

AMENDED IN SENATE MAY 20, 2004  
AMENDED IN SENATE MAY 4, 2004  
AMENDED IN SENATE APRIL 27, 2004  
AMENDED IN SENATE MARCH 26, 2004

**SENATE BILL**

**No. 1342**

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**Introduced by Senators Speier and Romero**

February 18, 2004

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An act to amend Sections 6125, 6128, and 6129 of, and to add Section 6130 to, the Penal Code, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Speier. Inspector General.

Existing law establishes the office of the Inspector General relative to corrections, and generally provides for various duties and authority of the office.

This bill would provide that the Inspector General would be appointed to a 10-year term, subject to Senate confirmation, and that the Inspector General could not be removed from office except for good cause. ~~The bill would also provide that the budget of the office of the Inspector General would be fixed annually at an appropriate percentage of the amount approved for the budget of the Department of Corrections and the Department of the Youth Authority.~~

The bill would revise certain provisions relating to what materials are deemed confidential in connection with investigations by the Inspector General. The bill would delete provisions regarding investigations of employees of the Youthful Offender Parole Board, and revise provisions regarding the communication to the Inspector General if

information that may describe a variance from various departmental investigatory policies and procedures to apply, instead, to improper governmental activity, as defined. The bill would also revise procedures relating to the investigation of complaints of retaliation by certain employees, and would provide a procedure for coordinating investigations by the Inspector General and the appropriate employing entity, and complaints filed with the Inspector General and the Personnel Board by an employee, as specified. The bill would delete provisions authorizing punitive damages for malicious acts by offending parties against state employees, and revise the provisions for the referral ~~if~~ of criminal conduct by the Inspector General and specified state agencies to law enforcement officials, ~~to refer instead to referral to~~ the district attorney, or Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6125 of the Penal Code is amended to  
2 read:

3 6125. ~~(a)~~—There is hereby created the independent office of  
4 the Inspector General which shall not be a subdivision of any other  
5 governmental entity. The Governor shall appoint, subject to  
6 confirmation by the Senate, the Inspector General to a 10-year  
7 term. The Inspector General may not be removed from office  
8 during that term, except for good cause.

9 ~~(b) The budget of the office of the Inspector General shall be  
10 fixed annually at an appropriate percentage of the amount  
11 approved for the budget of the Department of Corrections and the  
12 Department of the Youth Authority.~~

13 SEC. 2. Section 6128 of the Penal Code is amended to read:

14 6128. (a) The office of the Inspector General may receive  
15 communications from any individual, including those employed  
16 by any department, board, or authority who believes he or she may  
17 have information that may describe an improper governmental  
18 activity, as that term is defined in subdivision (b) of Section 8547.2  
19 of the Government Code. It is not the purpose of these  
20 communications to redress any single disciplinary action or  
21 grievance that may routinely occur.



1 (b) In order to properly respond to any allegation of improper  
2 governmental activity, the Inspector General shall establish a  
3 toll-free public telephone number for the purpose of identifying  
4 any alleged wrongdoing by an employee of the Department of  
5 Corrections, the Department of the Youth Authority, the Board of  
6 Prison Terms, the Board of Corrections, the Narcotic Addict  
7 Evaluation Authority, the Prison Industry Authority, or the Youth  
8 and Adult Correctional Agency. This telephone number shall be  
9 posted by the above-named departments, and their respective  
10 subdivisions, in clear view of all employees and the public. When  
11 appropriate, the Inspector General shall initiate an investigation or  
12 audit of any alleged improper governmental activity. However,  
13 any request to conduct an investigation shall be in writing.

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

19 SEC. 3. Section 6129 of the Penal Code is amended to read:

20 6129. (a) (1) For purposes of this section, “employee”  
21 means any person employed by the Youth and Adult Correctional  
22 Agency, the Department of Corrections, the Department of the  
23 Youth Authority, the Board of Corrections, the Board of Prison  
24 Terms, *the Youth Authority Board* or the Inspector General.

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

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

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

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

35 (b) (1) Upon receiving a complaint of retaliation from an  
36 employee, the Inspector General may commence an investigation.  
37 All investigations conducted pursuant to this section shall be  
38 performed, in accordance with Sections 6126.5 and 6127.3. The  
39 Inspector General may also refer the matter for investigation by the  
40 appropriate employing entity, subject to investigative oversight by



1 the Inspector General. In a case in which the employing entity  
2 declines to investigate the complaint, it shall, within 30 days of  
3 receipt of the referral by the Inspector General, notify the Inspector  
4 General of its decision. The Inspector General may thereafter, in  
5 his or her discretion, conduct his or her own investigation into the  
6 complaint, or may notify the complaining employee and the State  
7 Personnel Board that no investigation will be conducted into the  
8 complaint.

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

13 (A) Unwarranted or unjustified staff changes.

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

16 (C) Unwarranted or unjustified formal or informal  
17 investigations.

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

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

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

36 (A) In a case in which the complaining employee has filed a  
37 retaliation complaint with the Inspector General but not with the  
38 State Personnel Board, the limitation period for filing a retaliation  
39 complaint with the State Personnel Board shall be tolled until the  
40 time the Inspector General or the employing entity either issues its



1 investigative report to the ~~complaint~~ *complaining* employee or the  
2 State Personnel Board, or until the complaint is rejected or  
3 otherwise dismissed by the Inspector General or the employing  
4 entity.

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

12 (c) (1) In a case in which the Inspector General determines, as  
13 a result of his or her own investigation, that an employee has been  
14 subjected to acts of reprisal, retaliation, threats, or similar acts in  
15 violation of this section, the Inspector General shall provide a copy  
16 of the investigative report, together with all other underlying  
17 investigative materials the Inspector General determines to be  
18 relevant, to the appropriate director or chair so that disciplinary  
19 action may be initiated against those individuals found to have  
20 intentionally engaged in acts of reprisal, retaliation, threats or  
21 similar acts. In a case in which the Inspector General determines,  
22 based on a review of the investigation conducted by the employing  
23 entity, that an employee has been subjected to acts of reprisal,  
24 retaliation, threats, or similar acts in violation of this section, the  
25 Inspector General shall submit a written recommendation to the  
26 appropriate director or chair so that disciplinary action may be  
27 initiated, based on the employing entities investigation, against  
28 those individuals found to have intentionally engaged in acts of  
29 reprisal, retaliation, threats, or similar acts.

30 (2) Any employee at any rank and file, supervisory, or  
31 managerial level, who intentionally engages in acts of reprisal,  
32 retaliation, threats, coercion, or similar acts against another  
33 employee, pursuant to paragraph (2) of subdivision (a), shall be  
34 disciplined by the employing entity by adverse action as provided  
35 in Section 19572 of the Government Code. The disciplinary action  
36 shall require, at a minimum, a suspension for not less than 30 days  
37 without pay, except in a case in which the employing entity  
38 determines that a lesser penalty is warranted. In that case, the  
39 employing entity shall, within 30 days of receipt of the  
40 investigative report, provide written justification for that decision



1 to the Inspector General. The employing entity shall also, within  
2 30 days of receipt of the written report, notify the Inspector  
3 General in writing as to what steps, if any, it has taken to remedy  
4 the retaliatory conduct found to have been committed by any of its  
5 employees.

6 (3) In an instance in which it is determined that the employing  
7 entity, upon being notified that one or more of its employees has  
8 been subjected to acts of reprisal, retaliation, threats, or similar  
9 acts in violation of this section, took reasonable steps to remedy  
10 any retaliatory conduct found to have been committed by any of  
11 its employees, including, but not limited to, taking adverse action  
12 against the offending employee, and remedying any improper  
13 personnel actions taken against the complaining employee, the  
14 employing entity itself shall not thereafter be held liable for any  
15 other compensatory or punitive damages, or for reasonable  
16 ~~attorneys~~ attorney's fees, that might thereafter be awarded to the  
17 complaining employee in any other state administrative or judicial  
18 forum. This shall not, however, preclude the complaining  
19 employee from recovering any other compensatory or punitive  
20 damages, or reasonable attorney's fees, that might be awarded to  
21 the complaining employee in any other state administrative or  
22 judicial forum against those individuals found to have engaged in  
23 acts of reprisal, retaliation, threats, or similar acts in violation of  
24 this section, against the complaining employee.

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

34 (2) The Inspector General may, thereafter, with the written  
35 consent of the complaining employee, forward a copy of the  
36 investigative report, together with all other underlying  
37 investigative materials the Inspector General deems to be relevant,  
38 to the State Personnel Board so that adverse action proceedings  
39 may be invoked against the employee found to have engaged in



1 acts of reprisal, retaliation, threats, or similar acts, in accordance  
2 with the provisions of Section 19583.5 of the Government Code.

3 (3) In addition to all other penalties provided by law, including  
4 Section 8547.8 of the Government Code or any other penalties that  
5 the sanctioning authority may determine to be appropriate, any  
6 state employee at any rank and file, supervisory, or managerial  
7 level found by the State Personnel Board to have intentionally  
8 engaged in acts of reprisal, retaliation, threats, or coercion shall be  
9 suspended for not less than 30 days without pay, and shall be liable  
10 in an action for damages brought against him or her by the injured  
11 party. If the State Personnel Board determines that a lesser period  
12 of suspension is warranted, the reasons for that determination must  
13 be justified in writing in the decision.

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

17 SEC. 4. Section 6130 is added to the Penal Code, to read:

18 6130. The Youth and Adult Correctional Agency, the  
19 Department of the Youth Authority, the Department of  
20 Corrections, the Board of Corrections, the Board of Prison Terms,  
21 or other applicable employing entity, shall immediately inform the  
22 Inspector General of all matters involving criminal conduct and  
23 shall refer those matters to the district attorney in the appropriate  
24 jurisdiction and the Attorney General for further action. The  
25 employing entity shall make available all information and  
26 evidence gathered during the investigative process to those law  
27 enforcement authorities who receive the referral and the  
28 employing entity may cooperate with further investigation.  
29 Except as to the receiving authorities, the employing entity shall  
30 not disclose official information gathered during the investigative  
31 process which is deemed to be confidential or privileged pursuant  
32 to any other provision of law and no official information deemed  
33 to be confidential or privileged may be entered in the officer's  
34 personnel file.

