notify the Legislature

regarding any credit changes. This is necessary because CDCR makes changes through the regulatory process and there is no current requirement to notify the Legislature when it has made changes that may impact the Department's budgetary needs.

Staff Recommendation: Hold Open

ISSUE 2: CDCR AUDIT ON REHABILITATIVE PROGRAMMING

The State Auditor's Office will open this item with an overview of findings from their audit of the California Department of Corrections and Rehabilitation's (CDCR) rehabilitative programming.

PANELISTS

- State Auditor's Office
- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

In 2018, the Joint Legislative Audit Committee requested an audit of CDCR's rehabilitative programs which was subsequently completed in January of 2019. Findings from the audit include the following:

- CDCR's implementation of certain rehabilitation programs has not resulted in demonstrable reductions in recidivism. Inmates who completed their recommended Cognitive Behavior Treatment (CBT) programs recidivated at about the same rate as inmates who were not assigned to those programs. One possible reason why the audit came to this conclusion is that CDCR has not re-validated the accuracy of the tools it uses to assess rehabilitative needs. In addition, CDCR has not ensured the delivery of evidence-based CBT programs by its vendors. Of the vendors that provided CBT classes at 10 of CDCR's prisons, 20% of their respective curricula were not evidence-based.
- CDCR is failing to place inmates into appropriate rehabilitation programs, leading to inmates being released from prison without having any of their rehabilitation needs met. CDCR failed to meet the rehabilitative needs of 62% of inmates released in 2017-18 who were assessed as at-risk of recidivating.
- Additional oversight is needed to ensure the effectiveness of the rehabilitation programs. CDCR has neither developed any performance measures for its rehabilitation programs, such as a target reduction in recidivism, nor has it assessed program cost-effectiveness.

Based on these findings, the State Auditor's Office makes the following recommendations:

- The Legislature should require CDCR to establish performance targets, including ones for reducing recidivism and determining the programs' cost-effectiveness, and to partner with external researchers to evaluate the effectiveness of its rehabilitation programs.

- CDCR should validate its assessment tools for assessing the needs of the prison population.
- CDCR should provide adequate oversight to ensure that its vendors teach only evidence-based curricula.
- CDCR should develop and begin implementing plans to meet its staffing level goals for rehabilitative programming.
- CDCR should partner with a research organization to conduct a systematic evaluation to determine whether its rehabilitation programs are reducing recidivism and if they are cost effective.

According to the State Auditor's Office, CDCR agrees with the findings in the audit and will address the specific recommendations in a corrective action plan within the timelines outlined in the audit report.

STAFF COMMENTS

Effective rehabilitation programs are a critical component to assisting individuals prepare for their eventual release and successful reentry into society. The passage of Proposition 57 provided the Department with the authority to expand credits for participation in rehabilitative programming to manage the prison population in a manner that supports the rehabilitation of incarcerated individuals. In a relatively short amount of time, the Department has implemented policies and procedures that have resulted in steady population reductions that move the state in a direction towards eventually freeing itself from its current court orders. The impediments to this progress, as identified by the State Auditor, are longstanding. The lack of validation, evaluation, and tracking have impeded the Department's ability to demonstrate the fruits of their efforts as well as confirm whether these rehabilitative programs are the appropriate programs for the appropriate individuals. Penal Code Section 3020 states:

The Department of Corrections and Rehabilitation shall conduct assessments of all inmates that include, but are not limited to, data regarding the inmate's history of substance abuse, medical and mental health, education, family background, criminal activity, service in the United States military, and social functioning. The assessment shall be used to place the inmate in programs that will aid in his or her reentry to society and that will most likely reduce the inmate's chances of reoffending.

This section provides both the mandate and statutory authority for the Department in providing (1) individually assessed programs that will (2) most likely reduce the inmate's chances of

reoffending. According to State Auditor's findings, an urgent intervention is needed to support the goals of reducing recidivism, improving the outcomes of individuals released from prison, and prioritizing state resources into those programs that can best support these goals. As such, the Legislature may wish to implement the State Auditor's recommendations within the timeline provided. In addition, the Legislature may wish to consider reviewing other rehabilitation programs that were not included in the audit, which may also help to improve outcomes and reduce rehabilitation and whether additional resources are warranted.

The Subcommittee is in receipt of letters from advocates that provide the following comments:

"Research finds that participation in education programs and vocational training programs in prisons reduces post-release recidivism significantly...but only when programs appropriately meet the needs of the prison population served."

The audit misses the "opportunity to learn more about the most effective programs--those that help people process their unresolved traumatic experiences in a way that leads to improved emotional intelligence and communication skills...as these programs are the ones that have the greatest success in transforming violence to virtue among people convicted of the most serious offenses...This is a glaring omission given that this group now makes up 76% of the state's prison population."

"...[T]he requirement to assess and treat a person's exposure to trauma [under Penal Code Section 3020] may be implied but should be explicit. A statutory or regulatory amendment that makes this more explicit would go a long way toward closing this important gap."

"While CDCR's reliance on [Cognitive Behavior Therapy] programs has not produced intended outcomes, many community-based programs run highly effective and evidence based programs...CBOs are only allocated four million of [the] twelve billion-dollar CDCR budget...our member organizations are providing critical programming on shoestring budgets, often leaving little extra funding to implement evaluations comparable to the State Auditor's report."

Staff Recommendation: Hold Open.

0552 OFFICE OF INSPECTOR GENERAL

ISSUE 3: DEPARTMENTAL OVERVIEW

The Office of Inspector General will open this issue with an overview of the Department.

PANELISTS

- Office of Inspector General
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

The Office of Inspector General (OIG) was first established in 1994 within the Youth and Adult Correctional Agency, which has since been abolished. Duties included conducting investigations, reviewing policy, and performing management review audits of wardens and superintendents. As a result of widespread abuse in the state's correctional system, the Legislature responded in 1998-99 by expanding the OIG's oversight responsibility and making it an independent entity with discretionary authority to conduct audits and investigations. The Legislature further expanded the OIG's duties to include the discipline monitoring process, warden vetting, and follow-up warden audits. In 2011, the OIG's office was restructured in a manner that removed their authority to conduct discretionary audits and investigations, limited their oversight to only specified areas, added a medical inspection process, and required that special reviews be authorized only by the Governor, the Office of the Speaker, or the Office of the pro Tem. As a result of these changes, the OIG's office's limited functions are as follows:

- Monitor the employee discipline process, critical incidents, and use of force.
- Evaluate the quality of medical care at adult institutions.
- Maintain a statewide complaint intake process.
- Conduct authorized special reviews.
- Review retaliation complaints of staff against management.
- Monitor CDCR's Blueprint ("The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Oversight, and Improve the Prison System").
- Chair the California Rehabilitation Oversight Board (C-ROB).

STAFF COMMENTS

Generally, an inspector general's office is defined as an independent oversight body that is charged with identifying, investigating, and auditing a particular agency or department to detect and deter misconduct and abuse. As such, an inspector general's office requires an adequate level of discretion to conduct such investigations, audits, and other duties to fulfill its oversight functions in a manner that ultimately supports the fidelity of the entity's (subject to the oversight) mission and the resources invested into that entity.

California's OIG currently lacks the adequate statutory authority allowing for discretionary investigations and audits that is conspicuously out of line with inspector general offices across the country. Due to statutory changes in 2011 in California, audits to be performed by the OIG can only be ordered by the Governor's Office, the Office of the Speaker, or the Office of the pro Tempore. While this does allow the Administration and the Legislature to seek an investigation on issues that rise to their attention, many critical issues deserving of attention may not. With a more nimble process, OIG staff, who are regularly at the prisons, would allow the provision of timely responses to issues they witness, or are otherwise made aware of, through other processes. In addition, while CDCR may invite the OIG to conduct investigations and has done so in the past, CDCR also has the authority to substantially limit the scope of the investigations.

Most importantly, the limited discretionary abilities of the OIG result in significantly less oversight over a Department that has been plagued by lawsuits for decades. Any steps towards freeing the state from eventual court oversight requires providing for adequate, if not robust, oversight. Finally, the OIG serves as the single independent state body that the public may access with concerns about institutional practices and policies, allegations of misconduct, and other issues. The OIG receive nearly 300 complaints a month. The current limitations of the OIG's office substantially limit its ability to assist the public in resolving their concerns.

As such, the Legislature may wish to consider restoring the duties the OIG had prior to 2012 in order to enhance its oversight of CDCR, restore its ability to adequately address legitimate grievances from the public, and to reduce the state's risk of continued and additional litigation.

Staff Recommendation: Hold Open.

ISSUE 4: SPECIAL REVIEW OF SALINAS VALLEY STATE PRISON'S PROCESSING OF INMATE ALLEGATIONS OF STAFF MISCONDUCT

The Office of Inspector General (OIG) will open this item with key findings and recommendations from their Special Review of Salinas Valley State Prison.

PANEL ONE

- Office of Inspector General
- California Department of Corrections and Rehabilitation

PANEL TWO

- Don Specter, Prison Law Office
- Rita Lomio, Prison Law Office

BACKGROUND**Staff Complaint Process**

CDCR institutions process staff complaints in accordance with Title 15 and its department operations manual. An inmate who alleges staff misconduct may fill out an appeal form ("602") where he or she is asked to describe in detail what happened, including dates, times, places, and names of all people involved in the incident, including all witnesses if possible. It is then submitted to the prison's appeals office where staff screen whether it is a routine complaint or a staff complaint. Possible staff complaints are then sent to the appeals coordinator for a second opinion to determine whether alleged misconduct would violate any policy if the allegations were true.

If the appeals coordinator concurs that the appeal contains a staff complaint, he or she forwards the form to the hiring authority. When the hiring authority determines that an allegation warrants a staff complaint inquiry, the appeals coordinator forwards the staff complaint to a manager within a particular yard where it is assigned to a reviewer who is a supervisor who holds a rank at least one level above that of the accused staff member. In general, this inquiry is completed within 30 working days. The reviewer first assesses all information in the complaint and collects any other necessary documentation. Next, the reviewer conducts interviews with the appellant, pertinent witnesses, and the subject to obtain evidence. The reviewer is not compelled to interview all witnesses if he or she can demonstrate that the witness testimony would not be relevant and, if a reviewer believes a witness is not credible, he or she must present facts to support that conclusion.

If at any point during the investigation the reviewer discovers information indicating serious misconduct may have occurred, the reviewer must cease interviewing any staff or inmate and must immediately bring this information to the hiring authority's attention for future review. The hiring authority then determines whether to instruct the reviewer to continue the staff complain inquiry, assign the matter to the prisons Investigative Services Unit, or refer the matter to the Office of Internal Affairs.

Upon receiving a completed staff complaint inquiry report, the hiring authority may:

- Conclude no violation occurred and take no further action or,
- Conclude a policy violation did occur and may impose corrective action such as on the job training or counseling. If the hiring authority believes the violation requires an adverse action, such as a reprimand, pay reduction, suspension, or dismissal, they must first refer the matter to the Office of Internal Affairs. Ultimately, the hiring authority determines all disciplinary and corrective against their employees.

OIG Report

In January 2018, the Secretary of the California Department of Corrections and Rehabilitation (CDCR) and attorneys from the Prison Law Office requested that the Office of Inspector General (OIG) assess Salinas Valley State Prison's (SVSP) process of handling inmate allegations of staff misconduct, referred to as "staff complaints." The OIG conducted an investigation and released a report with findings on January 24, 2019. The findings include the following:

- Between December 1, 2017 through May 31, 2018, there were 3,218 staff complaint appeals statewide. SVSP received 298 during this same period of time which was significantly higher than other institutions.
- The process utilized at SVSP to review allegations was inadequate and the assigned staff investigators were inadequately trained.
 - Of the 188 staff complaint inquiry reviews, 55 percent were found to be inadequate and 92 percent had at least one significant deficiency. Of the 150 staff complaint inquiries that could have had relevant evidence to collect, reviewers failed to do 60 percent of the time.
 - Of the 61 reviewers at this one prison, only 23 percent had received any relevant training on the complaint inquiry process and 8 percent had received none.

- Staff Complaint Reviewers were not independent and, at times, displayed bias in favor of their fellow staff members, ignored inmate witness testimony, and often compromised confidentiality.
 - The prison assigned a reviewer who worked on the same yard and shift as the subject of the inquiry 60 percent of the time.
 - In at least 5 instances, the reviewer was actually involved in the incident giving rise to the staff complaint.
 - In a significant number of appellant and witness interviews, reviewers compromised the confidentiality of the process.
- While most of the staff complaint inquiries were completed within the required time frames, inmates were not notified, as required, when inquiries were overdue.
- SVSP staff worked more thoroughly when reviewing complaints submitted by attorneys who represented inmates but they still did not complete high quality inquiries.

OIG Recommendations

- To address the independence and quality issues identified in the report, a complete overhaul of the staff complaint process and reassignment of the responsibility of conducting staff complaint inquiries to employees who work outside of the prison's command structure which is the Division of Adult Institution is needed. To achieve this, a regionalized model should be adopted so that reviewers are not co-located in the facilities where they conduct staff complaint inquiries.
- Provide comprehensive and ongoing training to all staff members who may be assigned to conduct staff complaint processes and assign inquiries to only to those individuals who have received training and are certified.
- Consider requiring reviewers receive a certificate from the California Commission on Peace Officer Standards and Training with respect to conducting investigations.
- Consider requiring audio-recorded interviews of staff subjects and witnesses and video-record or at least audio-record all appellant and inmate witness interviews.

CDCR's Response to the OIG Report

CDCR agrees that the OIG's findings in SVSP is not limited to just this institution and that there may be "similar issues present at other institutions." They describe the following new framework as their response to the concerns outlined in the OIG report:

- CDCR's Office of Appeals has been removed from custody operations in the Division of Adult Institutions and placed under the purview of the Office of Administration and Offender Services, Division of Correctional Policy Research and Internal Oversight.
- CDCR is revising its regulations regarding administrative remedies, including changing the current three level approach to two levels, divided into grievances and appeals of grievances.
- Correctional Counselor II Supervisors will act as Grievance Coordinators and Correctional Lieutenants will review staff complaints at targeted adult institutions with the highest number of grievances.
- Correctional Lieutenants, whose primary assignment is staff complaints, will be sent to Peace Officer Standards and Training Commission certified Interview and Interrogation techniques course. CDCR's Office of Internal Affairs and Office of Appeals will provide statewide training to those staff who will be responding to staff complaints, provide an investigative and inquiry training module at the supervisory academy, and add reference material and refresher training via an asynchronous online system.

Prison Law Office

The Prison Law Office (PLO) is a non-profit public interest law firm that provides free legal services to incarcerated adults and youth to improve their conditions of confinement. The office provides direct services to thousands of prisoners and youth each year, advocates for policy changes, and, if necessary, engages in impact litigation to ensure that the correctional institutions meet standards required by the U.S. Constitution.

In their November 14, 2017 letter to the CDCR Office of Legal Affairs, the PLO detailed concerns with the staff complaint process they observed as part of their ongoing *Armstrong*¹ monitoring of SVSP. They indicated concerns with (1) lack of confidentiality in the process, (2) the conducting of "random interviews" with individuals that neither witnessed the event or had pertinent

¹ *Armstrong*, brought by disabled prisoners and parolees, requires CDCR to comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973 and improve access to prison programs for prisoners with physical disabilities at all of California's prisons and parole facilities.

information related to the event, (3) problematic interview techniques that indicated bias in favor of the staff member and hostility towards the complainant, (4) staff that discouraged the filing of complaints or fear of retaliation, (5) the use of Computer Voice Stress Analysis which is only administered on incarcerated individuals, (6) individuals who were not interviewed after their transfer to other institutions, and (7) at least one allegation related to the Prison Rape Elimination Act where a transgender woman was pressured to work in a kitchen so she could prostitute herself, and when she spoke to a sergeant about this issue, he responded with the statement, “Fuck, fight, or get along.”

The PLO recommends that CDCR must take “concrete, corrective action to address the large number of serious allegations of staff violence, harassment, discrimination, and other forms of misconduct.” They further recommend that video cameras be deployed at SVSP and for the prison to implement a “meaningful early warning system to ‘identify potentially problematic behavior, allow early intervention to correct misconduct, and assist in identifying deficiencies in supervision, management, and policies.’”

- CDCR’s Office of Audits and Court Compliance will regularly audit the institutions’ handling of its grievances.
- CDCR is exploring the development of tablet and kiosk-based grievance and appeals submissions.
- CDCR is establishing a Chief Risk Officer within OACC who will oversee the design and development of an early warning risk identification system to recognize systemic weaknesses and intervene accordingly.

STAFF COMMENTS

The staff complaint process allows inmates with a formal process to address issues that impact their health, safety, and other issues, and allows for the channeling of grievances in an appropriate manner that supports the safety of institutional staff and other inmates. A well-designed process also helps to minimize the risk of litigation brought by inmates and advocates.

The fidelity of a staff complaint process is incumbent on consistent procedures that are carried out by well-trained, unbiased individuals. According to the OIG report, CDCR has not met these requirements and while the report focuses on SVSP, it is likely endemic in other prisons across the state. While the procedures are outlined in detail, they are not followed consistently. A significant number of staff charged with the inquiry and investigation of the complaints have not received adequate training. Most importantly, the process is carried out within CDCR’s command structure, risking the reliability of the process and the accuracy of the outcomes.

CDCR's response to the OIG's findings and recommendations falls short of addressing the inherent bias of a process that allows fellow staff members to investigate complaints against their co-workers who are co-located in the same institution and sometimes in the same yard. While training those staffed to process and investigate these complaints is critical, the question of which entity or individuals should shepherd this process is the most critical issue to resolve in order for the state to ensure a process that provides adequate due process, supports the safety and welfare of both prison inmates and staff, and reduces the risk of costly litigation. As such, the Legislature may wish to consider adopting the OIG's recommendations and develop additional guidance to implement the changes and require a progress update to the Legislature by January 1, 2020.

The Subcommittee is in receipt of letters from advocates who state the following:

"Both youth and adult institutions within the CDCR system lack a fundamental check on staff abuse: a fully independent process for investigation complaints. To ensure the safety of individuals at all CDCR facilities, the state must take action to establish a robust, independent monitoring body that is charged with receiving allegations of misconduct and undertaking investigations."

"We support proper training for employees who process complaints. However, employing the best trained staff will be futile if we do not remedy the inherent conflict of interest that exists when prison staff are responsible for investigating their work partners."

"Though independent, the Inspector General's duties are fairly limited and often follow a period of internal investigations. For these reasons, we respectfully request further study of the staff misconduct investigation process across the CDCR system and as that the Assembly Committee on Budget explore opportunities to expand the oversight authority of existing monitoring bodies or to develop a new independent monitor responsible for maintaining the safety and integrity of the misconduct investigation process."

"Common complaints of misconduct we receive range from the use of demeaning racial and sexual epithets to the destruction of personal property. However, the overarching reason prisoners write to us is to tell us that their formal complaints are routinely dismissed...these incidents are not isolated to a single prison; rather, they are occurring in prisons throughout the state. What this really amounts to is a lack of due process..."

Staff Recommendation: Hold Open
