OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

• *PROMOTING INTEGRITY* •

REVIEW OF THE IMPLEMENTATION OF WELFARE AND INSTITUTIONS CODE SECTION 1732.8 PROVIDING FOR HOUSING CALIFORNIA YOUTH AUTHORITY WARDS IN DEPARTMENT OF CORRECTIONS FACILITIES

FEBRUARY 2003

GRAY DAVIS, GOVERNOR

OFFICE OF THE INSPECTOR GENERAL

REVIEW OF THE IMPLEMENTATION OF WELFARE AND INSTITUTIONS CODE SECTION 1732.8 PROVIDING FOR HOUSING CALIFORNIA YOUTH AUTHORITY WARDS IN DEPARTMENT OF CORRECTIONS FACILITIES

REPORT

FEBRUARY 21, 2003

This report presents the results of a review conducted by the Office of the Inspector General of the implementation by the California Youth Authority and the Youthful Offender Parole Board of *Welfare and Institutions Code* Section 1732.8 (Senate Bill 768, Chapter 476, McPherson, Statutes of 2001). The statute, which allows California Youth Authority wards to consent to be confined in Department of Corrections facilities, became law on January 1, 2002. Wards covered by the statute are termed "dual commitment" wards.

The review was conducted at the request of Senator Gloria Romero, Chair of the Senate Select Committee on the California Correctional System, in response to a letter from a California Youth Authority dual commitment ward, [redacted] In the letter, [redacted] alleged that the California Youth Authority and the Youthful Offender Parole Board have not properly implemented provisions of *Welfare and Institutions Code* Section 1732.8. Specifically, he alleged that the California Youth Authority and the Youthful Offender Parole Board have not complied with the statute's requirement that they review the eligibility of the wards for parole in the same manner and under the same standards and criteria that would be applicable if they were confined in the California Youth Authority. The ward further alleged that the Youthful Offender Parole Board has violated the statute by twice denying him parole because he has been unable to complete board-ordered programs. The ward also alleged that the California Youth Authority and the Youthful Offender Parole Board have a "blanket policy" of denying parole to wards who consent to being incarcerated in the Department of Corrections and that wards are intentionally denied access to appeal and grievance systems.

At Senator Romero's request, the review was expanded to include all of the 40 California Youth Authority dual commitment wards housed in Department of Corrections institutions under the provisions of *Welfare and Institutions Code* Section 1732.8 as of December 27, 2002. In conducting the review, the Office of the Inspector General interviewed 37 of the 40 dual commitment wards, including [redacted] The Office of the Inspector General also reviewed each of the wards' central files and interviewed officials of the California Youth Authority, the Youthful Offender Parole Board, and the Department of Corrections.

dual commitment wards do not have access to board-ordered programs at Department of Corrections and may not have access to equivalent programs. The California Youth Authority and the Youthful Offender Parole Board have also not developed standards or procedures to cover the programming of dual commitment wards. The review found in addition that dual commitment wards have not been adequately informed about what programming requirements they are expected to fulfill. Many of the wards expressed confusion about what programming the board expects of them.

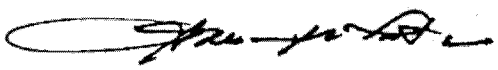
The Office of the Inspector General also found that dual commitment wards are not afforded the rights provided to other California Youth Authority wards to attend their annual review and parole consideration date hearings at which the board may decide to change the parole consideration date, and that many of the wards had not understood that they would not be allowed to attend the hearings when they signed the consent document.

While the Office of the Inspector General found no evidence that dual commitment wards have been purposely denied access to appeal and grievance systems, the review did show that the agencies have not developed appeal and grievance procedures to accommodate these wards. The review found in addition that the respective responsibilities of the California Youth Authority, the Youthful Offender Parole Board, and the Department of Corrections for appeal and grievance procedures for dual commitment wards have not been adequately defined. The review revealed that Department of Corrections counselors generally lack knowledge about the program.

The Office of the Inspector General found in the case that the California Youth Authority did not provide to the Youthful Offender Parole Board important information about the ward's progress at the Department of Corrections institution and that failure may result in a board decision to extend his parole date. As a result of the Office of the Inspector General's review and findings, the California Youth Authority has agreed to recommend that the Youthful Offender Parole Board reconsider case.

The Office of the Inspector General's specific recommendations for remedying the deficiencies identified in the review appear in the body of the report. I hope the information contained in this report is helpful. We would be pleased to provide your office with a detailed briefing on this matter if you desire.

Very truly yours,



STEVE WHITE
Inspector General

Cc: Jerry Harper, Director, California Youth Authority
Raul Galindo, Chairperson, Youthful Offender Parole Board

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FEBRUARY 2003

GRAY DAVIS, GOVERNOR

Steve White, Inspector General

OFFICE OF THE INSPECTOR GENERAL

February 7, 2003

The Honorable Gloria Romero
Chair, Senate Select Committee
State Capitol, Room 5051
Sacramento, CA 95814-4900

Dear Senator Romero:

Enclosed is a report presenting the results of an administrative review conducted by the Office of the Inspector General of the allegations made in a November 27, 2002 letter to the National Center for Youth Law by Mr. a ward incarcerated at California State Prison, Solano. Mr. allegations concern the implementation of California *Welfare and Institutions Code* Section 1732.8, which pertains to the housing of California Youth Authority wards in Department of Corrections facilities (Chapter 476, Statutes of 2001 (SB 768, McPherson)).

Mr. alleged that wards housed in Department of Corrections institutions, who are termed "dual commitment wards," are being denied parole because they are unable to complete programs ordered by the Youthful Offender Parole Board, disregarding that the programs are not available at the institutions. He also alleged that the agencies involved have a blanket policy of denying parole to dual commitment wards and that the wards are intentionally denied access to appeal and grievance systems.

At your request, the review was expanded to include all of the 40 wards incarcerated at the Department of Corrections under the provisions of Section 1732.8 as of December 27, 2002. The Office of the Inspector General interviewed 37 of the wards, including Mr. , at eighteen institutions throughout the state. Two of the three wards not interviewed were housed at institutions in remote locations and the third was paroled the day before the field visit. We also reviewed the central files of the wards and interviewed officials of the California Youth Authority, the Youthful Offender Parole Board, and the Department of Corrections.

The Office of the Inspector General did not find evidence that the agencies have a blanket policy of denying parole to dual commitment wards, but did find that in making parole decisions, the Youthful Offender Parole Board does not adequately take into account that

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12, 2002. The board responded with a decision on November 4, 2002, but could have chosen not to respond at all.

Appeal and grievance procedures do not accommodate dual commitment wards. The Office of the Inspector General also noted, however, that none of the agencies involved with the dual commitment wards have adapted their appeal and grievance policies and procedures to accommodate these wards. The California Youth Authority and Youthful Offender Parole Board grievance forms also are not readily available to the dual commitment wards because they are not kept at Department of Corrections institutions. In addition, nothing in the dual commitment statute, department policies, or the memorandum of understanding entered into by the agencies defines which entity is responsible for various dual commitment ward issues or which agencies' processes apply.

As a result, the dual commitment wards are uncertain about the procedures to be used. Eleven of the 37 wards interviewed expressed frustration and confusion about the proper forms to file in registering appeals and grievances, and that confusion, coupled with uncertainty on the part of the agencies about respective responsibilities may cause documents to be lost or to not be processed in a timely manner.

RECOMMENDATIONS

The Office of the Inspector General recommends that the agencies administering Welfare and Institutions Code Section 1732.8 modify the memorandum of understanding to specify the agencies' respective responsibilities for handling dual commitment ward grievances and to establish reasonable time limits for filing and responding to grievances. The dual commitment consent form should be modified to incorporate the process and procedures governing appeals and should fully explain the process to the wards. The consent form should also include the agencies' addresses for mailing ward inquiries and grievances.

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add assessed by the Department of Corrections for a rules violation. When that ward completes his 60-day confinement, he will become a California Department of Corrections parolee with no California Youth Authority confinement time remaining.

FINDING 4

The Office of the Inspector General found no evidence that dual commitment wards have been purposely denied a means of appealing actions or grieving department policies, but did find that the agencies have not developed appeal and grievance procedures to meet the needs of these wards.

The Office of the Inspector General found that the dual commitment wards are generally aware of and have used the appeal and grievance remedies available to them and found no evidence that the appeals and grievances have not been handled within prescribed time limits. But the review also found that the California Youth Authority, the Youthful Offender Parole Board, and the Department of Corrections have not adequately defined which entity is responsible for various issues pertaining to dual commitment wards and have not developed appeal and grievance policies and procedures to accommodate them. As a result, the dual commitment wards are uncertain about what procedures to use.

Appeal and grievance remedies available to dual commitment wards. Dual commitment wards have a number of appeal and grievance avenues available. On matters pertaining to the Department of Corrections, dual commitment wards can use the CDC Form 602 to file appeals. For matters relating to the California Youth Authority or the Youthful Offender Parole Board, the wards can write directly to either the board or the California Youth Authority. They can also request blank ward grievance and appeal forms from either entity, complete the forms, and mail them back to the appropriate agency.

The Office of the Inspector General found that 16 of the 37 dual commitment wards interviewed have used the CDC-602 inmate appeal process at the Department of Corrections to address issues pertaining to the department. A review by the Office of the Inspector General of the records of those appeals showed that in most cases the time limits specified in Title 15 of the *California Code of Regulations* had been observed. In at least one case, a lower-level ruling was overruled when the appeal proceeded to a higher level.

The Office of the Inspector General also found that most of the dual commitment wards with complaints about matters relating to the California Youth Authority or the Youthful Offender Parole Board had written letters directly to those agencies. In some instances, blank ward grievance forms had been mailed to the wards by a California Youth Authority representative to allow them to file ward grievances.

No evidence of efforts to obstruct appeals. The Office of the Inspector General found no evidence of deliberate efforts by the California Youth Authority or the Youthful Offender Parole board to obstruct the appeal efforts of dual commitment wards. In one case, the Youthful Offender Parole Board was late in issuing a decision in response to a ward's appeal, but in that case, the ward had also exceeded the 30-day time limit specified under Section 4938 of the *Welfare and Institutions Code* for filing an appeal. The ward in that case was appealing a board order dated June 26, 2002, but did not file the appeal until September

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on. Your decision to return or remain in the CDC and not participate in the programs offered at CYA may make it more difficult for you to demonstrate your parole readiness to the YOPB.

The form fails to make clear to the ward that even though he will not be required to participate in board-mandated programs if they are not available at the Department of Corrections institution, he nonetheless will be required to participate in programs that are available at the institution and that his failure to do so could lead to an unfavorable parole recommendation or an extension of his parole consideration date.

An earlier version of Item 11 included the language: "By you choosing to remain or return to the CDC you are acknowledging this situation which may have an impact on your parole date." But that wording has now been removed. As a result of this lack of clarity, many of the wards are confused about what programming they are expected to complete. Several wards told the Office of the Inspector General that they thought they did not have to program because Section 1732.8 (e) prohibits the board from extending parole dates by adding programming requirements not available at their prisons. Twelve (32 percent) of the 37 wards interviewed by the Office of the Inspector General said they did not know what the board expects of them. [redacted] in fact, told the Office of the Inspector General that rather than receiving an explanation of the dual commitment program and its implications from a counselor, the consent form was slid under his door and he was given only until noon of that day to make the decision and sign it.

RECOMMENDATIONS

The Office of the Inspector General recommends that the California Youth Authority and the Youthful Offender Parole Board jointly review the case files of the 14 wards who have had time added to the parole consideration date for additional treatment and training to ensure that due process rights have been fully observed.

The Office of the Inspector General also recommends that the California Youth Authority modify the dual commitment consent form to clearly articulate (1) the programming expectations of the Youthful Offender Parole Board, and (2) the potential consequences of a ward's failure to avail himself of programs at the Department of Corrections institution.

FINDING 3

The Office of the Inspector General found no evidence that the California Youth Authority and the Youthful Offender Parole Board have a "blanket policy" of automatically denying parole to dual commitment wards.

The Office of the Inspector General found that since *Welfare and Institutions Code* Section 1732.8 became effective in January 2002, the Youthful Offender Parole Board has granted parole to 12 of the 55 dual commitment wards. In every case, parole was granted before the ward's California Youth Authority available confinement time date—ranging from four months to as long as four years and four months before that date. No wards were illegally held past their parole date—although one ward remained in administrative segregation past his California Youth Authority available confinement time while he served a 60-day time

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- ***The [redacted] case.*** [redacted] who is incarcerated at California State Prison, Solano, contends that the board has denied his parole because of his inability to complete board-ordered programs. The Office of the Inspector General found that since his arrival at the institution, [redacted] has incurred no disciplinary actions and has worked at a prison job. [redacted] also said that he has enrolled in college correspondence courses at Fresno Pacific College and Coastline Community College. Yet, his parole date has been extended, and a report prepared by the California Youth Authority on November 12, 2002 for his upcoming February 2003 hearing recommends that his parole consideration date be extended six months.

  According to the file, [redacted]'s parole date was extended on January 14, 2001 because of the ward's failure to complete various programs while he was incarcerated at the California Youth Authority. On August 1, 2002, according to the file, the board extended the parole date because of the ward's failure to complete those programs at both the California Youth Authority and the Department of Corrections. The Office of the Inspector General also noted, however, that the November 12, 2002 report fails to fully include the information about his positive behavior at California State Prison, Solano, noting only that he has worked since arriving at the institution. The report bases the recommendation to extend his parole date on the seriousness of his commitment offense, even though earlier reports did not mention the commitment offense as a factor. [redacted] contends that he was unable to complete board-ordered programs at the California Youth Authority because he had been placed on waiting lists—a factor, incidentally, that he says influenced his decision to return to the Department of Corrections. But because he was not present at either of the two earlier hearings and will not have the right to appear at the February hearing, he has not had the opportunity to explain either the reasons he has not completed the board-ordered programs or to present information about his progress at the institution, except in a written statement. Subsequent to this review by the Office of the Inspector General, however, the California Youth Authority has agreed to recommend that the Youthful Offender Parole Board reconsider [redacted] case and has rescheduled his February 2003 annual review to April 2003.

- ***Board extends parole date for more treatment despite recommendation to parole.*** In another case, the Youthful Offender Parole Board elected at two separate hearings to add time to the ward's parole date for training and treatment even though the California Youth Authority both times had recommended parole. As the reason for extending the parole date, the board cited the ward's overall lack of motivation evidenced by his failure to report to his work assignment.

- ***Dual commitment wards do not understand what programming is expected of them.*** The Office of the Inspector General found that the dual commitment wards have not been clearly informed about the programming implications of a decision to remain in Department of Corrections custody or the possible effect of that decision on the parole date. Item 11 of the dual commitment consent form, which addresses programming, has been revised three times since the program's inception in January 2002. The latest version reads:

  Your decision to remain or return to the CDC to serve your time removes you from the options available at the CYA which target the treatment areas you need to work

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consider the programming barriers faced by dual commitment wards and has not developed programming standards or guidelines to cover them. The review also revealed that dual commitment wards have not been adequately informed that their lack of access to California Youth Authority programs may extend their parole dates. In any case, board-imposed programming requirements are both pointless and unreasonable when the programs are unavailable to the ward.

Statutory provisions. *Welfare and Institutions Code* Section 1732.8(e) provides that the Board:

> *[S]hall not order or recommend any treatment, education, or other programming that is unavailable in the institution where the person is housed, and shall not deny parole to a person housed in the institution* ***solely*** *on the person's failure to participate in programs unavailable to the person. [Emphasis added].*

Under that provision, the board may not deny a ward parole based on that ward's failure to participate in California Youth Authority-type programs unless those programs are available to the ward at a Department of Corrections institution. The board can, however, take into account whether the ward has availed himself of programs offered by the Department of Corrections, irrespective of whether such programs were ordered by the board, when determining the ward's suitability for parole. While the board cannot deny parole solely on the grounds that the ward has not participated in board-mandated programming that is unavailable at the Department of Corrections institution, it can deny parole to the ward if it is able to provide a separate basis for the parole denial.

The board does not consider the programming barriers of dual commitment wards. The Office of the Inspector General found that at the annual reviews of 14 of the 37 wards interviewed, the board had added time to the parole consideration date for the purpose of additional treatment or training. In all 14 instances, the board cited factors other than the ward's inability to complete board-ordered programs in extending the date, ostensibly complying with statutory requirements that the time added not be caused solely by the ward's inability to complete the programs. Yet, the review also showed that the board has not taken into account that dual commitment wards do not have access to board-ordered programs at Department of Corrections institutions and may not have access to program equivalents. The California Youth Authority and the Youthful Offender Parole Board have also not developed standards or procedures to cover the programming of dual commitment wards.

In the case of [redacted] the ward whose complaints initiated this review, the Office of the Inspector General found that the California Youth Authority failed to provide the board with important information about the ward's progress at the Department of Corrections — the absence of which could result in a board decision to extend his parole date. The review also found that in the [redacted] case, the board did not apply consistent standards from one hearing to another in making parole decisions. In the case of another ward, the board twice extended the parole date, citing the ward's apparent lack of motivation, even though the California Youth Authority had recommended parole. The Office of the Inspector General found in addition that the dual commitment wards have not been adequately informed about the programming implications of the choice to remain in Department of Corrections custody.

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the consent form. Only 13 (35 percent) knew their counselor's name. Those who had met with a counselor said that the counselor knew little or nothing about the consent form, the ward's obligations under *Welfare and Institutions Code* 1732.8, or the ward's programming needs. The Office of the Inspector General's interviews with correctional counselors at the prisons confirmed that the counselors generally lacked this knowledge. The counselors said they had received no orientation in implementing the provisions of Section 1732.8 other than having received program documentation forwarded by the California Youth Authority. Several counselors said that when they have questions about the program they contact California Youth Authority headquarters.

RECOMMENDATIONS

The Office of the Inspector General recommends the following:

- **The California Youth Authority and the Youthful Offender Parole Board should reevaluate the Youth and Adult Correctional Agency legal opinion concerning whether *California Welfare and Institutions Code* Section 1732.8 (e) mandates that wards be given appearance hearings. If appearance hearings are indeed required by law, which is the view of the Office of the Inspector General, the department must either provide the wards with appearance hearings or pursue legislation to amend Section 1732.8(e).**

  On the other hand, if it is determined that appearance hearings are not required under the current statute, the department should revise the consent form to clearly address the issue of non-appearance hearings.

- **The California Youth Authority should send representatives to prisons at designated intervals to communicate with dual commitment wards or should provide orientation to correctional counselors on Section 1732.8 requirements.**

- **Even though the ward's decision is irrevocable once he or she has signed the waiver form, the California Youth Authority should provide the current dual commitment wards with an opportunity to reconsider their decision in light of the fact that some wards may have signed the consent form without a clear understanding of its provisions.**

FINDING 2

The Office of the Inspector General found that in making parole decisions, the Youthful Offender Parole Board does not adequately take into account that dual commitment wards do not have access to the equivalent of board-ordered programs at Department of Corrections institutions and has not developed programming standards for these wards.

The Office of the Inspector General found that the Youthful Offender Parole Board had added time for additional training and treatment for more than a third of the dual commitment wards interviewed. In every case the board cited factors other than the ward's failure to complete board-ordered programs as the reason for adding time. But the Office of the Inspector General found that in making parole decisions, the board does not adequately

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wards housed in or committed to any non-California Youth Authority facility are excepted. That is, hearings for wards housed in California Department of Corrections prisons do not require the ward's presence.

Conflict between the statute and the memorandum of understanding. The memorandum of understanding entered into by the California Youth Authority, the Youthful Offender Parole Board, the Department of Corrections, and the Board of Prison Terms also conflicts with the statute. The memorandum of understanding provides: "The YOPB shall conduct non-appearance Annual Reviews and PCD reviews with the prior consent of the ward." The participating agencies entered into the memorandum of understanding under the apparent belief that non-appearance annual and parole consideration date reviews were the intent of the Legislature in passing the statute. The Youthful Offender Parole board informed the Office of the Inspector General that it had obtained a legal opinion from the Youth and Adult Correctional Agency on this issue. The resulting opinion stated that parole consideration hearings must be appearance hearings, but that all other hearings for wards housed in non-California Youth Authority facilities may be non-appearance reviews. The legal support for this position is questionable, however. As a statute, *Welfare and Institutions Code* Section 1732.8(e) has higher legal standing than either Title 15, Section 4927(b) or the memorandum of understanding. We conclude, therefore, that wards may be entitled to appearance hearings.[1]

The wards did not know they would not appear at hearings. Most of the dual commitment wards interviewed by the Office of the Inspector General reported that they were not aware that they would not be allowed to appear at hearings. Of the 37 wards interviewed by the Office of the Inspector General, 21 (57 percent) said they expected that all of their board hearings would be appearance hearings. Only twelve (32 percent) said they were informed by the California Youth Authority representative with whom they met to sign the consent form that their hearings would be non-appearance. The remaining four wards (11 percent) were unsure what they had been told. Many of the wards interviewed expressed concern about lack of representation while their parole consideration dates are being extended during the annual review hearings. While California Youth Authority departmental policy allows wards to retain legal counsel to represent them at their own (or their parents'/guardians') expense, almost all of the wards said that they do not have the financial means to do so.

Wards do not have contact with the California Youth Authority. Already lacking the ability to attend annual hearings and parole consideration date reviews, the dual commitment wards reported that they have little contact with the California Youth Authority except by mail. Only one (3 percent) of the 37 wards interviewed by the Office of the Inspector General stated he had been visited by a California Youth Authority representative since signing the consent form.

Moreover, few wards had been in contact with correctional counselors at their respective prisons. Only 15 (41 percent) said they had met with a correctional counselor since signing

[1] After an earlier version of this report was released, the general counsel of the Youth and Adult Correctional Agency issued a clarification of the agency's legal opinion, providing instead that any hearing at which a ward's liberty is at stake, including hearings at which time may be extended, requires that the ward be given the opportunity to appear in person. That opinion is consistent with the Office of the Inspector General's interpretation of *California Welfare and Institutions Code* Section 1721.8(e).

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wards housed in or committed to any non-California Youth Authority facility are excepted. That is, hearings for wards housed in California Department of Corrections prisons do not require the ward's presence.

Conflict between the statute and the memorandum of understanding. The memorandum of understanding entered into by the California Youth Authority, the Youthful Offender Parole Board, the Department of Corrections, and the Board of Prison Terms also conflicts with the statute. The memorandum of understanding provides: "The YOPB shall conduct non-appearance Annual Reviews and PCD reviews with the prior consent of the ward." The participating agencies entered into the memorandum of understanding under the apparent belief that non-appearance annual and parole consideration date reviews were the intent of the Legislature in passing the statute. The Youthful Offender Parole board informed the Office of the Inspector General that it had obtained a legal opinion from the Youth and Adult Correctional Agency on this issue. The resulting opinion stated that parole consideration hearings must be appearance hearings, but that all other hearings for wards housed in non-California Youth Authority facilities may be non-appearance reviews. The legal support for this position is questionable, however. As a statute, *Welfare and Institutions Code* Section 1732.8(e) has higher legal standing than either Title 15, Section 4927(b) or the memorandum of understanding. We conclude, therefore, that wards may be entitled to appearance hearings.[1]

The wards did not know they would not appear at hearings. Most of the dual commitment wards interviewed by the Office of the Inspector General reported that they were not aware that they would not be allowed to appear at hearings. Of the 37 wards interviewed by the Office of the Inspector General, 21 (57 percent) said they expected that all of their board hearings would be appearance hearings. Only twelve (32 percent) said they were informed by the California Youth Authority representative with whom they met to sign the consent form that their hearings would be non-appearance. The remaining four wards (11 percent) were unsure what they had been told. Many of the wards interviewed expressed concern about lack of representation while their parole consideration dates are being extended during the annual review hearings. While California Youth Authority departmental policy allows wards to retain legal counsel to represent them at their own (or their parents'/guardians') expense, almost all of the wards said that they do not have the financial means to do so.

Wards do not have contact with the California Youth Authority. Already lacking the ability to attend annual hearings and parole consideration date reviews, the dual commitment wards reported that they have little contact with the California Youth Authority except by mail. Only one (3 percent) of the 37 wards interviewed by the Office of the Inspector General stated he had been visited by a California Youth Authority representative since signing the consent form.

Moreover, few wards had been in contact with correctional counselors at their respective prisons. Only 15 (41 percent) said they had met with a correctional counselor since signing

[1] After an earlier version of this report was released, the general counsel of the Youth and Adult Correctional Agency issued a clarification of the agency's legal opinion, providing instead that any hearing at which a ward's liberty is at stake, including hearings at which time may be extended, requires that the ward be given the opportunity to appear in person. That opinion is consistent with the Office of the Inspector General's interpretation of *California Welfare and Institutions Code* Section 1721.8(e).

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FINDINGS AND RECOMMENDATIONS

FINDING 1

The Office of the Inspector General found that dual commitment wards are not allowed to attend their annual reviews and parole consideration date reviews and have little contact with the California Youth Authority and the Youthful Offender Parole Board.

Although most other California Youth Authority wards have the right to appear in person at annual reviews, parole consideration date reviews, and parole consideration hearings before the Youthful Offender Parole Board, dual commitment wards are not afforded the same right. Instead, the Youthful Offender Parole Board conducts "non-appearance" annual and parole consideration date reviews for all wards in Department of Corrections custody. At those reviews, the board decides in the ward's absence whether to change the parole consideration date based on information in the master file provided by the California Youth Authority about the ward's behavior and progress. Dual commitment wards are allowed to attend only the initial parole consideration date hearing held at the California Youth Authority and the parole consideration hearing, which is held when the parole consideration date draws near. For the annual reviews and parole consideration date reviews, dual commitment wards may provide only a written statement.

Many of the dual commitment wards interviewed said they had not understood that they would not appear at hearings at the time they signed the consent document. Nearly all also reported that they had little contact with the California Youth Authority and the Youthful Offender Parole Board after they elected to remain at the Department of Corrections.

The statute requires the ward's appearance. The practice of not allowing dual commitment wards to attend the annual reviews and parole consideration date reviews conflicts with *Welfare and Institutions Code* Section 1732.8. Section 1732.8(e) provides:

> *The Youthful Offender Parole Board shall continue to determine the person's eligibility for parole at the same intervals, in the same manner, and under the same standards and criteria that would be applicable if the person were confined in the Department of the Youth Authority.*

The statutory language is repeated in the dual commitment consent form, which the wards are required to sign to participate in the program. The Office of the Inspector General found that the Youthful Offender Parole Board does schedule annual reviews and initial parole consideration date reviews for Section 1732.8 wards at the same intervals it does for other wards and does appear to employ the same standards and criteria. But while wards housed in the California Youth Authority, with few exceptions, are allowed to be present for their annual review and parole consideration date reviews, dual commitment wards are not.

Conflict between the statute and the California Code of Regulations. The problem arises from a conflict between *Welfare and Institutions Code* Section 1732.8(e) and Title 15, Section 4927(b) of the *California Code of Regulations*. Section 4927(b) requires wards to attend all board hearings held at the California Youth Authority institutions in which they are confined. These hearings include annual reviews and parole consideration date reviews as well as all other types of hearings. However, Title 15, Section 4927(b) also states that

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implementing its provisions. The California Youth Authority provided the Office of the Inspector General with a roster of wards incarcerated at Department of Corrections institutions under the provisions of Section 1732.8 as of December 27, 2002. The roster listed 44 wards housed at 19 different institutions throughout the state. Of those 44, four had recently paroled and were no longer at the institutions. The Office of the Inspector General reviewed the master files for the remaining 40 wards at California Youth Authority headquarters in Sacramento. The Office of the Inspector General then developed an interview questionnaire from information obtained from reviewing the ward master files, the regulations, and the allegations. The purpose of the questionnaire was to provide consistency in the ward interviews and to determine whether other wards who had consented to be incarcerated under the provisions of Section 1732.8 shared similar concerns.

On January 16, 17, 22, and 23, 2003, Office of the Inspector General visited eighteen institutions and conducted interviews with 37 wards. Two of the wards who were not interviewed were housed at institutions in remote areas of the state and the third was paroled the day before the field visit. In addition to conducting the interviews, the Office of the Inspector General also reviewed each ward's central file.

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circumstances, the Youthful Offender Parole Board can require the ward to abide by the programming requirements of his or her board orders. However, there is no requirement for the Department of Corrections to provide dual commitment wards with the programs necessary for them to fulfill the board orders. Neither is the Department of Corrections obligated to provide a ward with academic or vocational education. Such education is to be provided only to the extent that the appropriate programs are available.

The effect of not completing programs ordered by the Youthful Offender Parole Board, in turn, may be to lengthen the ward's sentence. As long as a ward has not completed his or her California Youth Authority available confinement time, the Youthful Offender Parole Board has authority to add time to a ward's confinement in either the California Youth Authority or the Department of Corrections. In making the decision, the board considers a case report on the ward prepared by the California Youth Authority and logged into the ward master file from information obtained from the Department of Corrections. The information is to include the ward's history of disciplinary actions such as CDC-115 rules violations, programming efforts, and in-prison jobs the ward may have held. Even if a ward has incurred no disciplinary actions, the absence of programming efforts may be grounds for added time.

ALLEGATIONS

In his complaint to Senator Romero, dual commitment ward [redacted] made the following allegations:

- The California Youth Authority and the Youthful Offender Parole Board are not following *Welfare and Institutions Code* Section 1732.8 guidelines by reviewing ward files, allowing wards to appear at hearings, and recommending parole in the same manner it does for wards in California Youth Authority facilities;
- Dual commitment wards have been denied parole on the basis that they have not completed board-ordered programs, which are unavailable in Department of Corrections institutions.
- The California Youth Authority has an unlawful "blanket policy" of automatically denying parole to dual commitment wards. Some wards are overdue to be paroled but are being unlawfully detained.
- Dual commitment wards are not allowed to use the Department of Corrections appeal and grievance system. The wards are not provided with a system for appealing board actions or for grieving a departmental policy. Procedures are deliberately structured so that wards cannot meet appeal time limits, and documents are lost or not responded to, precluding the wards from exhausting their administrative remedies in order to pursue legal action.

REVIEW METHODOLOGY

The Office of the Inspector General met with representatives of the California Youth Authority and the Youthful Offender Parole Board to gain an understanding of the provisions of Section 1732.8 as well as to ascertain the process used by both agencies for

BACKGROUND

Chapter 476, Statutes of 2001 (SB 768, McPherson) added Section 1732.8 to the *California Welfare and Institutions Code*. The provision established a program allowing certain California Youth Authority wards to choose to be confined in Department of Corrections facilities until they are released from custody. The program affects those commonly referred to as "dual commitment" or "dual jurisdiction" wards. These are wards over the age of 18 who have committed felonies while housed in a California Youth Authority facility or while on California Youth Authority parole; who have served court-imposed time for those felonies in the California Department of Corrections; and who have confinement time remaining with the California Youth Authority. Dual commitment wards often have assaulted other wards, staff, or members of the public and frequently have failed to program well at the California Youth Authority. They are generally disruptive and unsuited to the California Youth Authority's mission of treatment and training.

Approximately 60 days before the end of their Department of Corrections sentence, the wards are provided with a consent form allowing them to exercise their option to either remain in Department of Corrections custody or return to the California Youth Authority. The statute requires that a California Youth Authority representative meet with the ward and explain the provisions of the statute before the ward exercises the option. The provisions of the statute are articulated in the consent form, which requires the ward's initials beside each provision. The ward must also check the option he or she has selected and sign the consent form. The ward's decision is irrevocable once the consent form is signed, but the director of the Department of Corrections has discretionary authority to return any ward to the California Youth Authority.

Dual commitment wards may exercise the Department of Corrections option for a variety of reasons, including distaste for the programming required under the Youthful Offender Parole Board orders, perceived treatment in the California Youth Authority as children rather than adults, or a desire to be housed closer to their families. Since the statute became law on January 1, 2002, the California Youth Authority has offered the program to 81 wards. Of these, 55 have opted to accept confinement in Department of Corrections facilities, while the remaining 26 have exercised their right to return to the California Youth Authority.

Wards who choose to remain in Department of Corrections custody may still be subject to Youthful Offender Parole Board orders requiring that they complete a range of programs, such as anger management, victim awareness, or gang awareness. The ward also may be required to earn a high school diploma or a general educational development certificate. When a ward is sentenced to the Department of Corrections, the maximum sentence runs concurrently with his or her available confinement time, which is established by law and represents the last date the ward can be held by the California Youth Authority. The available confinement time is based on the type of crime committed and generally cannot exceed the ward's 25th birthday. If a ward's Department of Corrections sentence exceeds his or her California Youth Authority available confinement time, the Youthful Offender Parole Board may dishonorably discharge the ward from the California Youth Authority; but if the Department of Corrections sentence is less than the available confinement time, the ward is left with California Youth Authority confinement time remaining. Under those

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The Office of the Inspector General found that the dual commitment wards generally approve of the option to be confined at the Department of Corrections. Twenty-five (68 percent) of the 37 wards interviewed said that they would prefer to serve their remaining time at the Department of Corrections institution rather than at the California Youth Authority.

But the review revealed a number of deficiencies in the implementation of the statute and in the handling of dual commitment wards. Although the Office of the Inspector General did not find evidence that the agencies have a blanket policy of denying parole to dual commitment wards, the review did find that in making parole decisions, the Youthful Offender Parole Board does not appear to take into account that dual commitment wards do not have access to board-ordered programs at Department of Corrections institutions and may not have access to equivalent programs. The review also found that dual commitment wards have not been adequately informed about what programming requirements they are expected to fulfill.

In the case of [redacted] the Office of the Inspector General found that the California Youth Authority failed to provide the Youthful Offender Parole Board with important information about the ward's progress at the Department of Corrections and that the absence of that information may result in a board decision to extend his parole date. As a result of the Office of the Inspector General's review, the California Youth Authority has agreed to recommend that the Youthful Offender Parole Board reconsider [redacted]s case.

The Office of the Inspector General also found from the review that, unlike other California Youth Authority wards, dual commitment wards are not allowed to appear in person at their annual review and parole consideration date reviews, during which the Youthful Offender Parole Board may decide to change the ward's parole consideration date. Instead, dual commitment wards appear only at their parole consideration hearings, which are held when the parole consideration date approaches.

While the Office of the Inspector General found no evidence that dual commitment wards have been purposely denied access to appeal and grievance systems, the review did show that the agencies have not developed appeal and grievance procedures to meet the needs of these wards. The review found in addition that the respective responsibilities of the agencies have not been adequately defined. The review revealed that Department of Corrections counselors have received no formal orientation in implementing the provisions of *Welfare and Institutions Code* Section 1732.8 and generally lack knowledge about the program.

The Office of the Inspector General's specific recommendations for remedying the deficiencies identified in this review appear in the body of the report.

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