

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

**SENATE BILL**

**No. 490**

---

---

**Introduced by Senator Hancock**  
*(Coauthor: Senator Anderson)*

February 17, 2011

---

---

An act to amend Sections 830.2, 830.5, 830.11, 6125, 6126.2, 6126.3, 6126.4, 6126.5, 6127.3, 6127.4, 6131, 6132, and 6140 of, to amend the heading of Chapter 8.2 (commencing with Section 6125) of Title 7 of Part 3 of, to repeal Sections 6051, 6126.1, 6126.6, 6127.1, 6128, 6129, and 6133 of, and to repeal and add Section 6126 of, the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 490, as amended, Hancock. Corrections: Office of the ~~Inspector General~~ *Independent Correctional Oversight*.

(1) Existing law creates the independent Office of the Inspector General and provides that it is not a subdivision of any other government entity. The Inspector General and certain other employees of the office are peace officers provided that the primary duty of these peace officers is conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and the Board of Parole Hearings.

This bill would remove the Inspector General and the other employees from peace officer status. The bill would eliminate the Office of the Inspector General and replace it with its successor the Office of Independent Correctional Oversight and make conforming changes. The bill would require the Governor to appoint a director for the office,

as specified, and would authorize the director and certain other employees to exercise the powers of arrest and serving warrants, as provided.

(2) Existing law requires the Inspector General to, among other things, review departmental policy and procedures, conduct audits of investigatory practices and other audits, be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process, and conduct investigations of the department, and audit each warden of an institution one year after his or her appointment and each correctional institution at least once every 4 years. Existing law establishes within the Office of the Inspector General a Bureau of Independent Review (BIR). Existing law requires the Inspector General to evaluate and determine the qualifications of each candidate for warden or superintendent, as specified.

This bill would continue the purpose and duties of the BIR through the Office of Independent Correctional Oversight and require the Office of Independent Correctional Oversight to perform the function of evaluating candidates for warden or superintendent, as specified. The bill would authorize the office, pursuant to adoption of regulations and procedures, to conduct oversight reviews pertaining to specified significant correctional issues, including, among others, employee use of force, inmate-patient health care delivery, and security procedures. *The bill would require the office to conduct an inspection program to periodically review delivery of medical care at each state prison.*

(3) Existing law makes it a misdemeanor for certain persons that have assisted the Inspector General in the course of any audit or investigation or that have been furnished a draft copy of any report for comment or review to divulge or make known in any manner not expressly permitted by law any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public.

This bill would delete the reference to any audit or investigation and instead make the misdemeanor applicable to certain persons who have assisted the director in the course of his or her work. Because the bill would expand the scope of a crime, it would impose a state-mandated local program.

(4) Existing law requires the Inspector General, upon receiving a complaint of retaliation from an employee against a member of management at the department, to commence an inquiry into the

complaint and conduct a formal investigation where a legally cognizable cause of action is presented, as provided.

The bill would delete those provisions.

The bill would also delete obsolete provisions and make conforming changes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 830.2 of the Penal Code is amended to  
2 read:

3 830.2. The following persons are peace officers whose authority  
4 extends to any place in the state:

5 (a) Any member of the Department of the California Highway  
6 Patrol including those members designated under subdivision (a)  
7 of Section 2250.1 of the Vehicle Code, provided that the primary  
8 duty of the peace officer is the enforcement of any law relating to  
9 the use or operation of vehicles upon the highways, or laws  
10 pertaining to the provision of police services for the protection of  
11 state officers, state properties, and the occupants of state properties,  
12 or both, as set forth in the Vehicle Code and Government Code.

13 (b) A member of the University of California Police Department  
14 appointed pursuant to Section 92600 of the Education Code,  
15 provided that the primary duty of the peace officer shall be the  
16 enforcement of the law within the area specified in Section 92600  
17 of the Education Code.

18 (c) A member of the California State University Police  
19 Departments appointed pursuant to Section 89560 of the Education  
20 Code, provided that the primary duty of the peace officer shall be  
21 the enforcement of the law within the area specified in Section  
22 89560 of the Education Code.

23 (d) (1) Any member of the Office of Correctional Safety of the  
24 Department of Corrections and Rehabilitation, provided that the  
25 primary duties of the peace officer shall be the investigation or

1 apprehension of inmates, wards, parolees, parole violators, or  
2 escapees from state institutions, the transportation of those persons,  
3 the investigation of any violation of criminal law discovered while  
4 performing the usual and authorized duties of employment, and  
5 the coordination of those activities with other criminal justice  
6 agencies.

7 (2) Any member of the Office of Internal Affairs of the  
8 Department of Corrections and Rehabilitation, provided that the  
9 primary duties shall be criminal investigations of Department of  
10 Corrections and Rehabilitation personnel and the coordination of  
11 those activities with other criminal justice agencies. For purposes  
12 of this subdivision, the member of the Office of Internal Affairs  
13 shall possess certification from the Commission on Peace Officer  
14 Standards and Training for investigators, or have completed  
15 training pursuant to Section 6126.1 of the Penal Code.

16 (e) Employees of the Department of Fish and Game designated  
17 by the director, provided that the primary duty of those peace  
18 officers shall be the enforcement of the law as set forth in Section  
19 856 of the Fish and Game Code.

20 (f) Employees of the Department of Parks and Recreation  
21 designated by the director pursuant to Section 5008 of the Public  
22 Resources Code, provided that the primary duty of the peace officer  
23 shall be the enforcement of the law as set forth in Section 5008 of  
24 the Public Resources Code.

25 (g) The Director of Forestry and Fire Protection and employees  
26 or classes of employees of the Department of Forestry and Fire  
27 Protection designated by the director pursuant to Section 4156 of  
28 the Public Resources Code, provided that the primary duty of the  
29 peace officer shall be the enforcement of the law as that duty is  
30 set forth in Section 4156 of the Public Resources Code.

31 (h) Persons employed by the Department of Alcoholic Beverage  
32 Control for the enforcement of Division 9 (commencing with  
33 Section 23000) of the Business and Professions Code and  
34 designated by the Director of Alcoholic Beverage Control, provided  
35 that the primary duty of any of these peace officers shall be the  
36 enforcement of the laws relating to alcoholic beverages, as that  
37 duty is set forth in Section 25755 of the Business and Professions  
38 Code.

39 (i) Marshals and police appointed by the Board of Directors of  
40 the California Exposition and State Fair pursuant to Section 3332

1 of the Food and Agricultural Code, provided that the primary duty  
2 of the peace officers shall be the enforcement of the law as  
3 prescribed in that section.

4 SEC. 2. Section 830.5 of the Penal Code is amended to read:

5 830.5. The following persons are peace officers whose authority  
6 extends to any place in the state while engaged in the performance  
7 of the duties of their respective employment and for the purpose  
8 of carrying out the primary function of their employment or as  
9 required under Sections 8597, 8598, and 8617 of the Government  
10 Code. Except as specified in this section, these peace officers may  
11 carry firearms only if authorized and under those terms and  
12 conditions specified by their employing agency:

13 (a) A parole officer of the Department of Corrections or the  
14 Department of the Youth Authority, probation officer, deputy  
15 probation officer, or a board coordinating parole agent employed  
16 by the Youthful Offender Parole Board. Except as otherwise  
17 provided in this subdivision, the authority of these parole or  
18 probation officers shall extend only as follows:

19 (1) To conditions of parole or of probation by any person in this  
20 state on parole or probation.

21 (2) To the escape of any inmate or ward from a state or local  
22 institution.

23 (3) To the transportation of persons on parole or probation.

24 (4) To violations of any penal provisions of law which are  
25 discovered while performing the usual or authorized duties of his  
26 or her employment.

27 (5) To the rendering of mutual aid to any other law enforcement  
28 agency.

29 For the purposes of this subdivision, “parole agent” shall have  
30 the same meaning as parole officer of the Department of  
31 Corrections or of the Department of the Youth Authority.

32 Any parole officer of the Department of Corrections, the  
33 Department of the Youth Authority, or the Youthful Offender  
34 Parole Board is authorized to carry firearms, but only as determined  
35 by the director on a case-by-case or unit-by-unit basis and only  
36 under those terms and conditions specified by the director or  
37 chairperson. The Department of the Youth Authority shall develop  
38 a policy for arming peace officers of the Department of the Youth  
39 Authority who comprise “high-risk transportation details” or

1 “high-risk escape details” no later than June 30, 1995. This policy  
2 shall be implemented no later than December 31, 1995.

3 The Department of the Youth Authority shall train and arm those  
4 peace officers who comprise tactical teams at each facility for use  
5 during “high-risk escape details.”

6 (b) A correctional officer employed by the Department of  
7 Corrections or any employee of the Department of the Youth  
8 Authority having custody of wards or any employee of the  
9 Department of Corrections designated by the Director of  
10 Corrections or any correctional counselor series employee of the  
11 Department of Corrections or any medical technical assistant series  
12 employee designated by the Director of Corrections or designated  
13 by the Director of Corrections and employed by the State  
14 Department of Mental Health or employee of the Board of Prison  
15 Terms designated by the Secretary of the Youth and Adult  
16 Correctional Agency or employee of the Department of the Youth  
17 Authority designated by the Director of the Youth Authority or  
18 any superintendent, supervisor, or employee having custodial  
19 responsibilities in an institution operated by a probation  
20 department, or any transportation officer of a probation department.

21 (c) The following persons may carry a firearm while not on  
22 duty: a parole officer of the Department of Corrections or the  
23 Department of the Youth Authority, a correctional officer or  
24 correctional counselor employed by the Department of Corrections  
25 or any employee of the Department of the Youth Authority having  
26 custody of wards or any employee of the Department of Corrections  
27 designated by the Director of Corrections. A parole officer of the  
28 Youthful Offender Parole Board may carry a firearm while not on  
29 duty only when so authorized by the chairperson of the board and  
30 only under the terms and conditions specified by the chairperson.  
31 Nothing in this section shall be interpreted to require licensure  
32 pursuant to Section 25400. The director or chairperson may deny,  
33 suspend, or revoke for good cause a person’s right to carry a  
34 firearm under this subdivision. That person shall, upon request,  
35 receive a hearing, as provided for in the negotiated grievance  
36 procedure between the exclusive employee representative and the  
37 Department of Corrections, the Department of the Youth Authority,  
38 or the Youthful Offender Parole Board, to review the director’s or  
39 the chairperson’s decision.

1 (d) Persons permitted to carry firearms pursuant to this section,  
2 either on or off duty, shall meet the training requirements of Section  
3 832 and shall qualify with the firearm at least quarterly. It is the  
4 responsibility of the individual officer or designee to maintain his  
5 or her eligibility to carry concealable firearms off duty. Failure to  
6 maintain quarterly qualifications by an officer or designee with  
7 any concealable firearms carried off duty shall constitute good  
8 cause to suspend or revoke that person’s right to carry firearms  
9 off duty.

10 (e) The Department of Corrections shall allow reasonable access  
11 to its ranges for officers and designees of either department to  
12 qualify to carry concealable firearms off duty. The time spent on  
13 the range for purposes of meeting the qualification requirements  
14 shall be the person’s own time during the person’s off-duty hours.

15 (f) The Director of Corrections shall promulgate regulations  
16 consistent with this section.

17 (g) “High-risk transportation details” and “high-risk escape  
18 details” as used in this section shall be determined by the Director  
19 of the Youth Authority, or his or her designee. The director, or his  
20 or her designee, shall consider at least the following in determining  
21 “high-risk transportation details” and “high-risk escape details”:  
22 protection of the public, protection of officers, flight risk, and  
23 violence potential of the wards.

24 (h) “Transportation detail” as used in this section shall include  
25 transportation of wards outside the facility, including, but not  
26 limited to, court appearances, medical trips, and interfacility  
27 transfers.

28 SEC. 3. Section 830.11 of the Penal Code is amended to read:

29 830.11. (a) The following persons are not peace officers but  
30 may exercise the powers of arrest of a peace officer as specified  
31 in Section 836 and the power to serve warrants as specified in  
32 Sections 1523 and 1530 during the course and within the scope of  
33 their employment, if they receive a course in the exercise of those  
34 powers pursuant to Section 832. The authority and powers of the  
35 persons designated under this section shall extend to any place in  
36 the state:

37 (1) Persons employed by the Department of Financial  
38 Institutions designated by the Commissioner of Financial  
39 Institutions, provided that the primary duty of these persons shall

1 be the enforcement of, and investigations relating to, the provisions  
2 of law administered by the Commissioner of Financial Institutions.

3 (2) Persons employed by the Department of Real Estate  
4 designated by the Real Estate Commissioner, provided that the  
5 primary duty of these persons shall be the enforcement of the laws  
6 set forth in Part 1 (commencing with Section 10000) and Part 2  
7 (commencing with Section 11000) of Division 4 of the Business  
8 and Professions Code. The Real Estate Commissioner may  
9 designate persons under this section, who at the time of their  
10 designation, are assigned to the Special Investigations Unit,  
11 internally known as the Crisis Response Team.

12 (3) Persons employed by the State Lands Commission  
13 designated by the executive officer, provided that the primary duty  
14 of these persons shall be the enforcement of the law relating to the  
15 duties of the State Lands Commission.

16 (4) Persons employed as investigators of the Investigations  
17 Bureau of the Department of Insurance, who are designated by the  
18 Chief of the Investigations Bureau, provided that the primary duty  
19 of these persons shall be the enforcement of the Insurance Code  
20 and other laws relating to persons and businesses, licensed and  
21 unlicensed by the Department of Insurance, who are engaged in  
22 the business of insurance.

23 (5) Persons employed as investigators and investigator  
24 supervisors of the Consumer Services Division or the Rail Safety  
25 and Carrier Division of the Public Utilities Commission who are  
26 designated by the commission's executive director and approved  
27 by the commission, provided that the primary duty of these persons  
28 shall be the enforcement of the law as that duty is set forth in  
29 Section 308.5 of the Public Utilities Code.

30 (6) (A) Persons employed by the State Board of Equalization,  
31 Investigations Division, who are designated by the board's  
32 executive director, provided that the primary duty of these persons  
33 shall be the enforcement of laws administered by the State Board  
34 of Equalization.

35 (B) Persons designated pursuant to this paragraph are not entitled  
36 to peace officer retirement benefits.

37 (7) Persons employed by the Department of Food and  
38 Agriculture and designated by the Secretary of Food and  
39 Agriculture as investigators, investigator supervisors, and  
40 investigator managers, provided that the primary duty of these

1 persons shall be enforcement of, and investigations relating to, the  
2 Food and Agricultural Code or Division 5 (commencing with  
3 Section 12001) of the Business and Professions Code.

4 (8) The Director of the Office of Independent Correctional  
5 Oversight and those employees of the office as designated by the  
6 director, provided that the primary duty of those persons shall be  
7 the enforcement of the law relating to the duties of the Office of  
8 Independent Correctional Oversight.

9 (b) Notwithstanding any other provision of law, persons  
10 designated pursuant to this section may not carry firearms.

11 (c) Persons designated pursuant to this section shall be included  
12 as “peace officers of the state” under paragraph (2) of subdivision  
13 (c) of Section 11105 for the purpose of receiving state summary  
14 criminal history information and shall be furnished that information  
15 on the same basis as peace officers of the state designated in  
16 paragraph (2) of subdivision (c) of Section 11105.

17 SEC. 4. Section 6051 of the Penal Code is repealed.

18 SEC. 5. The heading of Chapter 8.2 (commencing with Section  
19 6125) of Title 7 of Part 3 of the Penal Code is amended to read:

20

21 CHAPTER 8.2. OFFICE OF INDEPENDENT CORRECTIONAL  
22 OVERSIGHT

23

24 SEC. 6. Section 6125 of the Penal Code is amended to read:

25 6125. (a) There is hereby created the Office of Independent  
26 Correctional Oversight which shall not be a subdivision of any  
27 other governmental entity.

28 (b) The purpose of the Office of Independent Correctional  
29 Oversight shall be to perform its functions as prescribed by law  
30 in a manner that promotes management, fiscal and program  
31 competency, and accountability in the state correctional system in  
32 furtherance of public safety and evidence-based correctional  
33 practices.

34 (c) The Governor shall appoint, subject to confirmation by the  
35 Senate, a director for the office, who shall hold office for a  
36 four-year term. The director may not be removed from office during  
37 that term, except for good cause.

38 (d) The director shall be deemed to be a department head for  
39 the purpose of Section 11189 of the Government Code in  
40 connection with any work conducted pursuant to this chapter.

1 (e) For purposes of this chapter, “director” means the Director  
2 of the Office of Independent Correctional Oversight.

3 SEC. 7. Section 6126 of the Penal Code is repealed.

4 SEC. 8. Section 6126 is added to the Penal Code, to read:

5 6126. (a) The Legislature finds and declares that the purpose  
6 and duties of the Bureau of Independent Review, previously  
7 existing within the Office of the Inspector General and repealed  
8 by this act, shall continue through the Office of Independent  
9 Correctional Oversight as created by ~~this act~~ *Section 6125*.

10 (b) The Office of Independent Correctional Oversight shall  
11 perform the following duties:

12 (1) Contemporaneous public oversight of the Department of  
13 Corrections and Rehabilitation investigations conducted by the  
14 Department of Corrections and Rehabilitation’s Office of Internal  
15 Affairs.

16 (2) Advising the public regarding the adequacy of each  
17 investigation, and whether discipline of the subject of the  
18 investigation is warranted.

19 (3) Issuing regular reports, no less than annually, to the Governor  
20 and the Legislature summarizing its recommendations concerning  
21 its oversight of the Department of Corrections and Rehabilitation  
22 allegations of internal misconduct and use of force.

23 (4) Issuing regular reports, no less than semiannually,  
24 summarizing its oversight of Office of Internal Affairs  
25 investigations pursuant to paragraphs (1) and (2). The reports shall  
26 include, but not be limited to, the following:

27 (A) Data on the number, type, and disposition of complaints  
28 made against correctional officers and staff.

29 (B) A synopsis of each matter reviewed by the office.

30 (C) An assessment of the quality of the investigation, the  
31 appropriateness of any disciplinary charges, the office’s  
32 recommendations regarding the disposition in the case and when  
33 founded, the level of discipline afforded, and the degree to which  
34 the agency’s authorities agreed with the office’s recommendations  
35 regarding disposition and level of discipline.

36 (D) The report of any settlement and whether the office  
37 concurred with the settlement.

38 (E) The extent to which any discipline was modified after  
39 imposition.

1 (F) The reports shall be in a form that does not identify the  
2 agency employees involved in the alleged misconduct.

3 (G) The reports shall be posted on the office's Internet Web site  
4 and otherwise made available to the public upon their release to  
5 the Governor and the Legislature.

6 (H) A report pursuant to this subdivision shall be submitted in  
7 compliance with Section 9795 of the Government Code.

8 (5) Reviewing the qualifications of a candidate for warden or  
9 superintendent as follows:

10 (A) Prior to filling a vacancy for warden by appointment  
11 pursuant to Section 6050, or superintendent pursuant to Section  
12 1049 of the Welfare and Institutions Code, the Governor shall first  
13 submit to the Office of Independent Correctional Oversight the  
14 names of candidates for the position of warden or superintendent  
15 for review of their qualifications.

16 (B) Upon receipt of the names of those candidates and their  
17 completed personal data questionnaires, the director shall employ  
18 appropriate confidential procedures to evaluate and determine the  
19 qualifications of each candidate with regard to his or her ability  
20 to discharge the duties of the office to which the appointment or  
21 nomination is made.

22 (C) Within 45 days of submission by the Governor of those  
23 names, the director shall advise, in confidence to the Governor,  
24 his or her recommendation whether the candidate is exceptionally  
25 well qualified, well qualified, qualified, or not qualified and the  
26 reasons therefor, and may report, in confidence, any other  
27 information that the director deems pertinent to the qualifications  
28 of the candidate.

29 (D) In reviewing the qualifications of a candidate for the position  
30 of warden or superintendent, the director shall consider, among  
31 other appropriate factors, the candidate's experience in effectively  
32 managing correctional facilities and inmate or ward populations;  
33 ability to deal effectively with employees, detained persons, and  
34 other interested persons in addressing management, confinement,  
35 and safety issues in an effective, fair, and professional manner;  
36 and knowledge of correctional best practices.

37 (E) The Office of Independent Correctional Oversight shall  
38 establish and promulgate rules and procedures to implement this  
39 paragraph no later than December 31, 2012. The director shall  
40 establish and adopt rules and procedures regarding the review of

1 the qualifications of candidates for the position of warden or  
2 superintendent. Those rules, regulations, and procedures shall  
3 establish appropriate, confidential methods for disclosing to the  
4 candidate the subject matter of substantial and credible adverse  
5 allegations received regarding the candidate's reputation and  
6 integrity, which, unless rebutted, would be determinative of the  
7 candidate's unsuitability for appointment. No rule or procedure  
8 shall be adopted that permits the disclosure to the candidate of  
9 information from which the candidate may infer the source, and  
10 no information shall either be disclosed to the candidate or be  
11 obtainable by any process that would jeopardize the confidentiality  
12 of communications from persons whose opinions have been sought  
13 on the candidate's qualifications.

14 (F) All communications, written, verbal, or otherwise, of and  
15 to the Governor, the Governor's authorized agents or employees,  
16 including, but not limited to, the Governor's Legal Affairs  
17 Secretary and Appointments Secretary, or of and to the director  
18 in furtherance of the purposes of this section are absolutely  
19 privileged from disclosure and confidential, and any  
20 communication made in the discretion of the Governor or the  
21 director with a candidate or person providing information in  
22 furtherance of the purposes of this section shall not constitute a  
23 waiver of the privilege or a breach of confidentiality.

24 (G) When the Governor has appointed a person to the position  
25 of warden or superintendent who has been found not qualified by  
26 the director, the director shall make public that finding, after due  
27 notice to the appointee of his or her intention to do so. That notice  
28 and disclosure shall not constitute a waiver of privilege or breach  
29 of confidentiality with respect to communications of or to the  
30 director concerning the qualifications of the appointee.

31 (H) No person or entity shall be liable for any injury caused by  
32 any act or failure to act, be it negligent, intentional, discretionary,  
33 or otherwise, in the furtherance of the purposes of this section,  
34 including, but not limited to, providing or receiving any  
35 information, making any recommendations, and giving any reasons  
36 therefor.

37 (I) As used in this section, "Office of Independent Correctional  
38 Oversight" or "office" includes employees and agents of the Office  
39 of Independent Correctional Oversight and the director.

1 (J) At any time prior to the receipt of the review from the Office  
2 of Independent Correctional Oversight specified in subdivision  
3 (b), the Governor may withdraw the name of any person submitted  
4 to the Office of Independent Correctional Oversight for evaluation  
5 pursuant to this section.

6 (K) No candidate for the position of warden or superintendent  
7 may be appointed until the director has advised the Governor  
8 pursuant to this section, or until 45 days have elapsed after  
9 submission of the candidate's name to the Office of Independent  
10 Correctional Oversight, whichever occurs earlier. The requirement  
11 of this subparagraph shall not apply to any vacancy in the position  
12 of warden or superintendent occurring within the days preceding  
13 the expiration of the Governor's term of office; provided, however,  
14 that, with respect to those vacancies, the Governor shall be required  
15 to submit any candidate's name to the Office of Independent  
16 Correctional Oversight in order to provide the office an  
17 opportunity, if time permits, to review and make a report.

18 (L) Nothing in this section shall be construed as imposing an  
19 additional requirement for an appointment or nomination to the  
20 position of warden or superintendent, nor shall anything in this  
21 section be construed as adding any additional qualifications for  
22 the position of warden or superintendent.

23 *(6) Conducting an objective, clinically appropriate, and*  
24 *metric-oriented medical inspection program to periodically review*  
25 *delivery of medical care at each state prison.*

26 (c) Subject to subdivision (d), the Office of Independent  
27 Correctional Oversight may conduct oversight reviews pertaining  
28 to the following significant correctional issues relating to the  
29 Department of Corrections and Rehabilitation:

30 (1) Security procedures, including contraband interdiction.

31 (2) Inmate, ward, and parolee administrative appeals and  
32 grievances.

33 (3) Employee use of force.

34 (4) Prison Rape Elimination Act procedures.

35 (5) Inmate-patient health care delivery.

36 (d) Oversight reviews conducted pursuant to subdivision (c)  
37 may be conducted only pursuant to the adoption of regulations and  
38 procedures for determining how the issues before the office shall  
39 be considered and selected.

40 SEC. 9. Section 6126.1 of the Penal Code is repealed.

1 SEC. 10. Section 6126.2 of the Penal Code is amended to read:  
2 6126.2. The director shall not hire any person known to be  
3 directly or indirectly involved in an open internal affairs  
4 investigation being conducted by any federal, state, or local law  
5 enforcement agency or the Office of Independent Correctional  
6 Oversight.

7 SEC. 11. Section 6126.3 of the Penal Code is amended to read:  
8 6126.3. (a) The director shall not destroy any papers or  
9 memoranda used to support its work within three years after a  
10 report is released.

11 (b) Except as provided in subdivision (c), all books, papers,  
12 records, and correspondence of the office and its predecessor, the  
13 Office of the Inspector General, pertaining to its work are public  
14 records subject to Chapter 3.5 (commencing with Section 6250)  
15 of Division 7 of Title 1 of the Government Code and shall be filed  
16 at any of the regularly maintained offices of the Office of  
17 Independent Correctional Oversight or its predecessor, the Office  
18 of the Inspector General.

19 (c) The following books, papers, records, and correspondence  
20 of the office and its predecessor, the Office of the Inspector  
21 General, pertaining to its work are not public records subject to  
22 Chapter 3.5 (commencing with Section 6250) of Division 7 of  
23 Title 1 of the Government Code, nor shall they be subject to  
24 discovery pursuant to any provision of Title 3 (commencing with  
25 Section 1985) of Part 4 of the Code of Civil Procedure or Chapter  
26 7 (commencing with Section 19570) of Part 2 of Division 5 of  
27 Title 2 of the Government Code in any manner:

28 (1) All reports, papers, correspondence, memoranda, electronic  
29 communications, or other documents that are otherwise exempt  
30 from disclosure pursuant to the provisions of subdivision (d) of  
31 Section 6126.5, Section 6126.6, subdivision (i) of Section 6127.5,  
32 subdivision (d) of Section 6128, subdivision (a) of Section 6131,  
33 or all other applicable laws regarding confidentiality, including,  
34 but not limited to, the California Public Records Act, the Public  
35 Safety Officers' Procedural Bill of Rights, the Information  
36 Practices Act of 1977, the Confidentiality of Medical Information  
37 Act of 1977, and the provisions of Section 832.7, relating to the  
38 disposition notification for complaints against peace officers.

1 (2) Any papers, correspondence, memoranda, electronic  
2 communications, or other documents pertaining to any work that  
3 has not been completed.

4 (3) Any papers, correspondence, memoranda, electronic  
5 communications, or other documents pertaining to internal  
6 discussions between the director and his or her staff, or any prior  
7 Inspector General and his or her staff, or between staff members  
8 of the office or its predecessor, or any personal notes of the director  
9 or his or her staff, or his or her predecessor the Inspector General  
10 or his or her staff.

11 (4) All identifying information, and any personal papers or  
12 correspondence from any person requesting assistance from the  
13 office or its predecessor, except in those cases where the director  
14 determines that disclosure of the information is necessary in the  
15 interests of justice.

16 (5) Any papers, correspondence, memoranda, electronic  
17 communications, or other documents pertaining to  
18 contemporaneous public oversight pursuant to Section 6133.

19 SEC. 12. Section 6126.4 of the Penal Code is amended to read:

20 6126.4. It is a misdemeanor for the director or any employee  
21 or former employee of the Office of Independent Correctional  
22 Oversight to divulge or make known in any manner not expressly  
23 permitted by law to any person not employed by the office any  
24 particulars of any record, document, or information the disclosure  
25 of which is restricted by law from release to the public. This  
26 prohibition is also applicable to any person or business entity that  
27 is contracting with or has contracted with the office and to the  
28 employees and former employees of that person or business entity  
29 or the employees of any state agency or public entity that has  
30 assisted the office in the course of its work or that has been  
31 furnished a draft copy of any report for comment or review.

32 SEC. 13. Section 6126.5 of the Penal Code is amended to read:

33 6126.5. (a) Notwithstanding any other provision of law, the  
34 Office of Independent Correctional Oversight during regular  
35 business hours or at any other time determined necessary by the  
36 director, shall have access to and authority to examine and  
37 reproduce any and all books, accounts, reports, vouchers,  
38 correspondence files, documents, and other records, and to examine  
39 the bank accounts, money, or other property of the Department of  
40 Corrections and Rehabilitation for any work authorized by this

1 chapter. Any officer or employee of any agency or entity having  
2 these records or property in his or her possession or under his or  
3 her control shall permit access to, and examination and  
4 reproduction thereof consistent with the provisions of this section,  
5 upon the request of any authorized representative of the office.

6 (b) For the purpose of conducting work authorized by this  
7 chapter, the director or his or her authorized representative shall  
8 have access to the records and property of any public or private  
9 entity or person subject to review or regulation by the public  
10 agency or public entity being audited, investigated, or overseen to  
11 the same extent that employees or officers of that agency or public  
12 entity have access. No provision of law or any memorandum of  
13 understanding or any other agreement entered into between the  
14 employing entity and the employee or the employee's  
15 representative providing for the confidentiality or privilege of any  
16 records or property shall prevent disclosure pursuant to subdivision  
17 (a). Access, examination, and reproduction consistent with the  
18 provisions of this section shall not result in the waiver of any  
19 confidentiality or privilege regarding any records or property.

20 (c) Any officer or person who fails or refuses to permit access,  
21 examination, or reproduction, as required by this section, is guilty  
22 of a misdemeanor.

23 (d) The Office of Independent Correctional Oversight may  
24 require any employee of the Department of Corrections and  
25 Rehabilitation to be interviewed on a confidential basis concerning  
26 matters within the authority of the office. Any employee requested  
27 to be interviewed shall comply and shall have time afforded by  
28 the appointing authority for the purpose of an interview conducted  
29 pursuant to this subdivision. The director shall have the discretion  
30 to redact the name or other identifying information of any person  
31 interviewed from any public report issued by the Office of  
32 Independent Correctional Oversight, where required by law or  
33 where the failure to redact the information may hinder prosecution  
34 or an action in a criminal, civil, or administrative proceeding, or  
35 where the director determines that disclosure of the information  
36 is not in the interests of justice. It is not the purpose of these  
37 communications to address disciplinary action or grievance  
38 procedures that may routinely occur. If it appears that the facts of  
39 the case could lead to punitive action, the office shall be subject  
40 to Sections 3303, 3307, 3307.5, 3308, 3309, and subdivisions (a)

1 to (d), inclusive, of Section 3309.5 of the Government Code as if  
2 the office were the employer, except that the office shall not be  
3 subject to the provisions of any memorandum of understanding or  
4 other agreement entered into between the employing entity and  
5 the employee or the employee's representative that is in conflict  
6 with, or adds to the requirements of, Sections 3303, 3307, 3307.5,  
7 3308, 3309, and subdivisions (a) to (d), inclusive, of Section 3309.5  
8 of the Government Code.

9 SEC. 14. Section 6126.6 of the Penal Code is repealed.

10 SEC. 15. Section 6127.1 of the Penal Code is repealed.

11 SEC. 16. Section 6127.3 of the Penal Code is amended to read:

12 6127.3. (a) In connection with duties authorized pursuant to  
13 this chapter, the Office of Independent Correctional Oversight may  
14 do any of the following:

15 (1) Administer oaths.

16 (2) Certify to all official acts.

17 (3) Issue subpoenas for the attendance of witnesses and the  
18 production of papers, books, accounts, or documents in any  
19 medium, or for the making of oral or written sworn statements, in  
20 any investigative interview conducted pursuant to duties authorized  
21 by this chapter.

22 (b) Any subpoena issued under this chapter extends as process  
23 to all parts of the state and may be served by any person authorized  
24 to serve process of courts of record or by any person designated  
25 for that purpose by the office. The person serving this process may  
26 receive compensation as is allowed by the office, not to exceed  
27 the fees prescribed by law for similar service.

28 SEC. 17. Section 6127.4 of the Penal Code is amended to read:

29 6127.4. (a) The superior court in the county in which any  
30 interview is held under the direction of the Office of Independent  
31 Correctional Oversight pursuant to duties authorized by this chapter  
32 has jurisdiction to compel the attendance of witnesses, the making  
33 of oral or written sworn statements, and the production of papers,  
34 books, accounts, and documents, as required by any subpoena  
35 issued by the office.

36 (b) If any witness refuses to attend or testify or produce any  
37 papers required by the subpoena, the Office of Independent  
38 Correctional Oversight may petition the superior court in the county  
39 in which the hearing is pending for an order compelling the person  
40 to attend and answer questions under penalty of perjury or produce

1 the papers required by the subpoena before the person named in  
2 the subpoena. The petition shall set forth all of the following:

3 (1) That due notice of the time and place of attendance of the  
4 person or the production of the papers has been given.

5 (2) That the person has been subpoenaed in the manner  
6 prescribed in this chapter.

7 (3) That the person has failed and refused to attend or produce  
8 the papers required by subpoena before the office as named in the  
9 subpoena, or has refused to answer questions propounded to him  
10 or her in the course of the interview under penalty of perjury.

11 (c) Upon the filing of the petition, the court shall enter an order  
12 directing the person to appear before the court at a specified time  
13 and place and then and there show cause why he or she has not  
14 attended, answered questions under penalty of perjury, or produced  
15 the papers as required. A copy of the order shall be served upon  
16 him or her. If it appears to the court that the subpoena was regularly  
17 issued by the Office of Independent Correctional Oversight, the  
18 court shall enter an order that the person appear before the person  
19 named in the subpoena at the time and place fixed in the order and  
20 answer questions under penalty of perjury or produce the required  
21 papers. Upon failure to obey the order, the person shall be dealt  
22 with as for contempt of court.

23 SEC. 18. Section 6128 of the Penal Code is repealed.

24 SEC. 19. Section 6129 of the Penal Code is repealed.

25 SEC. 20. Section 6131 of the Penal Code is amended to read:

26 6131. (a) Upon the completion of any oversight review  
27 conducted by the Office of Independent Correctional Oversight,  
28 the office shall prepare a complete written report, which shall be  
29 held as confidential and disclosed in confidence, along with all  
30 underlying investigative materials the office deems appropriate,  
31 to the Governor, the Secretary of the Department of Corrections  
32 and Rehabilitation, and the appropriate director, chairperson, or  
33 law enforcement agency.

34 (b) Upon the completion of any oversight review conducted by  
35 the Office of Independent Correctional Oversight, the office shall  
36 also prepare and issue on a quarterly basis a public report that  
37 includes all oversight reviews completed in the previous quarter.  
38 The public report shall differ from the complete report in the  
39 respect that the Office of Independent Correctional Oversight shall  
40 have the discretion to redact or otherwise protect the names of

1 individuals, specific locations, or other facts that, if not redacted,  
2 might hinder any related prosecution, or where disclosure of the  
3 information is otherwise prohibited by law, and to decline to  
4 produce any of the underlying materials. In a case where allegations  
5 were deemed to be unfounded, all applicable identifying  
6 information shall be redacted. The public report shall be made  
7 available to the public upon request and on a quarterly basis as  
8 follows:

9 (1) In those cases where a report is referred only for disciplinary  
10 action before the State Personnel Board or for other administrative  
11 proceedings, the employing entity shall, within 10 days of receipt  
12 of the State Personnel Board's order rendered in other  
13 administrative proceedings, provide the Office of Independent  
14 Correctional Oversight with a copy of the order. The office shall  
15 attach the order to the public report on his or her Internet Web  
16 site and provide copies of the report and order to the Legislature,  
17 as well as to any complaining employee and any employee who  
18 was the subject of the review.

19 (2) In those cases where the employing entity and the employee  
20 against whom disciplinary action has been taken enter into a  
21 settlement agreement concerning the disciplinary action, the  
22 employing entity shall, within 10 days of the settlement agreement  
23 becoming final, notify the Office of Independent Correctional  
24 Oversight in writing of that fact and shall describe what disciplinary  
25 action, if any, was ultimately imposed on the employee. The Office  
26 of Independent Correctional Oversight shall include the settlement  
27 information in the public report on its Internet Web site and provide  
28 copies of the report to the Legislature, as well as to any  
29 complaining employee and any employee who was the subject of  
30 the review.

31 (3) In those cases where the employing entity declines to pursue  
32 disciplinary action against an employee, the employing entity shall,  
33 within 10 days of its decision, notify the Office of Independent  
34 Correctional Oversight in writing of its decision not to pursue  
35 disciplinary action, setting forth the reasons for its decision. The  
36 office shall include the decision and rationale in the public report  
37 on his or her Internet Web site and provide copies of the report to  
38 the Legislature, as well as to any complaining employee and any  
39 employee who was the subject of the review.

1 (4) In those cases where a report has been referred for possible  
2 criminal prosecution, and the applicable local law enforcement  
3 agency or the Attorney General has decided to commence criminal  
4 proceedings against an employee, the report shall be made public  
5 at a time deemed appropriate by the Office of Independent  
6 Correctional Oversight after consultation with the local law  
7 enforcement agency or the Attorney General, but in all cases no  
8 later than when discovery has been provided to the defendant in  
9 the criminal proceedings. The office shall thereafter post the public  
10 report on its Internet Web site and provide copies of the report to  
11 the Legislature, as well as to any complaining employee and any  
12 employee who was the subject of the review.

13 (5) In those cases where the local law enforcement agency or  
14 the Attorney General declines to commence criminal proceedings  
15 against an employee, the local law enforcement agency or the  
16 Attorney General shall, within 30 days of reaching that decision,  
17 notify the Office of Independent Correctional Oversight of that  
18 fact. The office shall include the decision in the public report on  
19 its Internet 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 review.

22 (6) In those cases where a report has been referred for neither  
23 disciplinary action or other administrative proceedings, nor for  
24 criminal prosecution, the Office of Independent Correctional  
25 Oversight shall include the decision not to refer the matter in the  
26 public report on its Internet Web site and provide copies of the  
27 report to the Legislature, as well as to any complaining employee  
28 and any employee who was the subject of the review.

29 SEC. 21. Section 6132 of the Penal Code is amended to read:

30 6132. (a) Notwithstanding Section 10231.5 of the Government  
31 Code, the Office of Independent Correctional Oversight shall report  
32 annually to the Governor and the Legislature a summary of its  
33 reports. The summary shall be posted on the office's Internet Web  
34 site and otherwise made available to the public upon its release to  
35 the Governor and the Legislature. The summary shall include, but  
36 not be limited to, significant problems discovered by the office,  
37 and whether recommendations the office has made have been  
38 implemented.

39 (b) A report pursuant to subdivision (a) shall be submitted in  
40 compliance with Section 9795 of the Government Code.

1 SEC. 22. Section 6133 of the Penal Code is repealed.

2 SEC. 23. Section 6140 of the Penal Code is amended to read:

3 6140. There is in the Office of Independent Correctional

4 Oversight the California Rehabilitation Oversight Board (C-ROB).

5 The board shall consist of the 12 members as follows:

6 (a) The Director of the Office of Independent Correctional

7 Oversight, who shall serve as chair.

8 (b) The Secretary of the Department of Corrections and

9 Rehabilitation, or his or her designee.

10 (c) The Superintendent of Public Instruction, or his or her

11 designee.

12 (d) The Chancellor of the California Community Colleges, or

13 his or her designee.

14 (e) The Director of the State Department of Alcohol and Drug

15 Programs, or his or her designee.

16 (f) The Director of Mental Health, or his or her designee.

17 (g) A faculty member of the University of California who has

18 expertise in rehabilitation of criminal offenders, appointed by the

19 President of the University of California.

20 (h) A faculty member of the California State University, who

21 has expertise in rehabilitation of criminal offenders, appointed by

22 the Chancellor of the California State University.

23 (i) A county sheriff, appointed by the Governor.

24 (j) A county chief probation officer, appointed by the Senate

25 Committee on Rules.

26 (k) A local government official who provides mental health,

27 substance abuse, or educational services to criminal offenders,

28 appointed by the Speaker of the Assembly.

29 (l) The State Auditor.

30 SEC. 24. No reimbursement is required by this act pursuant to

31 Section 6 of Article XIII B of the California Constitution because

32 the only costs that may be incurred by a local agency or school

33 district will be incurred because this act creates a new crime or

34 infraction, eliminates a crime or infraction, or changes the penalty

35 for a crime or infraction, within the meaning of Section 17556 of

36 the Government Code, or changes the definition of a crime within

37 the meaning of Section 6 of Article XIII B of the California

38 Constitution.

O