

OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL



**FOLLOW-UP REVIEW OF THE
BOARD OF PRISON TERMS**

APRIL 2002

GRAY DAVIS, GOVERNOR

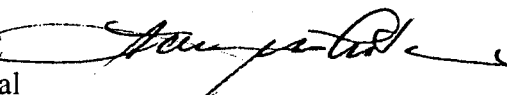


PROMOTING INTEGRITY

Memorandum

Date: April 8, 2002

To: CAROL A. DALY, Chairperson
Board of Prison Terms

From: STEVE WHITE 
Inspector General

Subject: FOLLOW-UP REVIEW OF THE BOARD OF PRISON TERMS

Enclosed please find the final report of our follow-up review of the procedures used by the Board of Prison Terms in conducting indeterminate sentence hearings. The review scope also included the board's procedures for processing inmate appeals.

On March 15, 2002, before the report was finalized, the Office of the Inspector General furnished you with a draft version of the report and held an exit conference with you and your executive officer, Marvin Speed, to explain the draft report findings. The board's written response to the findings is included in the final report as Attachment A and our comments to your response are included as Attachment B. The Office of the Inspector General is scheduling another follow-up review approximately six months from the date of this report to review the board's progress in implementing the recommendations made in this report.

Throughout the course of the review, we have received excellent cooperation from you and your staff. I wish to acknowledge and express my appreciation for the courtesy extended to the staff of the Office of the Inspector General.

Please call me if you have questions concerning this report.

Enclosure

cc: Robert Presley, Secretary, Youth and Adult Correctional Agency

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EXECUTIVE SUMMARY

This report presents the results of the Office of the Inspector General follow-up review of the Board of Prison Terms conducted during October through December 2001. The Office of the Inspector General conducted this review to determine the corrective actions undertaken by the board following the March 2000 review. The review was conducted pursuant to the Office of the Inspector General oversight responsibility provided under *California Penal Code* Section 6126 for board's and departments within the Youth and Adult Correctional Agency, including the Board of Prison Terms.

In March 2000, the Office of the Inspector General conducted a review of the Board of Prison Terms and found that the board's hearing backlog in fiscal year 1999-00 was projected to rise 51% to 1,050—a new all-time high.

In its March 2000 report, the Office of the Inspector General concluded the following:

- The Board of Prison Terms process for identifying and scheduling indeterminate sentence hearings is inadequate and fails to ensure that hearings are properly managed and are handled on a timely basis.
- The Board of Prison Terms backlog of indeterminate sentence hearings is so large that most of the hearings are delinquent.
- One Board of Prison Terms commissioner reportedly makes it a practice to not attend the portion of the hearing in which the inmate is notified of the board's decision.
- In 2 of the 25 cases reviewed, the inmate's request for a translator was not honored and no explanation for the action was given.

The Office of the Inspector General continued to receive complaints about the delays in the hearing process. In correspondence to the Board of Prison Terms on May 30, 2001, the Office of the Inspector General noted that the backlog had grown to 2,058 cases from 1,051 in June 1999, and requested the board's plan to resolve the issue. The board responded with a comprehensive plan that was outlined in a July 18, 2001 memo. In response to legislative concerns, Senator John Burton authored Senate Bill 778, which became effective in August 2001 and provided the Board of Prison Terms with emergency statutory authority to reduce the number of commissioners required when holding hearings. Further concerns arose and a memo from the Secretary of the Youth and Adult Correctional Agency followed on October 2, 2001 which directed the board to schedule all commissioners for hearing panels five days a week.

In this follow-up review, the Office of the Inspector General found that:

- The Board of Prison Terms system for identifying and scheduling indeterminate sentence hearings continues to be antiquated and cannot provide adequate assurance that such hearings are properly managed.
- Since the release of the first Office of the Inspector General report, the Board of Prison Terms has not taken proactive action to reduce the backlog. Recent reductions in the backlog resulted entirely from the enactment and implementation of SB 778 (Chapter 131, Statutes of 2001).
- The Board of Prison Terms estimated schedule for eliminating the hearing backlog by May 2002 is unrealistic.
- The Board of Prison Terms processes are not adequate to handle appeals in a timely manner. There is a backlog of over 2,200 appeals from inmates and parolees, but the Board of Prison Terms has taken no action to address this backlog.

The Office of the Inspector General recommends that the Board of Prison Terms take proactive steps to address the backlog in both the parole hearings for inmates serving indeterminate sentences and the appeals process for inmates and parolees. Specific recommendations are described in the main body of this report.

INTRODUCTION

The Office of the Inspector General conducted this review of the Board of Prison Terms pursuant to *California Penal Code* Section 6126. The code gives the Office of the Inspector General responsibility for oversight of boards and departments under the Youth and Adult Correctional Agency, including the Board of Prison Terms. The law also gives the Office of the Inspector General authority to conduct audits and investigations at the request of the Governor or a member of the Legislature or at the initiative of the Inspector General. The March 2000 and March 2002 reviews were conducted in accordance with this oversight authority.

BACKGROUND

Among the Board of Prison Terms most important responsibilities is holding hearings in order to grant, deny, revoke, or suspend the parole of inmates, and to place conditions on the granting of that parole, according to the *California Penal Code*, Section 5075. Accordingly, the board makes decisions on parole releases for all persons sentenced to state prison under the state's indeterminate sentencing laws. Indeterminate sentencing refers to an offender whose prison term is not fixed in advance by the court; but, instead, the offender is sentenced to an "indeterminate period" such as 25 years to life. The offender is eligible for parole consideration after serving the minimum prison term specified in state law for the respective crime committed. The board also conducts parole revocation hearings for parolees who have violated their parole conditions. In addition, the Board of Prison Terms advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine whether they are sexually

violent predators subject to potential civil confinement. Because any decision by the board can be appealed, the Board of Prison Terms reviews and resolves inmate and parolee appeals as well.

Pursuant to *California Penal Code* Section 5075, et. seq., the Governor is authorized to appoint nine commissioners to the Board of Prison Terms for four-year terms. The commissioners are subject to Senate confirmation. Currently, all of the nine commissioner positions are filled.

In addition to the commissioners, the Board of Prison Terms employs approximately 64 deputy commissioners. The deputy commissioners conduct parole revocation hearings, serve as panel members in hearings for prisoners serving indeterminate sentences, review appeals, and conduct other hearings and functions within the board's jurisdiction. The deputy commissioners are appointed under state civil service rules and procedures and are considered "exempt" employees. According to the state Department of Personnel Administration, exempt employees are expected to work all hours necessary to fulfill their job responsibilities.

In the March 2000 report, the Office of the Inspector General identified four conditions requiring management attention. First, the Office of the Inspector General concluded the board's process for identifying and scheduling cases for indeterminate sentences was inadequate and failed to ensure that hearings are properly managed and are handled on a timely basis. The Office of the Inspector General recommended that the board immediately begin acquiring the resources to establish a centralized system for tracking hearing cases. Second, the board's backlog of indeterminate sentence hearings was so large that most of the hearings were delinquent. The Office of the Inspector General recommended that the board increase the number of hearings by one case per day unless other measures were available to reduce the backlog more quickly. Third, one board commissioner reportedly made it a routine practice to not attend the portion of the hearing in which the inmate is notified of the board's decision. The Office of the Inspector General recommended that after a thorough investigation, if the allegations proved to be valid, the board should take appropriate action to prevent recurrences. Finally, in two of the 25 cases reviewed, the inmate's request for a translator was not honored and no explanation for the action was given. The Office of the Inspector General recommended that the board provide written notices if an inmate's request for a translator is denied. The basis for denial should be explained and documented at the hearing.

In May 2001, the Office of the Inspector General, in correspondence to the Board of Prison Terms, referred to the backlog of 2,058 indeterminate sentence hearings and described how it "has continued to receive complaints about excessive delays in the hearing process," and requested the board's plan to address the situation. In its July 2001 response to the Office of the Inspector General, the Board of Prison Terms set forth its specific plans to clear the backlog of indeterminate sentence hearings. First, the board noted that the addition of new commissioners based in Sacramento enabled the board to increase the total amount of scheduled hearings at institutions from 22 per week to 26—a 20% increase. Second, the Board of Prison Terms proposed holding its monthly board

meetings in Sacramento on Monday instead of Tuesday in order to have an extra day in which commissioners could schedule hearings. The board concluded, “this alone could result in 26 additional hearings a month, resulting in an increase of 312 hearings per year.” Finally, the Board of Prison Terms proposed that it develop a supplemental hearing list in order “to assure that the hearing schedule is full each day.” The board noted that in 2000, 474 scheduled hearings were postponed or stipulated, or a total of 22% of the hearings. The board recognized “extra hearings could be scheduled on a standby basis in order to fully utilize commissioner time...the standby list could create the potential for the scheduling of up to 474 additional hearings.”

The enactment of SB 778 (D-Burton) in August 2001 was the latest effort to resolve the backlog of hearings. Prior statutory guidelines required that the Board of Prison Terms panels conducting hearings for inmates serving indeterminate sentences be comprised of three members, including at least two commissioners and one board-appointed deputy commissioner. The newly enacted bill enabled the board’s panel to reduce its size from three members to two for indeterminate sentence hearings on an emergency basis until the end of 2003. SB 778 stated:

“This bill would authorize...on an emergency basis, and only until December 31, 2003, life parole consideration hearings or life rescission hearings to be conducted by 2-person panels consisting of at least one commissioner in order to allow the board to increase the number of hearings conducted each month to eliminate the backlog of inmates awaiting a parole consideration hearing.” SB 778 (Chapter 131, Statue of 2001) also requires that “each commissioner participate in hearings each workday, except as specified.”

In addition to SB 778, the Secretary of the Youth and Adult Correctional Agency followed with a directive to the board in October 2001 to schedule all commissioners for parole hearings five days per week, noting that “SB 778 was intended to reduce the backlog in lifer (indeterminate sentence) hearings as expeditiously as possible.” Each panel was instructed to conduct no fewer than three hearings each Monday and Friday and five hearings each Tuesday, Wednesday and Thursday for a total amount of 21 hearings per week. The exception to this rule would be work-related training, full board sessions, and similar factors, which require the approval of the chair.

In this March 2002 report, the Office of the Inspector General conducted a review of the remedial actions undertaken by the Board of Prison Terms following the March 2000 review. The Office of the Inspector General review focused on what it considers to be the most pressing issue facing the board: a large backlog of indeterminate sentence parole hearings and also a backlog of inmate or parolee appeals pending review.

REVIEW SCOPE & METHODOLOGY

In this March 2002 report, the Office of the Inspector General will address whether the Board of Prison Terms has taken appropriate corrective actions in response to the March 2000 review to resolve the following four issues:

- The Board of Prison Terms process for identifying and scheduling indeterminate sentence hearings is inadequate and fails to ensure that hearings are properly managed and are handled on a timely basis.
- The Board of Prison Terms backlog of indeterminate sentence hearings is so large that most of the hearings are delinquent.
- One Board of Prison Terms commissioner reportedly makes it a practice to not attend the portion of the hearing in which the inmate is notified of the board's decision.
- In 2 of the 25 cases reviewed, the inmate's request for a translator was not honored and no explanation for the action was given.

In addition, the Office of the Inspector General review focused on the board's timeliness in delivering hearing decisions for indeterminate sentences. To that end, the Office of the Inspector General performed the following:

- Reviewed the Board of Prison Terms current systems and processes for scheduling parole eligibility hearings for inmates sentenced under the state's indeterminate sentencing laws.
- Reviewed the current backlog of indeterminate sentence hearings and the steps taken by the Board of Prison Terms to reduce the backlog.
- Applied analytical procedures to determine the validity of the Board of Prison Terms estimate for clearing the backlog of indeterminate sentence hearings.
- Reviewed a sample of transcripts and institution logs from indeterminate sentence hearings to determine the average duration of those hearings and the total amount of time spent by commissioners and deputy commissioners in the institutions.

The Office of the Inspector General also focused on the Board of Prison Terms appeals process by reviewing its systems and procedures for effectiveness and efficiency. The Office of the Inspector General performed the following procedures:

- Reviewed and evaluated the board's regulations and procedures used to review, process, and complete inmate and parolee appeals.
- Interviewed Board of Prison Terms staff, including the appeals unit coordinator, to obtain background information and knowledge of the procedures used to process appeals.
- Observed the operations of the unit and performed an analytical review of the trends and fluctuations in the volume of appeals.
- Analyzed various administrative reports produced by the appeals unit and assessed its ability to process past, present, and future appeals.

FINDINGS AND RECOMMENDATIONS

FINDING 1

The Office of the Inspector General found that the Board of Prison Terms system for identifying and scheduling indeterminate sentence hearings continues to be antiquated and, therefore, cannot provide adequate assurance that such hearings are properly managed and conducted with reasonable promptness.

The Office of the Inspector General concluded in its March 2000 report that the Board of Prison Terms should immediately begin acquiring the resources to establish a centralized system for tracking hearing cases. Presently, the board continues to use the same process dating back to the initial review. The board, in its scheduling of indeterminate sentence hearings, uses primarily manual methods involving a monthly exchange of faxes between board staff and a coordinator at each of the California Department of Corrections 32 institutions (the 33rd institution, the California Rehabilitation Center, does not have any inmates with indeterminate sentences). The responsibility for scheduling indeterminate sentence hearings is shared between the Board of Prison Terms and Department of Corrections staff. First, the board determines which hearings and institutions to schedule based on the caseload information supplied by the California Department of Corrections coordinators. Then the California Department of Corrections coordinators schedule the most delinquent cases first.

The cumbersome and labor-intensive process employed by the Board of Prison Terms relies on the California Department of Corrections coordinators to provide accurate information. But the Office of the Inspector General has found that this process does not meet the board's statutory responsibility for ensuring that indeterminate sentence hearings are conducted in a proper manner and with reasonable promptness. For instance, the Board of Prison Terms has no established procedures to determine the accuracy of information provided by the Department of Corrections in regards to the total number of hearings outstanding and the priority of those cases. The Board of Prison Terms still relies on a paper-based system, which severely inhibits its ability to collect and analyze workload data that could in turn improve the administration of its workload and scheduling of hearings.

The result is that the Board of Prison Terms is unable to provide the Office of the Inspector General with specific data indicating the number of indeterminate sentence hearings that are delinquent. The board also has not established guidelines to notify inmates of their anticipated hearing dates or of hearing delays. Instead, the Board of Prison Terms relies on the coordinator at each of the California Department of Corrections' 32 institutions to perform this function.

In response to the Office of the Inspector General March 2000 review, the Board of Prison Terms sought to secure a funding increase from the Youth and Adult Correctional Agency which would have enabled the board to hire new staff. In the Board of Prison Terms fiscal year 2001-02 annual budget change, the board requested funding for five new staff

positions to monitor the list of inmates awaiting hearings and to schedule hearings. However, the documentation submitted with the budget change did not provide sufficient information to explain the specific processes or functions to be implemented, or an analysis of the workload that would justify the additional positions. Ultimately, the Youth and Adult Correctional Agency denied this funding increase.

Nonetheless, the Office of the Inspector General still believes that a top priority of the Board of Prison Terms should be to develop and implement new technologies and systems that enhance the management and processing of information and the performance of board business functions. Such systems need not be necessarily elaborate or cutting-edge, but should provide the Board of Prison Terms with accurate and timely information to plan the workload of future hearings and give background information on past hearings. By implementing such a system, the board would have relatively easy access to tracking and scheduling information of indeterminate sentence hearings. The Board of Prison Terms lacks useful information to manage the functions and work required of the board and staff, which is critical to measure staff performance, set reasonable expectations for future performance, or justify staffing or process changes.

In addition, the systems would provide the Board of Prison Terms essential information and data to meet growing workloads. The lack of records and information undermines its ability to manage the large workload. For example, the board could not provide to the Office of the Inspector General operational records and data on indeterminate sentence hearings essential to an efficient and effective operation. The board also did not have such basic information as the monthly backlog of hearings for the past two years, the average number of days that indeterminate hearings had been delayed beyond the initially scheduled hearing, or the number of hearings the board expected to conduct over the course of a year.

The same deficiency and lack of records and data was also evident in the board's appeals process. The appeals unit was unable to provide information on the number of backlogged appeals, the types of appeals filed by inmates and parolees, the number of days that pending appeals had been in the system, or the number of days taken to complete various types of appeals during the past two years.

Nor does the board's information systems provide data on the current status of the indeterminate sentence and appeals workload or track trends and fluctuations in hearing and appeal patterns. As a result, the board is mostly reacting to events as they occur, rather than anticipating needs and potential problems, or identifying improvement opportunities.

The Office of the Inspector General found instances where the reports provided by the Board of Prison Terms management information systems unit and the appeals unit contained inaccurate information.

The findings included the following:

- The board's appeal unit provided monthly and quarterly workload data and statistics to show the appeals unit activity, including the number of pending appeals, but the reports did not reconcile from month to month or from quarter to quarter.
- The Office of Inspector General found that many of the appeals unit reports contained conflicting summary totals. Though the report should have stated the same summary figure from one section of the report to the next, in reality, the reports had different summary figures that did not match.
- Inconsistent summary figures in board reports were identified by the Office of the Inspector General in reports dating back to January 1998, the earliest period reviewed. The board submitted several of these reports with incorrect data to the Department of Finance to support Budget Change Proposals for additional appeals unit staff.

The Appeals Tracking System maintained by the board's appeals unit, which provides information on pending appeals, is not routinely updated to clear the completed appeals or identify long outstanding appeals.

Management does not have adequate quality control measures in place to ensure that completed appeals are properly closed out on the tracking system. The Office of the Inspector General found that the following factors undermine the appeals unit's effectiveness and credibility:

- Outdated reports are used to respond to calls from inmates, parolees and institutions on the status of appeals.
- After the Office of the Inspector General pointed out to the Board of Prison Terms the outdated entries in reports, the board staff researched and cleared 128 of the 196 old appeals, 65% of the pending appeals in the system as of December 29, 2000. Of those 128 appeals, 106 had been completed, but the appeals unit had neglected to update and close the appeals on the tracking system.

The Office of the Inspector General found in its review that a computer-based appeals management system does not exist to track and analyze the time it takes to complete appeals.

Only indeterminate sentence hearings are monitored for timeliness, which is a result of court decisions. When the Office of the Inspector General requested this information, the appeals unit spent several weeks compiling the information and preparing the reports.

The Board of Prison Terms does not track the different types of inmate and parolee appeal issues, which is essential in order to identify trends or systemic problems.

The appeals unit staff stated that they were not sure of the benefits of monitoring such issues. However, the board can make an informed decision only if it has information such as whether a particular deputy commissioner is making a disproportionate amount of poor

decisions or if deputy commissioners need refresher training in specific areas, such as parole revocation terms or procedures.

RECOMMENDATION

The Office of the Inspector General found that the Board of Prison Terms previous action item respective to developing and implementing new systems for identifying and scheduling indeterminate sentence hearings remains unresolved.

The Office of the Inspector General recommends that the Board of Prison Terms implement new technologies and systems to develop an efficient and effective hearings and appeals operation, including the following:

- The Board of Prison Terms should identify specific information that would help to effectively manage its various activities and then develop new systems for compiling, processing, and analyzing that information. The information processed should address and support each unit's objectives, track hearings and appeals in the system, and document the outcomes.
- In cases where the Board of Prison Terms already produces management reports, the board should evaluate whether the reports contain accurate information, and if necessary correct internal errors. Further, the Board of Prison Terms should implement quality control procedures relative to data-entry and compilation, which would improve the overall accuracy of reports.
- The Board of Prison Terms should assign a specific staff member the responsibility for data collection and analysis. In addition, it should maintain data for a sufficient period of time to permit identification of trends and to establish baseline standards and expectations.

FINDING 2

The Office of the Inspector General found that the Board of Prison Terms has not taken any proactive measures to reduce the backlog of indeterminate sentence hearings, which continued to grow until the implementation of SB 778. Recent reductions in the backlog result entirely from the enactment and implementation of the provisions of SB 778 (Chapter 131, Statutes of 2001).

In its July 2001 response to the Office of the Inspector General, the Board of Prison Terms provided its specific plans to clear the backlog of indeterminate sentence hearings. First, the board noted that the addition of new commissioners based in Sacramento enabled the board to increase the total amount of scheduled hearings at institutions from 22 per week to 26—a 20% increase. Second, the Board of Prison Terms proposed holding its monthly board meetings in Sacramento on Monday instead of Tuesday in order to have an extra day in which commissioners could schedule hearings. The board concluded, “this alone could result in 26 additional hearings a month, resulting in an increase of 312 hearings per year.” Finally, the Board of Prison Terms proposed that it develop a supplemental hearing

list in order “to assure that the hearing schedule is full each day.” The board noted that in 2000, 474 scheduled hearings were postponed or stipulated, or a total of 22% of the hearings. The board recognized “extra hearings could be scheduled on a standby basis in order to fully utilize commissioner time...the standby list could create the potential for the scheduling of up to 474 additional hearings.”

The Office of the Inspector General review found that the Board of Prison Terms has not fully implemented any of the above-delineated measures. On the contrary, the review found that the board has reduced the scheduled hearings from 22 cases per week to 18 cases per week, purportedly because of additional workload imposed on the panel members from a three-person panel to a two-person panel.

The Board of Prison Terms has room in its schedule to add on more hearings.

Despite the recommendation in the Office of the Inspector General March 2000 review, the express intent of SB 778 (Burton), and the directive from the Secretary of the Youth and Adult Correctional Agency, the Board of Prison Terms continues to conduct hearings only four-days per week, Monday through Thursday. Explanations by the board include that they need to take an extra day off during the week of the monthly board meetings or that the commissioners work a 4-day, 10 hour-per-day week. The shortened workweek—five-days/40-hours per week—is a handicap to the board’s effort to clear a backlog, and it most significantly restricts the number of scheduled hearings.

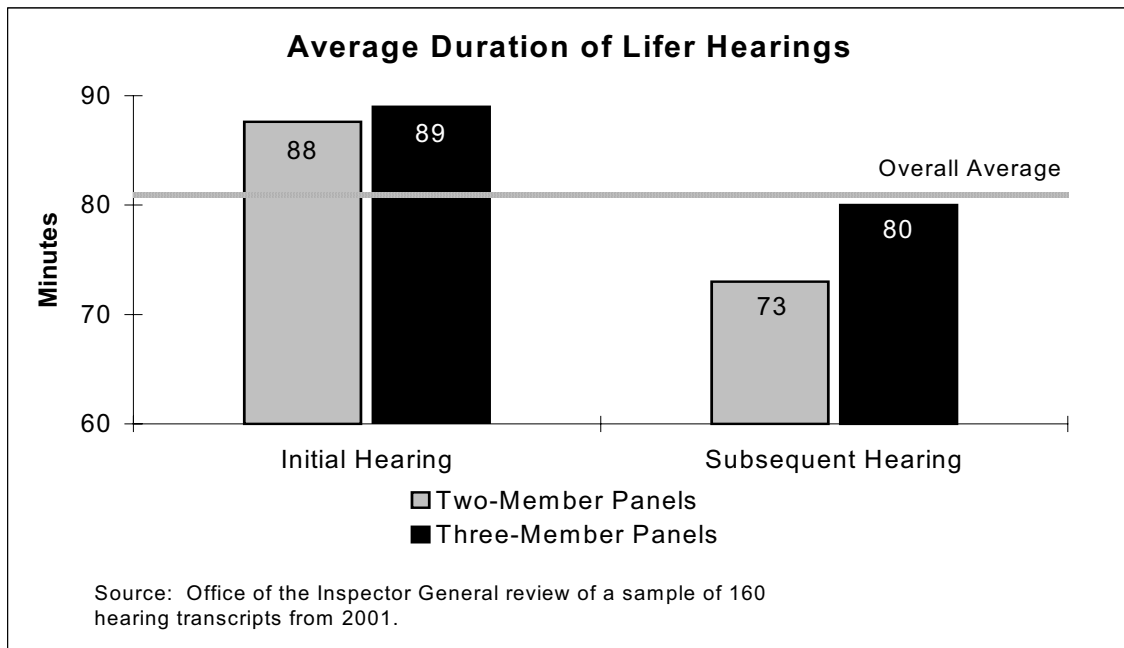
A seven-week survey of time logs at three institutions over a three month period shows that the board commissioners spent an average of 25 1/2 hours per week in institutions with actual hours ranging anywhere from 20 1/2 hours per week to 28. Therefore, there appears to be ample opportunity to schedule more hearings by having the commissioners spend more time at the institutions.

The survey also shows a pattern of the board members typically arriving at the institutions at noon on Mondays and departing between noon and 1 p.m. on Thursdays. Apparently, most board members take about half a day to travel to the institutions on Mondays and another half a day to travel home on Thursdays. Based on an analysis of the physical location of the institutions in relationship to where the commissioners live, the Office of the Inspector General believes this travel time allowance is overly generous and that six hours per week should be more than sufficient for most institutions. For example, using an approximate 2 hour driving radius, 4 commissioners living in the greater southern California basin have 4 to 6 nearby institutions, a commissioner on the central coast has 5 nearby institutions, and 3 commissioners in the Sacramento/Stockton area have 6 to 10 nearby institutions.

In addition, the board has not moved its monthly meetings from Tuesdays to Mondays as it committed in its July 2001 letter to the Office of the Inspector General.

The Board of Prison Terms schedule of hearings declined to 18 per week from 21 as reported in the March 2000 review.

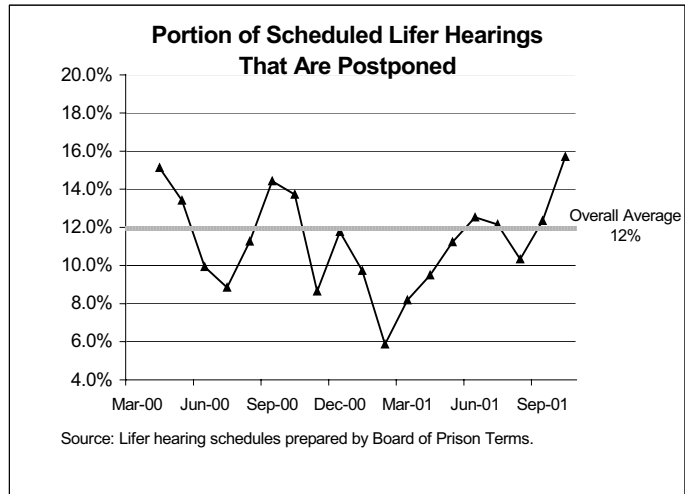
The board reduced the number of scheduled weekly hearings from 21 to 18 for each panel. It further asserts that this action was justified because after it began scheduling hearings in October 2001 with two-person panels as opposed to three, it takes longer to conduct hearings. That is not accurate. As shown in the chart below, the Office of the Inspector General found just the opposite -- the two-person panel actually shortens the average hearing time. The Board of Prison Terms currently allots 90 minutes for each hearing. A sampling of 160 hearings transcripts reviewed by the Office of the Inspector General determined that, overall, the hearings averaged 81 minutes in length for the two member panels. The amount of time varied from an average of 77 minutes for subsequent hearings (a hearing for an inmate previously denied parole) to an average of 88 minutes for an initial hearing (a life-term inmate's first parole consideration hearing). Of the two types of hearings, subsequent hearings, which account for 75% of the total hearings, actually required less time with a two-person panel than a three-member one. Overall, there is no evidence that two-person panels require more time for hearings, and in fact it appears that hearings take less time with the two-person panels.



- **The Board of Prison Terms should adjust its schedule to take into account the 12% of postponed hearings.**

During the past 20 months, the Board of Prison Terms scheduled 4,671 indeterminate sentence hearings. Of these hearings, 12% (558), or an average of two per week per panel, were postponed and yet the board does not fill the open slots with other cases. Instead, the board leaves the slots empty and the panels experience a lighter workload that day. Accordingly, the Board of Prison Terms should adjust for postponements and fill empty slots by scheduling 12% more hearings than it does now. This would ensure that hearing panels are fully utilized.

The board staff expressed concern that if extra hearings are scheduled to compensate for postponements and no postponements actually occur, then the extra hearings might need to be cancelled to avoid unusually long work days. It further expressed concern that canceling hearings places an unnecessary hardship on witnesses and other hearing participants. However, the board staff misunderstands the Office of the Inspector General's position. The board should not cancel hearings, it should conduct all hearings that have been scheduled, even if it is necessary to stay later to complete the hearings. By conducting all scheduled hearings, even if there are no postponements, the board could perform more than 20 hearings a week.



- **The Office of the Inspector General calculates that the Board of Prison Terms can schedule at least 22 hearings per panel per week.**

The Office of the Inspector General based its conclusion by taking into account an average of 90 minutes for scheduled hearings, six hours of travel time per week, 15 minutes to review each file, and an adjustment for 12% postponed hearings.

Based on 18 hearings and 15 minutes of preparation time to review hearing files, which is based on information provided by a former commissioner, each panel member would need 4.5 hours per week to prepare in advance for hearings.

The Office of the Inspector General based the travel time on an average of six hours per week after taking into consideration that some institutions are located in remote parts of the state while others are situated close to metropolitan areas.

The scheduling of 18 hearings would consume an average of 34.3 hours per week, which is short of the commissioners or deputy commissioners' 40-hour workweek. Since about 12% of hearings are postponed each week, the Office of the Inspector General suggests that the board make an upward adjustment of 22 hearings per week, 4 hearings more than usual.

**Estimate of the Average Hours Needed
To Conduct a Week of Indeterminate Sentence Hearings**

Time Element	Current Schedule (18 Hearings/week)	Recommended Schedule (22 Hearings/week)
Hearing Time	27 hours	33 hours
Postponed Hearing Adj.¹	(3.2) hours	(3.9) hours
Travel Time	6 hours	6 hours
Preparation Time²	4.5 hours	5.5 hours
<i>Total Hours Per Week</i>	34.3	40.6
<i>Approximate Number of Hearings Completed Per Week</i>	16	19

¹Assumes that 12 percent of scheduled hearings are postponed.

²Assumes that 15 minutes is an adequate average amount of time to prepare for each hearing.

Source: Office of the Inspector General Prepared.

If the Board of Prison Terms increases the number of hearings that it schedules to 22 from 18 hearings per panel per week, the panels would be scheduled to a 40-hour workweek. In addition, after adjusting for postponed hearings, the number of completed hearings would increase from about 16 to 19 per week.

- The Board of Prison Terms should move its monthly board meetings to Monday from Tuesday to increase the number of scheduled hearings during that week.** Board commissioners meet once a month on Tuesdays for board meetings in Sacramento. The commissioners frequently take Monday off prior to a Tuesday board meeting, claiming as justification administrative time off to travel to Sacramento. The result is that commissioners are only scheduled for nine hearings instead of 21 during those weeks. (Six hearings on Wednesday and three on Thursday.)

As previously noted, the Board of Prison Terms previously proposed to move the monthly meeting from Monday to Tuesday to provide room for more hearings. If the Board of Prison Terms moves its board meetings to Monday from Tuesday, the panels could schedule hearings three days per week instead of the two currently scheduled. This would result in 15 hearings per week instead of the nine currently scheduled, a 67% increase. This would increase the number of hearings scheduled per year by 288 if 4 hearing panels are used; or 576 if 8 panels are used.

In an interview with the Office of the Inspector General, the board staff did recall conducting one monthly board meeting on a Monday instead of Tuesday in either August or September 2001. But this happened only once. The meetings were changed back to Tuesday after enactment of SB 778 (Burton), which excused hearings on the day of board meetings. According to board staff, the decision to revert to Tuesday board meetings was

made by the board's then chair because of pressure from the commissioners. The commissioners reportedly traveled all week long and wanted one day per month to take care of personal business on a weekday. But the Office of the Inspector General points out that the board takes every Friday off, even during the week of board meetings. Moreover, in light of the significant hearing case backlog, the argument that the commissioners have personal business to take care of on a normal workday is not compelling or persuasive.

The enactment in August 2001 of SB 778 (Burton) enabled the Board of Prison Terms to schedule parole hearings for indeterminate sentences on an emergency basis with two-person panels as opposed to the three-persons previously required. This doubled the number of available hearing panels from four to eight. During a three-month period beginning in October 2001, the hearings backlog declined 29%, falling by more than 530 hearings. This was attributable to the expanded number of panels available for hearings.

If the board experiences significant board vacancies in the future, it could once again end up with a large backlog of hearings. Accordingly, the board should revise procedures and/or develop a plan that would allow it to stay current with its hearings, even in the event of vacancies.

RECOMMENDATION

To ensure that its commissioners and deputy commissioners are working at least an average of 40 hours each week, the Board of Prison Terms should increase the number of hearings it schedules each week. Specifically, the board should monitor the rate at which hearings are postponed, and increase the number of hearings scheduled to compensate for postponed hearings. The board should also move its monthly board meetings from Tuesday to Monday to increase the number of hearings conducted during that week. In addition, the board should conduct an internal review of the hearing process for indeterminate sentence hearings to identify measures to achieve greater efficiency in the process.

FINDING 3

The Office of the Inspector General found that the Board of Prison Terms estimated schedule for eliminating the hearing backlog by May 2002 is unrealistic.

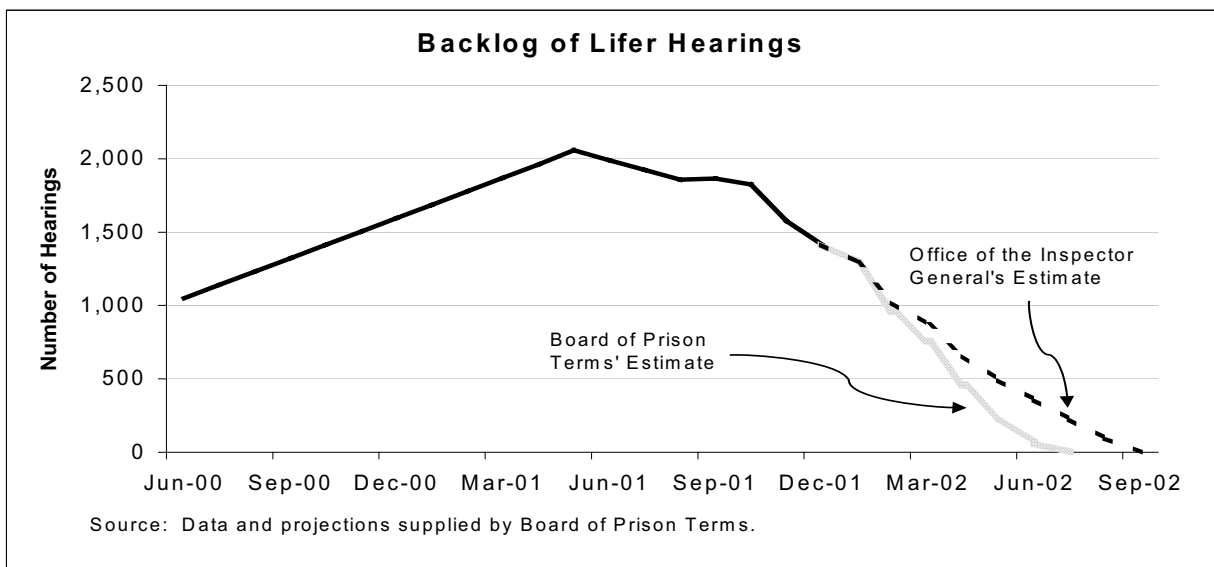
In the beginning of December 2001, the Board of Prison Terms reported the backlog of indeterminate sentence hearings dropped 47%, declining to 1,400 from 2,058 since May 2001. Yet the December figure is still high in comparison to a June 1999 backlog of 695 hearings. The Board of Prison Terms attributes the rise in the backlog to past vacancies on the board. Beginning in May 2001, all of the board's positions were filled, making available eight commissioners to sit on hearing panels. (The ninth commissioner serves as chair and does not normally participate on hearing panels.)

In October, following enactment of SB 778 (Burton), the Board of Prison Terms began conducting eight hearing panels for indeterminate sentences and as a result, reduced its

backlog by 40 hearings in September, 249 hearings in October, 188 hearings in November, and 122 hearings in December 2001. The Board of Prison Terms projects the hearing backlog will be eliminated by May 2002. But the Office of the Inspector General finds the board's forecast unrealistic as it is based on the assumption that every hearing scheduled will actually be completed. The Office of the Inspector General found that in the past 20 months, 12% of scheduled hearings were postponed.

The board estimates it can schedule each panel for up to 650 hearings per year, though it currently schedules each panel for 625 hearings, or an aggregate total of 2,500 hearings per year. Therefore, the Board of Prison Terms needs to operate four hearing panels *full-time* for indeterminate sentences in order to meet its annual workload of 2,500 hearings.

As illustrated in the figure below, after adjusting the Board of Prison Terms projections for a 12% hearing postponement rate, the Office of the Inspector General expects that in reality the indeterminate hearing backlog will not be eliminated until September 2002 unless additional measures are implemented.



RECOMMENDATION

The Office of the Inspector General recommends that the Board of Prison Terms take measures to ensure a consistent, adequate delivery process for indeterminate sentence hearings. To improve its efficiency, the board should restructure its scheduling system by increasing the number of scheduled hearings for each of the four panels to offset 12 % in postponed hearings. This would also alleviate the workload in the event of short-term commissioner vacancies.

FINDING 4

The Office of the Inspector General found that the Board of Prison Terms processes are not adequate to handle appeals in a timely manner. As a result, there is a backlog of over 2,200 appeals from inmates and parolees, but the Board of Prison Terms has taken no action to address this backlog.

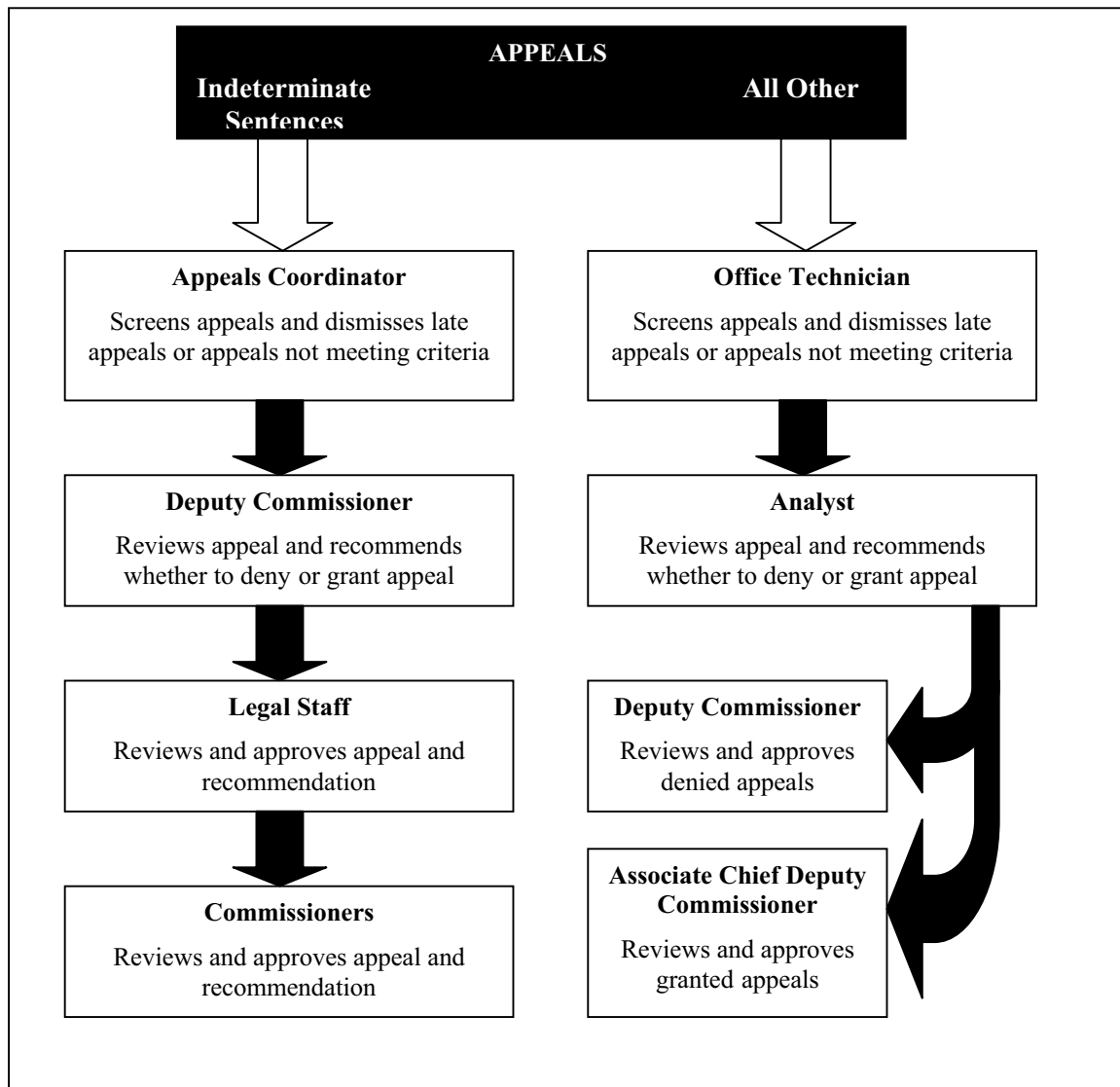
The Board of Prison Terms appeals process provides an inmate or parolee with due process rights to challenge a board decision prior to seeking court resolution. Provisions included in the *California Code of Regulations*, Title 15, Division 2, Sections 2050 to 2057, permit an inmate or parolee to appeal any Board of Prison Terms decision affecting that inmate or parolee. An appeal must be based on at least one of the following reasons: the board's decision was based on incorrect or incomplete information; was unreasonable in view of the facts; was illegal; or violated board rules. Inmates or parolees, must submit their appeal to a California Department of Corrections appeals coordinator within 90 days after receiving written confirmation of a board decision. These appeals fall into two distinct categories:

- Appeals related to the denial of a parole date or other matters related to the parole hearing for inmates serving indeterminate sentences
- Appeals related to all other issues including, but not limited to parole revocation, revocation extension, work time credits, and Americans with Disabilities Act requests.

The appeal and supporting documentation are forwarded to the Board of Prison Terms appeals unit. The appeals unit reviews the appeal and either:

- Dismisses the appeal – if the appeal is submitted after the 90-day deadline, the issue cannot be appealed, or the appellant has been released or paroled (procedural determination)
- Denies the appeal – if the information submitted with the appeal does not support that the original decision was based on incorrect or incomplete information, was unreasonable in view of the facts, was illegal, or otherwise violated board rules (determined on the merits of the issue)
- Renders a new decision – if the information supplied supports a change in the original decision, a new hearing is not required to make a new determination, and the new decision does not adversely affect the inmate/parolee
- Orders a new hearing – to occur within 60 days of its decision if the original decision contained a factual error, material omission, error of judgment, was illegal, or otherwise violates board rules.

The chart below illustrates the review process for indeterminate sentence appeals and all other appeals.



The Office of the Inspector General analyzed statistical reports prepared by the appeals unit to obtain an understanding of volume and magnitude of appeals processed by the unit. The following table summarizes the data listed within the reports. As shown, the unit completed 600 indeterminate sentence appeals and 4,891 other appeals in 2001. Very few appeals are actually granted: only 1-2 % of indeterminate sentence appeals and 5 % of non-indeterminate sentence appeals. The remaining appeals are either dismissed if submitted after the 90-day deadline, or the issue cannot be appealed, or denied after consideration by board staff.

Statistics for Lifer and Non-Lifer Appeals

Year	Indeterminate Sentence Appeals				All Other Appeals			
	Dismiss	Deny	Grant	Totals	Dismiss	Deny	Grant	Totals
1999	221	365	10	596	2,182	4,918	351	7,451
	37%	61%	2%		29%	66%	5%	
2000	193	322	5	520	2,127	4,745	312	7,184
	37%	62%	1%		30%	66%	4%	
2001	199	396	5	600	1,776	2,935	180	4,891
	33%	66%	1%		36%	60%	4%	

After reviewing the board's appeals statistics and assessing the appeals process it is clear that the board has not timely addressed appeals submitted, resulting in a backlog of approximately 2,200 appeals. The following factors contribute to the board's inability to process the workload.

The Board of Prison Terms has no established time limit to respond to appeals.

Although inmates and parolees must submit an appeal within 90 days of receiving written confirmation of a board decision, the board does not have a required timeframe within which it must respond to an appeal. For example, during the Office of the Inspector General visit to the appeals unit during October 2001, appeals analysts were reviewing appeals submitted in April and May 2001, or five to six months earlier. However, the review also disclosed appeals dating from December 2000, or 10 months earlier that were still awaiting review.

To evaluate the general timeliness of appeals processing, the Office of the Inspector General reviewed appeals received and closed between September 1, 2000 and August 31, 2001. The evaluation considered three situations - appeals dismissed because they did not meet the required time limit or other criteria; appeals denied; and appeals granted.

Number of Days Required to Process Appeals			
	Dismissed	Granted	Denied
Lifer Appeals	50	108	144
All Other Appeals	53	112	208

The evaluation determined that:

- The average number of days to dismiss the appeals varied only slightly for the different types of appeals; ranging from 50 days for indeterminate sentence appeals to 53 days for all others. However, although the average number of days to process dismissals was relatively short, the range of time was very broad. For example, for indeterminate sentence appeals the processing time ranged from 3 days to 180 days. Similarly, for all other appeals the spread was even larger, ranging from 1 day to 375 days.

- The average time taken to grant an appeal was roughly the same regardless of the type of appeal, ranging from 108 days for indeterminate sentence appeals to 112 days for all other appeals. For granted indeterminate sentence appeals, the range of time to process is very small with a low of 102 days and a high of 113 days. However, for appeals other than indeterminate sentence appeals, the range was quite broad with a low of 7 days and a high of 266 days.
- The time taken to deny an appeal was considerably longer, with an average of 144 days for indeterminate sentence appeals and 208 days for all other types of appeals. The number of days needed to process denials varied greatly. For example, denied indeterminate sentence appeals had a review time that ranged from 47 days to 477 days. For all other denied appeals, the spread was even larger ranging from 1 day to 494 days. For at least two denied appeals, it took approximately one year and four months to complete the review.

In general, where the board is able to address the appeal solely on a procedural basis it responds in a timely manner. However, given the average and range of days to process appeals where the appeal must be decided on the merits and analysis is required, the board is not particularly responsive. Further, as some appeals took longer than a year to process, the board's controls over processing are not adequate to ensure a decision within a reasonable period.

The board's inability to process appeals in a timely manner has resulted in three court decisions mandating that the board meet fixed timelines for specific appeals. Court decisions in 1999 required the board to process indeterminate sentence appeals within 120 days for:

- appeals that originate from the Richard J. Donovan Correctional Facility
- appeals filed by a specific inmate incarcerated in San Quentin State Prison.

In addition, a third court decision, *Armstrong v. Davis* requires the board to complete any appeal related to Americans with Disabilities Act issues within 30 days of receipt.

The fact that the court has stepped in to compel the board to process appeals within a fixed time period is a finding that the board's practices are neither reasonable nor defensible. However, the board has taken no action subsequent to these court decisions to establish a standard time period for processing appeals, or to ensure that appeals not covered by the court orders are processed timely. In fact, the board has exhibited less than a full commitment to meeting the current court requirements related to the processing of appeals from the Richard J. Donovan Correctional Facility and was recently fined by the court for failing to meet the 120-day deadline. Such non-compliance with existing court orders coupled with a lack of action to address the problem of timely processing appeals potentially subjects the board to broader action by the court in the future. Ultimately, the board may end up with court mandated deadlines for processing all appeals.

Though the Board of Prison Terms has a backlog of more than 200 appeals from inmates with indeterminate sentences, the board has failed to follow through with its plan to assign a deputy commissioner to the cases.

There is a backlog of approximately 214 indeterminate sentence appeals awaiting review and yet there is no deputy commissioner assigned to review those appeals. Although two deputy commissioners are allocated to the appeals unit to process these appeals, these deputy commissioners are typically reassigned to higher priority work such as hearings or special projects. In response to the appeals staff's repeated request for a deputy commissioner to process the growing appeals backlog, including 40-50 new appeals each month, the board assigned a deputy commissioner to the unit beginning the week of November 26, 2001. However, the deputy commissioner did not immediately begin working on the backlog.

The board's appeals unit staff estimated that a deputy commissioner can review five indeterminate sentence appeals a day. Based on the board's estimate and assuming that the Board of Prison Terms takes in 45 new appeals each month, the Office of the Inspector General determined that the board could process new appeals and the backlog, resulting in the elimination of the backlog in approximately three to four months.

The Board of Prison Terms has a backlog of 2,029 other (non-indeterminate) appeals as of the end of November 2001

In addition, the board receives about 600 new appeals each month, which usually requires an average of 430 appeals to be reviewed by analysts, with 170 appeals dismissed in the initial review by office technicians. According to board documents and discussions with the appeals coordinator, the three analysts assigned to the appeals unit can each review and process an average of seven non-indeterminate sentence appeals a day. This means the analysts could review approximately 420 cases per month, which still is slightly short of the 430 new cases each month. As a result, staff is unable to address the backlog of over 2,000 appeals. With this obvious mismatch of staff and workload, the Board of Prison Terms should immediately identify resources that can temporarily be reassigned to help the analysts reduce the backlog of all other appeals.

The delay by the Board of Prison Terms in responding to inmate appeals could have serious impact on the inmates' release dates. The Office of the Inspector General found instances where the Board of Prison Terms delay in processing inmates' appeals actually extended the inmates' sentence. Some examples include:

- An inmate was scheduled to return to parole on October 27, 2000, but because the board delayed the processing of the inmate's appeal, that inmate had to serve out an entire 10-month parole violation term and was not released until February 2001. Thus, the inmate spent an extra 100 days in prison. The inmate's appeal was not granted until June 2001, which was an injustice to the inmate since he had been released four months earlier.

- An inmate spent extra time in custody because the board took more than six months to resolve an appeal concerning a 90-day revocation extension term. The inmate returned to custody for a 12-month revocation term on June 20, 2000 and received a 90-day revocation extension on January 12, 2001 because of a rule violation report. However, the institution dismissed the rule violation report on January 20, 2001 and did not take any action to rescind the 90-day revocation extension. The inmate filed an appeal that was eventually granted on August 27, 2001. Meanwhile, the inmate returned to parole status on April 14, 2001, but could have been released as early as February 18, 2001 had the board rescinded the 90-day revocation extension. The inmate spent an extra 55 days in custody.

In addition to the issue of denying inmates their liberty, the board's lack of timeliness in processing appeals also results in additional cost to the state. According to figures from the Department of Corrections 2002-03 fiscal year budget, the cost per day to incarcerate an inmate in a state prison is approximately \$70. However, the average cost for an inmate on parole is only one-tenth that cost, or about \$7 per day. Therefore, the state incurs additional costs when inmates are improperly held beyond their release date. Further, in light of a recent court decision against Los Angeles County, improperly detaining inmates could subject the state to significant financial liability. Such an occurrence could potentially cost the state considerably more than the additional cost per day to house an inmate in state prison.

The Office of the Inspector General believes that there are measures that can be taken to improve efficiency without requiring additional resources. Specifically, the review observed the following conditions.

The Office of the Inspector General observed that the tasks performed by deputy commissioners and the legal staff are duplicative

A deputy commissioner routinely reviews the indeterminate sentence appeals and then forwards the appeal to the board's legal section for further review. The legal section's review ensures legal compliance and concurrence. Once approved, the appeal is sent on to two commissioners for final approval.

The deputy commissioners are duplicating the work of the legal staff. The review process can be streamlined by having the legal staff perform both the initial review and legal analysis. This would also address the deputy commissioners potential conflict since the deputies also conduct the parole hearings for inmates with indeterminate sentences.

In addition, it should be noted that for the 2001/02 fiscal year the board budgeted deputy commissioners at an average salary of \$7,076 per month compared to \$4,421 per month for staff counsels. Therefore, it is clearly more cost effective to have the legal staff performing these reviews.

The Board of Prison Terms needs to develop an Operations Manual and cross-train staff from other units to assist the appeals unit

During its review of the board's appeal process, the Office of the Inspector General noted two conditions that, if corrected, could improve appeal unit operations. The findings include the following:

The board does not have an Operations Manual for its appeals unit or written guidelines on how to process an appeal. Even though the appeals unit has developed an extensive set of standard responses to appeals, the addition of an operations manual and guidelines for processing appeals would clarify the standards expected of the appeals unit and advance the effective and efficient operation of that office.

The board has not established a back-up plan in the event of extended staff absences, such as those due to unexpected staff illnesses or annual leave usage. For example, one office technician responsible for inputting new appeals into the Appeals Tracking System missed two weeks of work due to illness. By the time the technician returned to work, the backlog of appeals waiting to be entered onto the tracking system grew to 173 appeals, which is significant compared to another technician who had a backlog of 32 appeals from working during that period. The delay in inputting appeals into the tracking system exacerbates the backlog, as appeals are not considered for review until logged into the system.

RECOMMENDATIONS

The Office of the Inspector General concluded that the Board of Prison Terms should take the following corrective actions to clear an excessive backlog of appeals:

- The Board of Prison Terms should consider transferring the responsibility of reviewing and completing indeterminate sentence appeals to its legal section from the deputy commissioners to eliminate a duplication of efforts and a potential conflict.
- The Board of Prison Terms should develop an operations manual and written guidelines on processing appeals for the appeals unit.
- The Board of Prison Terms should cross-train staff from other units on processing appeals as a back-up in the event of staff absence or shortage.

ATTACHMENT A

RESPONSE OF THE BOARD OF PRISON TERMS

BOARD OF PRISON TERMS

1515 K Street, 6th Floor
Sacramento, CA 95814



445-4072

April 3, 2002

Steve White
Office of the Inspector General
801 K Street, Suite 1900
Sacramento, California, 95814

Dear Mr. White:

Attached is the requested Board of Prison Terms (BPT) response to the Office of the Inspector General's draft report dated March, 2002, which presented the results of the review of the Board of Prison Terms conducted October through December 2001. The stated purpose of that review was to determine what corrective actions have been undertaken by the BPT following the March 2000 review.

I would like to take this opportunity to thank your staff for their courtesy and professionalism during the review process. If you find that the responses require further clarification, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in cursive script that reads "Carol A. Daly".

CAROL A. DALY
Chairperson

DS/ds

Attachment

**BPT Response
to the
March 2002 Report
of the
Office of the Inspector General**

FINDING #1

The BPT process for identifying and scheduling lifer hearings is inadequate and fails to ensure that hearings are properly managed and are handled on a timely basis. The system is antiquated and this issue is a carryover from the March 2000 report. (Page 6)

BPT response:

The BPT is continuing to work on developing a management information system that will provide background information on past hearings as well as assist in planning future workload. Since the release of the Inspector General's March 2000 report, the Lifer Scheduling Unit staff members, Management Information System Unit (MIS) and Electronic Data Processing Unit (EDP) staff have been working together to find ways to enable BPT staff to identify and schedule indeterminate sentenced hearings and eliminate dependence on CDC for this function. As of June 2001, the Lifer Scheduling Unit began meeting with MIS/EDP staff approximately once a month to discuss various lifer database modifications to make the database user friendly and allow the unit to capture pertinent data.

The MIS unit is now able to identify the next subsequent hearing date on the lifer database by recording the last hearing date and the decision from that hearing. MIS is also able to run daily, weekly and monthly reports to ensure that all hearing decisions (BPT 1001 and/or 1001(a)) are entered in the database, ensuring accuracy of proposed hearing date reports.

The BPT Executive Officer has assigned a specific staff member as the research manager of the MIS unit. It is the responsibility of this manager to oversee the process of data collection, data compiling, and analysis by various types of research methodology. Good quality control methods ensure maintenance of data quality and ensure that appeals cases are followed to completion. The data will be stored for an indefinite period so that baselines can be created yearly and trends can be identified.

- **Reports provided by the MIS unit and the appeals unit contain inaccurate information. (Page 8)**

BPT response:

The appeals tracking system was redesigned during the later part of 1999 to accommodate "Y2K". There were several glitches in the new system design that have required ongoing consultation between the Electronic Data Processing Unit (EDP) and the appeals unit. The issue of reports containing inaccurate information was resolved late in 2001. The assigned staff person from EDP made the necessary

adjustments to the appeals tracking system so that now the reports do reconcile from month to month and from quarter to quarter.

The appeals coordinator will continue to monitor the reports to assure that the numbers on the monthly and quarterly reports remain consistent. The MIS unit is currently reviewing the statistical reports dating back to 1998 in an effort to determine why the number of appeals reflected as pending from each month were inconsistent with the number of appeals reflected as a backlog in the following month.

- **The appeals tracking system in appeals unit is not routinely updated. (Page 9)**

BPT response:

The IG's Office identified appeals in the system that should have been shown as closed/completed; and, out of 196 old appeals, the BPT appeals unit was able to close/complete all but 38. The BPT is continuing to research information on the 38 appeals. Investigation has revealed the source of the problem to be the specific technique used to close an appeal in the appeal tracking system. Staff has since been reminded of actions to be taken in the system after closing an appeal to assure that the information is captured. Once the backlog of pending appeals is remedied, MIS will be providing the appeals unit with a monthly list of appeals open for 90 days or more for quality control purposes.

- **The appeals unit has no computerized tracking system to analyze the time it takes to complete appeals. (Page 9)**

BPT response:

The BPT can now track and analyze the time needed to complete appeals. This was accomplished by developing an ad hoc report which was prepared by re-prioritizing workload.

As background information, the MIS Unit was cut in 1992 as the result of legislative reductions to the BPT budget. This Unit has been re-established over the last 1.5 years and is now able to produce the standard reports necessary for the Board's functioning. However, when ad hoc reports are requested on a short timeline, it impacts the priority of workload. The Board set aside other projects in order to design and write code to produce the specialized reports requested by the Inspector General's team. While these reports can be designed and produced, it requires extra time and temporarily strains the Board's resources. However, once code has been written and the reports have been produced, those ad hoc reports become a user production report and can readily be produced upon request. The Board has had to develop priorities as to which reports are vital to operations at this moment in time, and will continue to develop and refine additional reports as time, resources and workload allow.

- **The appeals unit does not track appeal issues to identify trends or systemic problems. (Page 9)**

BPT response:

BPT is working to add a function to the appeals tracking system that will capture the information needed for future statistics on granted, as well as dismissed or denied, appeals, which would include the name of the involved deputy commissioner(s). Based on the availability of resources, the BPT plans to focus its data collection first on appeals granted by the BPT.

FINDING #2

Since the March 2000 report, the BPT has not taken proactive action to reduce the backlog. Recent reduction results entirely from the implementation of SB 778. (Page 10)

BPT response:

Since July 2001 the BPT has effectively reduced the life parole consideration hearing backlog from 2005 to 944 (as of March 1, 2002). This reduction was accomplished largely by instituting the two person panels allowed by Senate Bill 778.

Since the March 2000 report, the BPT has considered a number of proposals calculated to reduce the backlog. They included assigning local panels to local institutions; holding Board meetings on Mondays instead of Tuesdays; increasing the number of hearings held per week; and creating a supplemental hearing list.

The Board has implemented one of these proposals successfully. The BPT determined that if a locally based commissioner were assigned to a local institution, the number of hearings in a full-week schedule could be increased since there would be limited travel involved. Therefore, full-week hearings scheduled for California Men's Colony, Folsom State Prison, Pleasant Valley State Prison, Avenal State Prison and California State Prison, Solano were modified to begin earlier on Mondays. This has increased the number of hearings scheduled at those five prisons by a total of approximately 23 hearings per month in the first three months of 2002.

After further consideration and discussion, the remainder of these proposals were determined to be impractical.

Among the proposals considered were those recommended for implementation in the current IG report, which are as follows:

- **The BPT has room in its schedule to add on more hearings. (Page 11)**
- **The BPT schedule of hearings declined to 18 per week from 21 in March 2000 review. (Page 11)**
- **The BPT should adjust its schedule to take into account the 12% of postponed hearings. (Page 12)**

- The IG calculates that BPT can schedule at least 22 hearings per panel per week. (Page 13)
- The BPT should move its monthly Board meetings to Monday. (Page 14)

BPT response:

The overall number of hearings conducted per year has fluctuated between a low of 1,676 to a high of 3,633 over the past ten years. Until 2001, it had averaged approximately 2000 hearings per year. After falling to just under 2000 in 1999, it rose to 2176 in 2000 and, with the implementation two-person panels beginning in October 2001, to 3633 in 2001. In just the first two months of 2002, the panels have already held 948 hearings.

Deputy commissioners who sit on lifer panels already work full days just conducting hearings. In addition, panel members prepare cases in the evening for the next day's hearings after an arduous day of conducting hearings with no breaks for lunch, etc. While two-person panels may not take longer to actually conduct a hearing than a three-person panel, the preparation time for each hearing is increased by approximately 17% -- as the two members must do the work previously done by three. In addition, even those cases which are postponed or in which the inmate stipulated to unsuitability require review and preparation.

The suggestion that preparation for each hearing can be accomplished in 15 minutes is unrealistic, and allows time for only a cursory review. The report's finding, "based on 18 hearings" and "information provided by a former commissioner," provides inadequate basis for a conclusion that 15 minutes is sufficient time to review a case prior to hearing. Without further information on the basis for this conclusion, the BPT can only state that in the experience of current panels, 15 minutes is inadequate preparation time, and is not the current practice.

Creating a supplemental hearing list, as suggested by the report, with additional cases that would be heard regardless of whether postponements or gaps occurred in the schedule, is not a workable solution. With the increased number of hearings, it is difficult for the prisons to keep up with the increased demand for psychiatric/psychological reports and Board reports. The Board has determined that adding additional cases needing preparation and additional reports would exacerbate, rather than alleviate, the problem.

The BPT has looked at the issue of holding its monthly Board meetings on Mondays instead of Tuesdays, and has determined that it is not practical to do so. With the implementation of two-person panels to replace three-person panels, tie votes are now possible. These tie votes must be brought before the Board for en banc review at the monthly Board meetings. Consequently, Board members must thoroughly review and prepare these cases, and this is done on Monday to prepare for the meeting on Tuesday. In addition to tie votes, en banc reviews are also conducted on cases referred by the BPT's decision review process, panel members, and the Governor. The number of cases requiring en banc consideration at Board meetings have ranged

from five to twelve over the past few months. Other variables that favored Tuesday hearings were Monday holiday and long weekend vacation schedules, weather delays in the winter months, and consistency in the schedule.

FINDING #3

The BPT estimate for elimination of the hearing backlog by May 2002 is unrealistic. (Page 15)

BPT response:

This was an estimate based on the best information available at the time it was made. It was noted that the estimate was based on the best case scenario, as it was unrealistic to try to factor in the many variables that could affect its accuracy. Later estimates – again, best case scenario – predict late summer. Should we have vacancies in the commissioner ranks, this would be delayed. We currently have one commissioner pending confirmation, two whose terms have expired and who may serve only until mid-May unless re-appointed, one who plans to resign to accept an elected post, and one who is considering an appointment to another governmental position.

FINDING #4

The BPT processes are not adequate to handle appeals in a timely manner. There is a backlog of over 2200 appeals from inmates and parolees, but the BPT has taken no action to address this backlog. (Page 17)

BPT response:

The Board has taken the following actions to address the appeals backlog:

- Utilization of overtime for appeals staff.
- Secured a hiring freeze exemption to hire new deputy commissioners.
- Used retired annuitants.
- Prepared a critical response plan using deputy commissioners and retired annuitants to eliminate the appeal backlog over a 10-weeks period coinciding with the hiring and deployment of new deputy commissioners.

The BPT is considering requesting additional resources to handle appeals in future fiscal years, recognizing the constraints imposed by the general fund fiscal situation.

- **The BPT has no established time limit to respond to appeals. (Page 19)**

BPT response:

The BPT concurs with the statement. Although there is no time limit, the BPT practice is to respond as expeditiously as resources allow to all appeals, with the goal of response within 120 days.

- **The BPT has a backlog of more than 200 appeals from lifers, but has not assigned a DC to the cases. (Page 21)**

BPT response:

Workload demands and competing priorities rendered the BPT unable to dedicate a deputy commissioner (DC) full time beginning November 26, 2001, to address the backlog of appeals relating to indeterminate sentences.

The current backlog of indeterminate appeals is approximately 380. Assigning two DC positions full-time equivalent (2 FTE) would eliminate the backlog in approximately eight (8) weeks. Additionally, assigning one (1) full-time equivalent (FTE) would allow the appeals unit to stay abreast of the 75 (or more) new appeals received each month. It should be noted that the historical rate of 40-50 new appeals per month has risen steadily since the number of hearings nearly doubled due to the change in the law allowing for two-person panels. While there is currently an insufficient number of DCs to dedicate three (3) FTE position to these appeals, it is envisioned that staffing for these appeals will coincide with the hiring and deployment of new deputy commissioners. The BPT is in the process of hiring Deputy Commissioners.

- **The BPT has a backlog of 2, 029 other (non-indeterminate) appeals as of the end of November 31, 2001. (Page 21)**

BPT response:

The ability to respond timely to all incoming appeals, arriving at the rate of approximately 550 per month, has eluded BPT due to lack of staff, workload demands, and competing priorities. When ample staff are again on hand and fully trained, it is forecast that five (5 FTE) deputy commissioners working at the rate of ten (10) appeals per day could eliminate the backlog is approximately two and one-half months. The BPT is currently in the process of hiring new Deputy Commissioners. The influx of new appeals each month will require the permanent assignment of an additional two and one-half (2.5 FTE) DCs. To provide timely appeal responses and avoid court sanctions, this deployment of staff will be made a priority.

- **Tasks performed by DCs and legal staff is duplicative. (Page 23)**

BPT response:

The BPT agrees to consider transferring the lifer appeal process to the Board's Legal Unit. The BPT will also consider pursuing requests for additional resources in the upcoming fiscal years recognizing the constraints imposed by the general fund fiscal situation.

The report's conclusion that a deputy commissioner faces a conflict of interest responding to appeals is incorrect. While it is true that deputy commissioners are on hearing panels for parole consideration hearings, a deputy commissioner will not respond to a prisoner's appeal if he or she was on the panel for that hearing. This is identical to the Commissioner's situation, in that a Commissioner cannot approve the Board's response to a prisoner's appeal if he or she was on that prisoner's hearing panel for which the appeal is submitted.

- **The BPT needs to develop an Operations Manual and cross train staff from other units to assist the appeals unit. (Page 23)**

BPT response:

The BPT concurs with these recommendations, but is currently not able to accomplish this activity within existing resources. When resources can be dedicated to this effort, the BPT will develop an Operational Manual, which has long been a goal. While some limited cross training among staff in other units in processing appeals is desirable, developing the skills necessary for answering appeals requires a depth of experience developed over time. Nonetheless, this suggestion is certainly worth pursuing.

ATTACHMENT B

COMMENTS OF THE OFFICE OF THE INSPECTOR GENERAL

**COMMENTS OF THE OFFICE OF THE INSPECTOR GENERAL ON THE RESPONSE OF THE
BOARD OF PRISON TERMS TO THE DRAFT REPORT**

1. Senate Bill 778 (Burton) allowed the board to decrease its backlog of hearings through the two-person panel. Except for the implementation of Senate Bill 778, the board's efforts to improve efficiency and increase its hearing capacity have been minimal. In this response, the board apparently remains resolute in its efforts to maintain the status quo in how it conducts business, which is shortsighted. Senate Bill 778 is scheduled to expire at the end of December 2003. By failing to put forth plans to increase its hearing capacity, the board virtually ensures that it will find itself with a large hearing backlog after Senate Bill 778 expires.
2. There is no empirical data or evidence on the appropriate preparation time because the panel members are not required to document the case preparation time or to produce evidence to show that such effort was expended. As a result, the time and effort spent on advance preparation is entirely at each member's discretion. In arguing that an average of 15 minutes in preparation time is not enough, the board has provided no information to establish the time necessary to prepare for a hearing other than asserting that the panel members have to spend an unspecified and undocumented amount of time in the evenings to prepare for cases. The board should prescribe guidelines to delineate the steps the panel members must undertake to prepare for a case in advance of the hearing and develop procedures for documenting the time and effort spent on such advance preparation.
3. Even if the board is correct in its assertion that the state prison staff is overburdened, the extra work is caused by the board nearly doubling its hearings under Senate Bill 778. Once the backlog of hearings is eliminated and the board returns to a normal workload, the prison's extra burden to prepare psychiatric and other reports will also return to normal. If the board were to increase its schedule to compensate for postponed hearings after the backlog is eliminated, the extra workload burden for state prisons would be minor in comparison to what they experienced while the board was operating under Senate Bill 778.
4. The board again failed to acknowledge the temporary nature of the added workload needed to prepare for *en banc* hearings, which it lists as the principal reason it cannot hold its monthly board meetings on Mondays. As noted above, once the board eliminates its backlog of hearings, the number of hearings will return to normal, which should reduce the number of *en-banc* hearings and any extra review and preparation time. The response from the board is unclear about whether it intends to comply with the Senate Bill 778 requirement and the agency secretary's directive that it schedule hearings on Fridays. The board should comply with the statutory requirement and the agency secretary's directive. However, if the board continues with its current practice of not scheduling hearings on Fridays, review and preparation can also be done on the previous Fridays when no hearings are held. The other objections listed by the board appear to be trivial. Weather delays can occur on any day of the week, and holidays also fall on Tuesdays.