



# Department of Corrections and Rehabilitation:

Its Poor Internal Controls Allowed Facilities to  
Overpay Employees for Inmate Supervision

November 2009 Report I2009-0702



CALIFORNIA  
STATE AUDITOR

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Elaine M. Howle  
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# CALIFORNIA STATE AUDITOR

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November 17, 2009

Investigative Report I2009-0702

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the State Auditor's Office presents its investigative report concerning overpayments the Department of Corrections and Rehabilitation (Corrections) made to its employees for inmate supervision. After an earlier investigation we released in October 2008 revealed improper payments Corrections made to employees at one correctional facility, we initiated an investigation to determine if it had made such payments to employees at other correctional facilities.

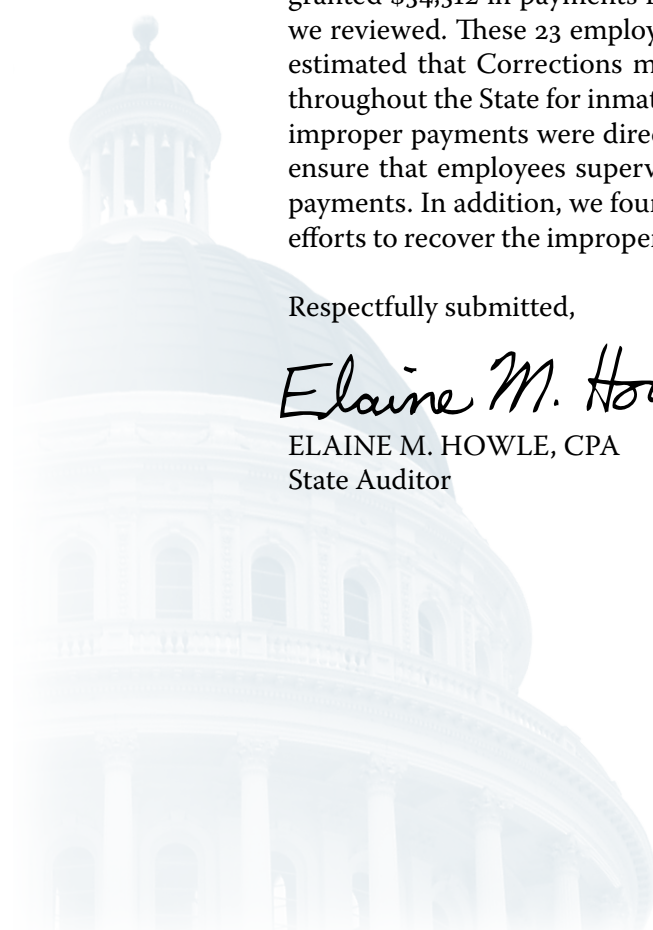
This report concludes that from March 2008 through February 2009, Corrections improperly granted \$34,512 in payments for inmate supervision to 23 of the 153 employees whose records we reviewed. These 23 employees worked at five of the six facilities we visited. In addition, we estimated that Corrections may have improperly paid as much as \$588,376 to its employees throughout the State for inmate supervision during this 12-month period. We believe that these improper payments were directly attributable to Corrections lacking the controls necessary to ensure that employees supervising inmates satisfied all of the requirements for receiving the payments. In addition, we found that for the most part Corrections had not initiated collection efforts to recover the improper payments it had identified after our October 2008 investigation.

Respectfully submitted,



*Elaine M. Howle*

ELAINE M. HOWLE, CPA  
State Auditor



## Contents

### Investigative Results

Results in Brief 1

Investigative Approach 3

Facts and Analysis 5

Recommendations 12

### Appendix

The Investigations Program 15

Summary of Agency Response and State Auditor's Comments 17

## Investigative Results

### Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the Bureau of State Audits (bureau) to investigate and report on improper governmental activities by agencies and employees of the State.<sup>1</sup> Under the Whistleblower Act, an improper governmental activity is any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

After an earlier investigation by the bureau revealed that the Department of Corrections and Rehabilitation (Corrections) had made improper payments to a particular class of employees for supervising inmates at one correctional facility, we launched an investigation to determine whether it also made such payments to additional classes of employees at other correctional facilities. We found that over the 12 months from March 2008 through February 2009, Corrections overpaid employees for inmate supervision at five of the six correctional facilities we visited. These improper payments, which 23 of the 153 employees we examined received, totaled \$34,512. We identified these employees by sampling inmate supervision payments during our visits. Based on our sample, we estimated that Corrections may have improperly paid as much as \$588,376 to its employees statewide during the 12-month period we reviewed. These improper payments resulted from Corrections having insufficient controls to ensure that its employees satisfied all of the requirements for receiving extra pay for inmate supervision. We also found that, except in a few instances, Corrections had not initiated collection efforts to recover the improper payments it identified during its follow up to our previous investigation.

### Background

The mission of Corrections is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies that help offenders successfully reintegrate into communities upon their release. As part of its rehabilitation process, Corrections employs inmates in a variety of positions inside its correctional facilities. The California Code of Regulations, Title 15, Section 3040, states that every able-bodied inmate in custody is subject to a work obligation. According to Corrections, inmates can benefit from

### Investigative Highlights...

*Our investigation of inmate supervision payments made by the Department of Corrections and Rehabilitation (Corrections) revealed the following:*

- » *Corrections overpaid 23 employees a total of \$34,512 over a 12-month period at five of the six correctional facilities we visited.*
- » *Based on our sample, Corrections may have improperly paid as much as \$588,376 to its employees statewide during the same 12-month period.*
- » *Corrections failed to implement sufficient controls to ensure that employees who received inmate supervision pay met the requirements.*
- » *Except in a few instances, Corrections had not initiated collection efforts to recover improper payments it identified subsequent to our initial investigation.*

<sup>1</sup> For more information about the bureau's investigative authority, please refer to the Appendix.

employment by earning work credits that reduce the amount of time they must serve in custody and by earning an hourly wage. Inmate employment benefits correctional facilities by enabling them to operate more self-sufficiently, by reducing violence, and by providing productive activities for inmates.

Corrections and a limited number of other state departments regularly assign non-custody staff to supervise inmates when those inmates are performing their work obligations. For example, office technicians at Centinela State Prison act as supervisors for two to four inmate clerks, providing guidance and delegating responsibilities to them. State employees in certain classifications who are assigned to supervise inmates in addition to performing their regular responsibilities are entitled to a pay differential ranging from \$190 to \$400 per month, provided they meet specific requirements. The amount of additional pay an employee receives is dependent on the employee's classification. Table 1 provides examples of job classifications that are eligible to qualify for the pay differential and the amounts individuals in each classification are allowed to receive.

**Table 1**  
**Examples of Job Classifications and the Corresponding Pay Differentials for Inmate Supervision**

JOB CLASSIFICATION	MONTHLY PAY DIFFERENTIAL
Chaplain	\$325
Chief psychologist	360
Clinical staff psychologist	325
Cook specialist I	190
Correctional case records manager	360
Office technician	190
Supervising registered nurse	400

Source: Department of Personnel Administration's Pay Differential 67.

The collective bargaining agreements between the State and employee bargaining units 1, 4, 15, and 19 set forth the primary requirements for receiving the pay differential for supervising inmates. The text box on the following page outlines these requirements, which apply to all applicable bargaining units.

The Department of Personnel Administration (Personnel Administration) has determined that the pay differential may also apply to employees having direct supervisory responsibility over other employees who meet the conditions outlined in the text box.

In other words, a supervisor whose subordinate employees receive the pay differential may also qualify to receive it, even if that supervisor does not directly supervise inmates.

In providing employees with this additional earned pay, Corrections has a duty under the California Government Code, Section 13403(a)(3), to maintain a system of authorization and record-keeping procedures that provide effective accounting controls over these payments. However, in October 2008, when we conducted an investigation at the R. J. Donovan Correctional Facility near San Diego, we found that Corrections improperly paid nine office technicians a total of \$16,530 for supervising inmates over a three-year period. Following our report's release, the director of adult institutions for Corrections instructed its facilities to conduct a review of employees receiving the pay differential to ensure that the additional pay was appropriate. We initiated our current investigation based on indications that the improper inmate supervision payments that Corrections made to its employees were not limited to a certain staff classification at the R. J. Donovan Correctional Facility, but rather were a symptom of a general failure of internal controls that affected numerous job classifications across all facilities administered by Corrections.

**Requirements for receiving the pay differential for inmate supervision:**

- An employee must have regular, direct responsibility for supervising the work of at least two inmates who jointly (or collectively) work at least 173 hours each month. The employee must provide the inmates with on-the-job training, and evaluate the inmates' work performance.
- Supervised inmates must perform work that would otherwise be performed by civil service employees.

Source: Department of Personnel Administration's Pay Differential 67.

**Investigative Approach**

To determine the extent of the improper payments, we conducted site visits at six correctional facilities and reviewed a sample of payments at each site. The six facilities we selected were California State Prison, Sacramento (CSP Sacramento); California State Prison, San Quentin (CSP San Quentin); California State Prison, Corcoran (CSP Corcoran); the California Men's Colony (Men's Colony); the California Rehabilitation Center (Rehabilitation Center); and Centinela State Prison. Figure 1 on the following page shows the geographic locations of these facilities. Table 2 on page 5 displays the number of inmates and also the number of employees who received the pay differential for inmate supervision at each of these six facilities.

At these six facilities, 371 employees received a total of 3,737 monthly differential payments for supervising inmates for the 12-month period from March 2008 through February 2009. We reviewed a random sample of 200 of these payments to ensure that the employees met the requirements for receiving the pay differential. The random sample of 200 payments included payments to a total of 153 employees (some employees received

more than one of the payments in our sample). Our primary goal in selecting this sample was to obtain data that would allow us to accurately estimate the extent to which Corrections may have made improper payments at its facilities throughout the State.

**Figure 1**  
**Map of Selected Facilities**



Source: California Department of Corrections and Rehabilitation's Web site.

We also wanted to determine how frequently employees received improper payments and identify employees who received multiple improper payments. Therefore, in addition to examining the payments in our sample, we further examined all payments made from March 2008 through February 2009 to each of the 153 employees. This expanded examination allowed us to identify improper payments outside our original sample.



**Table 2**  
**Number of Inmates and Number of Employees Receiving the Pay Differential at Selected Facilities**

FACILITY	NUMBER OF INMATES	NUMBER OF EMPLOYEES RECEIVING THE PAY DIFFERENTIAL
California Men's Colony	6,484	113
California Rehabilitation Center	4,344	50
California State Prison, Corcoran	5,631	57
California State Prison, Sacramento	2,959	39
California State Prison, San Quentin	5,239	56
Centinela State Prison	4,826	56

Sources: California Department of Corrections and Rehabilitation's Web site and Bureau of State Audits' analysis of State Controller's Office payment records.

To assist us in determining whether payments were appropriate, we obtained inmate time sheets and pay sheets from each of the six correctional facilities. If we were unable to locate both the inmate time sheet and the pay sheet related to a particular payment, we used whichever document we had to provide support for the pay differential. If we were unable to locate either document, we assumed that the pay differential had not been warranted.

In our review, we determined that employees in the kitchens oversee teams of inmates who work to prepare food for the facilities. Thus, we felt confident that kitchen staff supervised at least the minimum number of inmates who worked the required number of hours and did not classify any payments made to kitchen staff as improper.

**Facts and Analysis**

From March 2008 through February 2009, Corrections improperly granted \$34,512 in pay differentials for inmate supervision to 23 of the 153 employees whose records we reviewed. These 23 employees worked at five of the six facilities we visited. In addition, based on the improper payments identified in our sample, we estimated that Corrections may have improperly paid as much as \$588,376 to its employees throughout the State for inmate supervision during this 12-month period. We believe that these improper payments were directly attributable to Corrections lacking the controls necessary to ensure that employees supervising inmates satisfied all of the requirements for receiving the pay differential. In addition, we found that for the most part Corrections had not initiated collection efforts to recover the improper payments it identified after our October 2008 investigation.

### **Corrections Overpaid 23 Employees for Inmate Supervision**

As previously discussed, we examined Corrections' payments for inmate supervision to 153 employees whom we selected based on their inclusion in our random sample of 200 payments made from March 2008 through February 2009. We found that Corrections had overpaid 23 of these employees by a total of \$34,512. The overpayments to the individual employees ranged from \$380 to \$3,900. Table 3 shows that the Rehabilitation Center improperly paid its employees \$10,715, the largest amount among the facilities we visited. We found no improper payments at CSP Sacramento.

**Table 3**  
**Number and Amount of Improper Payments by Facility From March 2008 Through February 2009**

FACILITY	NUMBER OF EMPLOYEES WHO RECEIVED IMPROPER PAYMENTS	NUMBER OF IMPROPER PAYMENTS	AMOUNT OVERPAID
California Men's Colony	5	24	\$4,780
California Rehabilitation Center	6	50	10,715
California State Prison, Corcoran	5	33	6,143
California State Prison, Sacramento	0	0	0
California State Prison, San Quentin	3	19	3,524
Centinela State Prison	4	35	9,350
<b>Totals</b>	<b>23</b>	<b>161</b>	<b>\$34,512*</b>

Sources: Bureau of State Audits' analysis of documents provided by the six facilities and of records obtained from the State Controller's Office.

\* The Department of Corrections and Rehabilitation has already collected \$2,293 of this amount after initially issuing the improper payments.

In our preliminary review, we identified payments for a particular month as potentially improper when (1) the documentation indicated that the employee had not supervised two inmates; (2) the documentation indicated that, although the employee supervised at least two inmates, the inmates did not work for at least 173 hours collectively; or (3) we could not find any documentation indicating that the employee supervised inmates.<sup>2</sup>

Before categorizing these payments as improper, we further considered whether they were isolated occurrences and whether the employees still engaged in "regular" supervision as stated in the pay differential requirements. Because neither the employees' bargaining

<sup>2</sup> When examining payments Corrections made to employees who qualified because they had direct supervisory responsibility over other employees who supervised inmates, we reviewed documentation to ensure their subordinates met the requirements.

unit agreements nor Personnel Administration had defined what “regular” supervision means, we established what we believe are reasonable criteria for engaging in regular supervision. Specifically, we categorized potentially improper payments as improper when an employee failed to meet the number-of-inmates/number-of-hours requirements for either two or more consecutive months or for more than four months overall during the 12-month period. We categorized all other potentially improper payments as appropriate because we believed the employees had engaged in “regular” supervision.

An example of payments we categorized as improper involved a chaplain at one of the facilities who failed to meet the requirements for the pay differential for nine of the 12 months we tested. For eight of the months, the chaplain did not supervise two inmates. The documentation we reviewed for the ninth month indicated that, although he supervised two inmates, collectively they worked fewer than the 173 hours required. In total, the chaplain received \$2,925 in improper payments for these nine months.

***A chaplain at one facility failed to meet the requirements for nine months and received \$2,925 in improper payments.***

***During a One-Year Period, Corrections May Have Overpaid Its Employees by as Much as \$588,376***

One goal of our investigation was to estimate the total amount Corrections might have overpaid its employees statewide for inmate supervision over the period of our review. To arrive at this estimate, we performed a statistical analysis of the findings from our sample of 200 payments, which are summarized in Table 4 and Figure 2 on the following page.

As shown in Figure 2, 9.8 percent of the total dollar amount represented by the differential payments in our sample consisted of improper payments.<sup>3</sup> Based on this percentage, we estimated that overall, the improper payments made to Corrections’ employees at these six facilities totaled between \$43,552 and \$107,864 from March 2008 through February 2009.<sup>4</sup> If the percentage of improper payments at Corrections’ remaining facilities is consistent with the percentage found at the facilities we visited, we project that in total Corrections may have overpaid its employees between \$237,711 and \$588,376 in pay differentials during this 12-month period.

<sup>3</sup> Although the 19 improper payments identified in our sample represent 9.5 percent of the 200 sampled payments, the dollar amount of the improper payments (\$4,035) represents 9.8 percent of the total amount of the 200 payments (\$41,160). This difference results from the fact that employees who receive the pay differential are paid varying amounts depending on their classifications.

<sup>4</sup> We have confirmed this estimate with a statistician and are 95 percent confident that the actual improper amount falls within this range.

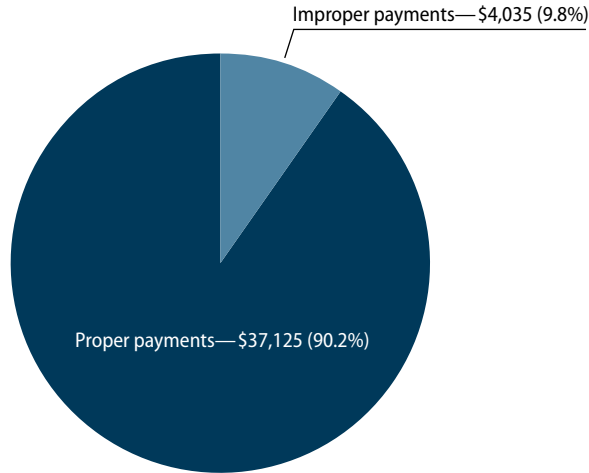
**Table 4**  
Number of Proper and Improper Differential Payments in Our Sample

FACILITY	SAMPLE SIZE	NUMBER OF PROPER PAYMENTS	NUMBER OF IMPROPER PAYMENTS
California Men’s Colony	61	57	4
California Rehabilitation Center	27	21	6*
California State Prison, Corcoran	30	27	3
California State Prison, Sacramento	21	21	0
California State Prison, San Quentin	31	30	1
Centinela State Prison	30	25	5
<b>Totals</b>	<b>200</b>	<b>181</b>	<b>19</b>

Source: Bureau of State Audits’ analysis of documents provided by the six facilities.

\* The Department of Corrections and Rehabilitation collected one of these payments from an employee five months after issuing the improper payment.

**Figure 2**  
Percentages of Proper and Improper Differential Payment Amounts in Our Sample



Sources: Bureau of State Audits’ analysis of documents provided by the facilities and of data obtained from the State Controller’s Office.

***Corrections Lacked Sufficient Controls to Ensure That Only Employees Satisfying Inmate Supervision Requirements Received the Pay Differential***

Five of the six facilities we visited had few or no policies in place during the period we reviewed to ensure that employees receiving the pay differential for supervising inmates met the necessary requirements each month. Specifically, the Rehabilitation Center, the Men’s Colony, CSP Sacramento, CSP Corcoran, and Centinela

State Prison confirmed that they did not conduct regular reviews or have other similar controls in place. The Rehabilitation Center and CSP Corcoran asserted that they relied on an employee's supervisor to notify personnel if the employee was no longer meeting the requirements. However, because supervisors also qualify to receive the pay differential based solely on their subordinate employees qualifying, the supervisors may have had little incentive to report to the personnel office when their subordinates did not meet the requirements. The 83 improper payments we identified at the Rehabilitation Center and CSP Corcoran during the 12-month period we reviewed strongly suggest that this control is inadequate.

The remaining facility we visited, CSP San Quentin, responded to our investigation of the R. J. Donovan Correctional Facility by implementing a policy requiring the employees in bargaining unit 4 (which includes office technicians, the classification we investigated at R. J. Donovan Correctional Facility) to submit inmate time sheets along with their own time sheets each month. According to the personnel officer at CSP San Quentin, personnel staff are responsible for reviewing the two sets of time sheets to ensure that the employees qualify for the extra pay. The policy also required the employees to resubmit the forms that authorized them to supervise inmates, which are kept in the employees' personnel files. Even though this policy took effect in October 2008, our expanded review found that among the 19 improper payments made to three employees over the 12-month period at this facility, two were made to an office assistant after the date CSP San Quentin put the policy into effect. This suggests that the facility is not following the controls it established. Moreover, the policy applies only to employees in one bargaining unit rather than to all employees who receive the pay differential. The facility's personnel officer stated that the policy applies only to bargaining unit 4 because our investigation of the R. J. Donovan Correctional Facility included only employees from that bargaining unit.

We also noted weaknesses in document retention at the facilities in our review. Staff at most of the facilities did not consistently retain inmate time sheets, and consequently a significant number of these were missing or misplaced. Problems with document retention may have been exacerbated by the fact that at least three of the facilities we visited failed to clearly communicate their retention policies to their employees. For example, an official at CSP San Quentin stated that an internal review of inmate pay records found little uniformity throughout the facility in the completion and retention of inmate time sheets. The official stated that the review found that employees charged with supervising inmates had not received any training on how to supervise the inmates and how to complete time sheets. We found similar weaknesses in the record retention policy at the Men's Colony. An official stated that the policy required

***Five of the six facilities we visited had few or no policies in place to ensure that employees receiving the pay differential for supervising inmates met the necessary requirements each month.***

employees to maintain inmate time sheets for one year but did not instruct staff to store the documents at their respective work sites. According to the official, an internal review found that many of the employees forwarded all inmate time sheets to records storage and were unable to provide copies when requested. When we attempted to review the documents in records storage, we found them stored in an unorganized, haphazard fashion, making it difficult to locate supporting documentation for the payments made.<sup>5</sup>

Finally, we found that many employees' personnel files did not contain certain required documents related to inmate supervision. Before an employee receives the inmate supervision pay differential, Personnel Administration requires that he or she provide a completed medical clearance form. All six facilities we visited confirmed that they require that this form—along with inmate duty statements and an authorization form approving the supervision of inmates—be maintained in the employees' personnel files. However, we found that 46 (30 percent) of the 153 employees identified by our sample did not have the required forms in their personnel files. Although we did not categorize payments to these employees as improper based solely on the absence of these forms, Corrections has less assurance that the employees whose forms were missing met the initial requirements necessary to receive the pay differential.

### ***Corrections Has Yet to Collect Most of the Overpayments It Identified Subsequent to Our Initial Investigation***

After our October 2008 investigation of the R. J. Donovan Correctional Facility, Corrections instructed its facilities to review the records of employees receiving the pay differential to ensure that the extra pay was appropriate. However, because Corrections failed to give its facilities specific, written instructions, the reviews conducted by the facilities we examined lacked uniformity. Moreover, as of August 2009, Corrections was unable to produce any type of report or written summary of the reviews completed by its facilities. Consequently, we compiled our own list (as shown in Table 5) of the individuals whom the six facilities in our sample identified as overpaid, as well as any subsequent actions the facilities took to collect those funds.

***Because Corrections failed to give its facilities specific, written instructions, the reviews conducted by the facilities we examined lacked uniformity.***

<sup>5</sup> The Men's Colony has since clarified its documentation retention policies. However, the revised policy took effect in March 2009, after the 12-month period we reviewed.

**Table 5**  
**Corrections' Efforts to Collect Improper Payments by Facility**

FACILITY	NUMBER OF EMPLOYEES IDENTIFIED IN INTERNAL REVIEWS AS PAID IMPROPERLY	TOTAL AMOUNT OF OVERPAYMENTS	ACCOUNTS RECEIVABLE ESTABLISHED?	COLLECTION EFFORT STARTED ON OR BEFORE AUGUST 2009?
California Men's Colony	6	\$4,189	No	No
California Rehabilitation Center	2	3,040	Yes	Yes
California State Prison, Corcoran	4	2,495	Yes	No
California State Prison, Sacramento	1	190	No	No
California State Prison, San Quentin	3	2,470	Yes	No
Centinela State Prison	4	12,330	No	No

Source: Documentation obtained from officials at the six facilities.

As shown, all six facilities we investigated found one or more employees who received the pay differential despite failing to meet the necessary requirements. However, only three of the facilities set up accounts receivable to recover the overpayments. As of August 2009, only the Rehabilitation Center had begun collecting funds from the identified employees. In addition, as of May 2009 Corrections had recovered only \$2,090 of the \$16,530 in improper payments that we identified during our previous investigation of the R. J. Donovan Correctional Facility. A directive by Corrections is largely responsible for the failure of the facilities to start and/or complete the recovery process. In August 2009 Corrections informed us that it had instructed its facilities to suspend further action against employees who had not met the requirements for the pay differential. It further informed us that in July 2009 it sent correspondence to Personnel Administration requesting a legal opinion on a number of issues related to the pay differential requirements. These issues include whether an employee is required to supervise two inmates for the full 173 hours even if one of the inmates is unavailable for a portion of the month and whether the pay differential is affected by an employee's absence because of vacation, sick leave, or worker's compensation.<sup>6</sup>

As instructed, CSP Sacramento, CSP San Quentin, CSP Corcoran, Men's Colony, and Centinela State Prison suspended their collection efforts. Although CSP San Quentin and CSP Corcoran had previously established accounts receivable for their identified employees, they had not proceeded with the recovery process as

<sup>6</sup> We based our findings on the number of hours the inmates worked and did not penalize employees for absences such as vacation or sick leave.

of August 2009. Corrections allowed the Rehabilitation Center to continue its collection of overpayments because it had begun collecting them prior to the announcement of the suspension.

### **Recommendations**

To ensure that employees who receive the pay differential supervise the required number of inmates for the required number of hours, Corrections should take the following agency-wide actions:

- Require employees at all of its facilities to submit copies of the supervised inmates' time sheets to their personnel offices each month along with their own time sheets. Supervisors who qualify for the pay differential because their subordinates supervise inmates should submit their own time sheets and the names of those they supervise. Personnel staff should use these documents to verify each employee's eligibility to receive the pay differential.
- Take steps to develop clearer requirements for receiving the pay differential that specifically define what constitutes the "regular" supervision of inmates.
- Instruct employees who supervise inmates on how to qualify and remain qualified for the pay differential. The instruction should include what documentation the employees need to complete, the length of time they should retain this documentation, the location where they should store the documentation, and the actions they should take when they no longer meet the pay differential requirements.
- Conduct training for its personnel office staff to ensure that they are familiar with the requirements and policies associated with the inmate supervision pay differential.

To ensure that all overpayments are returned to the State, Corrections should initiate accounts receivable for the employees identified as receiving improper payments and should begin collection efforts for these accounts.



We conducted this review under the authority vested in the California State Auditor by Section 8547 et seq. of the California Government Code and pursuant to applicable investigative standards.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: November 17, 2009

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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## Appendix

### THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, authorizes the Bureau of State Audits (bureau), headed by the state auditor, to investigate allegations of improper governmental activities by agencies and employees of the State. The Whistleblower Act defines an *improper governmental activity* as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the bureau maintains a toll-free Whistleblower Hotline: (800) 952-5665 or (866) 293-8729 (TTY). The bureau also accepts reports of improper governmental activities by mail and over the Internet at [www.bsa.ca.gov](http://www.bsa.ca.gov).

Although the bureau conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the bureau reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The Whistleblower Act requires the agency or appointing authority to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The Whistleblower Act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

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## Summary of Agency Response and State Auditor's Comments

The Department of Corrections and Rehabilitation (Corrections) agreed with some of our findings but disagreed with others. In particular, it agreed that some of its facilities have inadequate internal controls for the inmate supervision pay authorization process and document retention. However, Corrections believes that our estimate that it may have overpaid its employees as much as \$588,376 is overstated and not substantiated.

We disagree with Corrections' assertion and are confident that our estimate is accurate and fully substantiated. We based our projection on a sound statistical analysis that included an acceptable confidence level and a small margin of error. Further, the evidence we obtained fully supported the findings that we used to create the projection.

Corrections also provided us with a copy of the Department of Personnel Administration's (Personnel Administration) response to its questions regarding the pay differential and inferred that we applied the requirements for receiving the differential too strictly. However, most of Personnel Administration's response did not impinge on our investigation. Specifically, Personnel Administration stated that employees are probably not barred from receiving the differential if they are absent from work for a portion of the pay period. It also stated that in determining if employees meet the requirements for receiving the pay differential, Corrections should count the inmates' work hours rather than the employees' work hours. We based our findings on the number of hours the inmates worked and did not penalize employees for absences from work.

However, we disagree with Personnel Administration's opinion that employees are probably not barred from receiving the differential if an inmate they supervise is temporarily unable to work the entire 173 hours in a pay period. It argued that an inmate must only "substantially replace" a civil service employee for 173 hours but not necessarily work for those 173 hours. First, Personnel Administration failed to take into account that employees should supervise at least *two* inmates who *collectively* work the 173 hours. Second, we fail to see how inmates can substantially replace civil service employees while they are doing anything other than work that civil service employees would normally do. Therefore, we based our findings strictly on the number of hours inmates worked in a capacity that substantially replaced civil service employees. Nevertheless, as discussed in our report, we did not categorize isolated failures to meet the 173-hour requirement as improper because in these instances, the employees regularly

met the requirements. Only when employees failed to meet the requirements in more than four months during the 12-month period or in two or more consecutive months did we identify the payments as improper.

Corrections reported that it is establishing a task force of key staff to fully review Personnel Administration's opinion and to establish necessary guidelines and internal controls. It also reported that once the task force completes its assigned responsibilities, it will recover the funds it improperly paid to its staff.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
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Department of Finance  
Attorney General  
State Controller  
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