

AMENDED IN ASSEMBLY JULY 15, 2004  
AMENDED IN ASSEMBLY JUNE 22, 2004  
AMENDED IN ASSEMBLY JUNE 9, 2004  
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 ~~Sections 6130 and 6131~~ *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 6-year term, subject to Senate confirmation, and that the Inspector General could not be removed from office except for good cause.

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 of criminal conduct by the Inspector General and specified state agencies to law enforcement officials, the district attorney, or Attorney General.

~~The bill would require disclosure of completed audit or investigation reports by the Inspector General, and specify the conditions of those disclosures. The bill would require annual and other regular reports by the Inspector General, to the Governor and the Legislature, and others, as specified.~~

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. There is hereby created the independent office of the  
 4 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 six-year  
 7 term. The Inspector General may not be removed from office  
 8 during that term, except for good cause.  
 9 SEC. 2. Section 6128 of the Penal Code is amended to read:  
 10 6128. (a) The office of the Inspector General may receive  
 11 communications from any individual, including those employed  
 12 by any department, board, or authority who believes he or she may  
 13 have information that may describe an improper governmental  
 14 activity, as that term is defined in subdivision (b) of Section 8547.2



1 of the Government Code. It is not the purpose of these  
2 communications to redress any single disciplinary action or  
3 grievance that may routinely occur.

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

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

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

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

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

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

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

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

38 (b) (1) Upon receiving a complaint of retaliation from an  
39 employee against a member of management, the Inspector General  
40 shall commence an ~~investigation~~ *inquiry into the complaint and*



1 *conduct a formal investigation where a legally cognizable cause*  
2 *of action is presented.* All investigations conducted pursuant to  
3 this section shall be performed in accordance with Sections 6126.5  
4 and 6127.3. The Inspector General may refer all other matters for  
5 investigation by the appropriate employing entity, subject to  
6 investigative oversight by the Inspector General ~~and public~~  
7 ~~reporting pursuant to subdivision (b) of Section 6131.~~ In a case  
8 in which the employing entity declines to investigate the  
9 complaint, it shall, within 30 days of receipt of the referral by the  
10 Inspector General, notify the Inspector General of its decision. The  
11 Inspector General shall thereafter, conduct his or her own inquiry  
12 into the complaint. If, after reviewing the complaint, the Inspector  
13 General determines that a legally cognizable cause of action has  
14 not been presented by the complaint, the Inspector General shall  
15 thereafter notify the complaining employee and the State  
16 Personnel Board that a formal investigation is not warranted.

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

21 (A) Unwarranted or unjustified staff changes.

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

24 (C) Unwarranted or unjustified formal or informal  
25 investigations.

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

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

32 (3) In a case in which the complaining employee has also filed  
33 a retaliation complaint with the State Personnel Board pursuant to  
34 Sections 8547.8 and 19683 of the Government Code, the State  
35 Personnel Board shall have the discretion to toll any investigation,  
36 hearing, or other proceeding that would otherwise be conducted by  
37 the State Personnel Board in response to that complaint, pending  
38 either the completion of the Inspector General's or the employing  
39 entity's investigation, or until the complaint is rejected or  
40 otherwise dismissed by the Inspector General or the employing



1 entity. An employee, however, may not be required to first file a  
2 retaliation complaint with the Inspector General prior to filing a  
3 complaint with the State Personnel Board.

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

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

19 (c) (1) In a case in which the Inspector General determines, as  
20 a result of his or her own investigation, that an employee has been  
21 subjected to acts of reprisal, retaliation, threats, or similar acts in  
22 violation of this section, the Inspector General shall provide a copy  
23 of the investigative report, together with all other underlying  
24 investigative materials the Inspector General determines to be  
25 relevant, to the appropriate director or chair who shall take  
26 appropriate corrective action. In a case in which the Inspector  
27 General determines, based on an independent review of the  
28 investigation conducted by the employing entity, that an employee  
29 has been subjected to acts of reprisal, retaliation, threats, or similar  
30 acts in violation of this section, the Inspector General shall submit  
31 a written recommendation to the appropriate director or chair who  
32 shall take appropriate corrective action. *If the hiring authority*  
33 *initiates disciplinary action as defined in Section 19570 of the*  
34 *Government Code, it shall provide the subject with all materials*  
35 *required by law.*

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



1 (3) Any employee at any rank and file, supervisory, or  
2 managerial level, who intentionally engages in acts of reprisal,  
3 retaliation, threats, coercion, or similar acts against another  
4 employee, pursuant to paragraph (2) of subdivision (a), shall be  
5 disciplined by the employing entity by adverse action as provided  
6 in Section 19572 of the Government Code. The disciplinary action  
7 shall require, at a minimum, a suspension for not less than 30 days  
8 without pay, except in a case in which the employing entity  
9 determines that a lesser penalty is warranted. In that case, the  
10 employing entity shall, within 30 days of receipt of the  
11 investigative report, provide written justification for that decision  
12 to the Inspector General. The employing entity shall also, within  
13 30 days of receipt of the written report, notify the Inspector  
14 General in writing as to what steps, if any, it has taken to remedy  
15 the retaliatory conduct found to have been committed by any of its  
16 employees.

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

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

37 (3) In addition to all other penalties provided by law, including  
38 Section 8547.8 of the Government Code or any other penalties that  
39 the sanctioning authority may determine to be appropriate, any  
40 state employee at any rank and file, supervisory, or managerial



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

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

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

12 6130. The Youth and Adult Correctional Agency, the  
13 Department of the Youth Authority, the Department of  
14 Corrections, the Board of Corrections, the Board of Prison Terms,  
15 or other applicable employing entity, shall immediately inform the  
16 Inspector General of all matters involving *employee* criminal  
17 conduct and shall refer those matters to the district attorney in the  
18 appropriate jurisdiction and the Attorney General for further  
19 action. The employing entity shall make available all information  
20 and evidence gathered during the investigative process to those  
21 law enforcement authorities who receive the referral and the  
22 employing entity ~~may~~ shall cooperate with further investigation  
23 *by those authorities*. Except as to ~~the receiving~~ law enforcement  
24 authorities, the employing entity shall not disclose official  
25 information gathered during the investigative process which is  
26 deemed to be confidential or privileged pursuant to any other  
27 provision of law and no official information deemed to be  
28 confidential or privileged may be entered in the officer's personnel  
29 file *unless adverse action is sustained by the hiring authority*.

30 ~~SEC. 5. Section 6131 is added to the Penal Code, to read:~~

31 ~~6131. (a) Upon the completion of any audit conducted by the~~  
32 ~~Inspector General, he or she shall prepare a written report, which~~  
33 ~~shall be disclosed, along with all underlying materials the~~  
34 ~~Inspector General deems appropriate, to the Governor, the~~  
35 ~~Secretary of the Youth and Adult Correctional Agency, the~~  
36 ~~appropriate director, chair, or law enforcement agency, and the~~  
37 ~~Legislature. Copies of all those written reports shall be posted on~~  
38 ~~the Inspector General's Web site within 30 days of being disclosed~~  
39 ~~to the above-listed entities or persons.~~



1 ~~(b) Upon the completion of any investigation conducted by the~~  
2 ~~Inspector General, he or she shall prepare a complete written~~  
3 ~~report, which shall be disclosed, along with all underlying~~  
4 ~~investigative materials the Inspector General deems appropriate,~~  
5 ~~to the Governor, the Secretary of the Youth and Adult Correctional~~  
6 ~~Agency, and the appropriate director, chair, or law enforcement~~  
7 ~~agency.~~

8 ~~(c) Upon the completion of any investigation conducted by the~~  
9 ~~Inspector General, he or she shall also prepare a public~~  
10 ~~investigative report. The public investigative report shall differ~~  
11 ~~from the complete investigative report only in the respect that the~~  
12 ~~Inspector General shall have the discretion to redact the names of~~  
13 ~~individuals, specific locations, or other facts that, if not redacted,~~  
14 ~~might hinder prosecution related to the investigation, or where~~  
15 ~~disclosure of the information is otherwise prohibited by law, and~~  
16 ~~to decline to produce any of the underlying investigative materials.~~  
17 ~~In a case where allegations were deemed to be unfounded, all~~  
18 ~~applicable identifying information shall be redacted. The public~~  
19 ~~investigative report shall be made public as follows:~~

20 ~~(1) In those cases where an investigation is referred only for~~  
21 ~~disciplinary action before the State Personnel Board or for other~~  
22 ~~administrative proceedings, the employing entity shall, within 10~~  
23 ~~days of receipt of the State Personnel Board's order rendered in~~  
24 ~~other administrative proceedings, provide the Inspector General~~  
25 ~~with a copy of the order. The Inspector General shall, within 10~~  
26 ~~days of this notification, post the public investigative report on its~~  
27 ~~Web site and provide copies of the report to the Legislature, as well~~  
28 ~~as to any complaining employee and any employee who was the~~  
29 ~~subject of the investigation.~~

30 ~~(2) In those cases where the employing entity and the employee~~  
31 ~~against whom disciplinary action has been taken enter into a~~  
32 ~~settlement agreement concerning the disciplinary action, the~~  
33 ~~employing entity shall, within 10 days of the settlement agreement~~  
34 ~~becoming final, notify the Inspector General in writing of that fact~~  
35 ~~and shall describe what disciplinary action, if any, was ultimately~~  
36 ~~imposed on the employee. The Inspector General shall, within 10~~  
37 ~~days of this notification, post the public investigative report on its~~  
38 ~~Web site and provide copies of the report to the Legislature, as well~~  
39 ~~as to any complaining employee and any employee who was the~~  
40 ~~subject of the investigation.~~



1 ~~(3) In those cases where the employing entity declines to~~  
2 ~~pursue disciplinary action against an employee, the employing~~  
3 ~~entity shall, within 30 days of receipt of the investigative report,~~  
4 ~~notify the Inspector General in writing of its decision not to pursue~~  
5 ~~disciplinary action, setting forth the reasons for its decision. The~~  
6 ~~Inspector General shall, within 10 days of this notification, post the~~  
7 ~~public investigative report on its Web site and provide copies of the~~  
8 ~~report to the Legislature, as well as to any complaining employee~~  
9 ~~and any employee who was the subject of the investigation.~~

10 ~~(4) In those cases where an investigation has been referred for~~  
11 ~~possible criminal prosecution, and the applicable local law~~  
12 ~~enforcement agency or the Attorney General has decided to~~  
13 ~~commence criminal proceedings against an employee, the report~~  
14 ~~shall be made public at a time deemed appropriate by the Inspector~~  
15 ~~General after consultation with the local law enforcement agency~~  
16 ~~or the Attorney General, but in all cases no later than within 30~~  
17 ~~days of a verdict having been rendered in the criminal proceedings.~~  
18 ~~The Inspector General shall thereafter post the public investigative~~  
19 ~~report on its Web site and provide copies of the report to the~~  
20 ~~Legislature, as well as to any complaining employee and any~~  
21 ~~employee who was the subject of the investigation.~~

22 ~~(5) In those cases where the local law enforcement agency or~~  
23 ~~the Attorney General declines to commence criminal proceedings~~  
24 ~~against an employee, the local law enforcement agency or the~~  
25 ~~Attorney General shall, within 30 days of reaching that decision,~~  
26 ~~notify the Inspector General of that fact. The Inspector General~~  
27 ~~shall, within 10 days of this notification, post the public~~  
28 ~~investigative report on its Web site and provide copies of the report~~  
29 ~~to the Legislature, as well as to any complaining employee and any~~  
30 ~~employee who was the subject of the investigation.~~

31 ~~(6) In those cases where an investigation has been referred for~~  
32 ~~neither disciplinary action or other administrative proceedings,~~  
33 ~~nor for criminal prosecution, the Inspector General shall, within~~  
34 ~~30 days of issuing the complete investigative report, post the~~  
35 ~~public investigative report on its Web site and provide copies of the~~  
36 ~~report to the Legislature, as well as to any complaining employee~~  
37 ~~and any employee who was the subject of the investigation.~~



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2 CORRECTIONS  
3 Text — Page 3.  
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