

STATE OF CALIFORNIA  
**Budget Change Proposal - Cover Sheet**  
 DF-46 (REV 10/20)

<b>Fiscal Year</b> 2021-22	<b>Business Unit</b> 5225	<b>Department</b> Department of Corrections and Rehabilitation	<b>Priority No.</b> Click or tap here to enter text.
<b>Budget Request Name</b> 5225-456-BCP-2021- MR		<b>Program</b> Division of Correctional Policy Research and Oversight	<b>Subprogram</b> Office of Internal Affairs

**Budget Request Description**

Statewide Process for Use of Force and Prison Rape Elimination Act Allegations Against Employees

**Budget Request Summary**

The California Department of Corrections and Rehabilitation (CDCR) requests \$7.9 million General Fund and 40 positions in 2021-22 and ongoing to expand the Office of Internal Affairs' regional investigation process to include all allegations associated with potential employee violations of the Use of Force (UOF) policy and the Prison Rape Elimination Act (PREA).

<b>Requires Legislation</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Code Section(s) to be Added/Amended/Repealed</b> Click or tap here to enter text.	
<b>Does this BCP contain information technology (IT) components?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	<b>Department CIO</b> Click or tap here to enter text.	<b>Date</b> Click or tap to enter a date.

**For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.**

**Project No.** **Project Approval Document:** Click or tap here to enter text.

**Approval Date:** Click or tap to enter a date.

**If proposal affects another department, does other department concur with proposal?**  Yes  No  
*Attach comments of affected department, signed and dated by the department director or designee.*

<b>Prepared By</b> David Chriss_	<b>Date</b> 5/14/2021	<b>Reviewed By</b> Eric Swanson	<b>Date</b> 5/14/2021
<b>Department Director</b> Amy Miller	<b>Date</b> 5/14/2021	<b>Agency Secretary</b> Kathleen Allison	<b>Date</b> 5/14/2021

**Department of Finance Use Only**

**Additional Review:**  Capital Outlay  ITCU  FSCU  OSAE  Dept. of Technology

<b>PPBA</b> Allison Hewitt	<b>Date submitted to the Legislature</b> 5/14/2021
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## Analysis of Problem

### A. Budget Request Summary

The California Department of Corrections and Rehabilitation (CDCR) requests \$7.9 million General Fund and 40 positions in 2021-22 and ongoing to expand the Office of Internal Affairs' regional investigation process to include all allegations associated with potential employee violations of the Use of Force policy (UOF) and the Prison Rape Elimination Act (PREA).

### B. Background/History

Prior to 2019-20, CDCR reviewed and conducted inquiries at each institution for grievances covering a variety of issues, including allegations of employee misconduct, disagreement with disciplinary actions, concerns about living conditions, and personal property concerns. To address concerns of bias related to employee misconduct allegations within its institutions, The 2019-20 Budget Act added \$9.8 million General Fund and 47 positions ongoing to implement a new regional model within its Office of Internal Affairs (OIA) for reviewing and investigating incarcerated and paroled persons' complaints of employee misconduct, as well as revise CDCR's grievance review process. This new regional model became the Allegation Inquiry Management Section (AIMS) within the OIA. AIMS was established with three regional offices (Northern, Central and Southern) to be co-located with the regional offices for the Office of the Inspector General, as required by Penal Code section 6133.

The purpose of AIMS is to support the grievance and appeals process by providing independent, objective inquiries into incarcerated individual and parolee grievances alleging employee misconduct, and provide a fact-based report to the hiring authority for an appropriate decision. Inquiry interviews occur at employee's worksites, and, when necessary, AIMS Lieutenants conduct citizen interviews at law enforcement offices within the communities.

#### Prison Rape Elimination Act

The federal Prison Rape Elimination Act (PREA) requires specific actions to prevent, respond to, and investigate allegations of sexual misconduct and sexual harassment. PREA requires specific investigatory steps be completed within specific deadlines. California Penal Code sections related to PREA are 289.6 (prohibits staff from engaging in sexual activity with an incarcerated individuals) and 261 (a broader law establishing non-consensual intercourse between CDCR employees and incarcerated persons). The Department Operations Manual (DOM)(Chapter 5, Article 44, Sections 54040.1 through 54040.23) provides the requirements for education, prevention, detection, response, investigation, and tracking of staff sexual misconduct and harassment.

Currently, most of this investigatory work is done by institution staff trained to be Locally Designated Investigators (LDI). In 2019, institution staff trained to be LDI's conducted investigations into 485 PREA misconduct allegations involving employees statewide in addition to performing their regularly assigned duties. Transitioning this investigatory work previously done by institution staff statewide over to independent OIA investigators will require additional positions for OIA to investigate the alleged PREA acts, including interviews, travel, evidence collection, evidence review, and report writing, so that complete investigative reports can be provided to hiring authorities for discipline and to district attorneys for criminal allegations, etc.

#### Use of Force (UOF)

UOF policy is governed by Penal Code sections 196 (deadly force) and 835a, as well as case law including *Graham v. Connor* (how UOF must be judged, the objective reasonableness standard); *Madrid v. Allison* (resulted in injunctions aimed at eliminating excessive force, improving health care, and removing prisoners with mental illness from the SHU); and *Whitley v.*

## Analysis of Problem

Albers (Deliberate indifference standard); Coleman v. Wilson (UOF on mental health patients). CDCR Departmental Regulation, Title 15, Division 3, Subchapter 4, Article 1.5, Section 3268 through 3268.3 provides the requirements for UOF. DOM, Chapter 5, Article 2, Use of Force, provides definitions and requirements for UOF options, use of restraints, deadly force, non-deadly force, need for medical evaluation, immediate use of force, controlled use of force, reporting requirements, addressing allegations of unnecessary/excessive use of force, and the review process for the appropriateness of UOF.

Currently, supervisors and managers at each local prison review/investigate all allegations of unnecessary or excessive UOF by employees except when the UOF results in serious or great bodily injury; these cases are currently handled by OIA special agents or OIA AIMS staff. CDCR regulations require specific investigatory steps be completed within specific deadlines. In 2019, 1,681 allegations of unnecessary or excessive UOF were made that did not include serious or great bodily injury. Inquiries into these allegations were conducted by supervisors and managers at local prisons statewide unless evidence already existed to support a referral to OIA. Transitioning this work from local prison staff statewide to independent OIA investigators will require additional positions for OIA to investigate the UOF incident related to the allegations, including interviews, travel, evidence collection, evidence review, and report writing, so that complete investigative reports can be provided to hiring authorities for discipline and to district attorneys for criminal allegations, etc.

### Armstrong Court Orders

In September 2020, the United States District Court ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) to install surveillance cameras in all areas of Richard J. Donovan Correctional Facility (RJD) to which incarcerated people have access. CDCR was further ordered to retain footage of UOF and other triggering events indefinitely, and all other footage for a minimum of 90 days. The Court also ordered the use of body-worn cameras (BWCs) within 60 days for all correctional officers and sergeants at RJD who may interact with protected class members.

The Court also ordered CDCR to develop measures in order to reform its staff complaint, investigation, and discipline processes. The compliance measures must ensure CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct violating the rights of any class member under the Armstrong Remedial Plan (ARP) or the American with Disabilities Act (ADA). CDCR requested ten AIMS positions to review all staff complaints from RJD, including all allegations of unnecessary, excessive, or unreported instances of UOF, staff sexual misconduct (PREA), discrimination against a protected class, and retaliation due to use of the staff complaint process.

In March 2021, the United States District Court expanded the Armstrong Court order to include the same remedial requirements at an additional five institutions: California State Prison, Los Angeles County (LAC), California State Prison, Corcoran (COR), Substance Abuse Treatment Facility (SATF), California Institution for Women (CIW), and Kern Valley State Prison (KVSP). The order includes the same mandate to improve the staff complaint, investigation, and discipline processes. CDCR requests additional resources in a separate BCP for AIMS to review staff complaints from these five institutions.

## Analysis of Problem

### AIMS Resource History (Dollars in thousands)

Program Budget	2015-16	2016-17	2017-18	2018-19	2019-20
Authorized Expenditures	n/a	n/a	n/a	n/a	\$9,803
Actual Expenditures	n/a	n/a	n/a	n/a	\$3,564
Authorized Positions	n/a	n/a	n/a	n/a	47
Filled Positions	n/a	n/a	n/a	n/a	37
Vacancies	n/a	n/a	n/a	n/a	10*

\*OIA has since filled these vacancies and had subsequent turnover. There are currently four vacancies; all are currently in process to be filled.

### Workload History

Workload Measure	2015-16	2016-17	2017-18	2018-19	2019-20*	2020-21 YTD**
Number of allegations screened	n/a	n/a	n/a	n/a	448	1441
Number of allegations completed	n/a	n/a	n/a	n/a	309	775

\*AIMS activated for the Northern Region and RJD on January 27, 2020, and for the Central and Southern Regions on April 1, 2020.

\*\*July 1, 2020 through May 10, 2021

### C. State Level Consideration

This proposal aligns with CDCR's departmental goals to serve and be responsible to the public, behave professionally through fair, honest, and ethical behavior, and treat others with respect and dignity.

CDCR's credibility depends upon its ability to demonstrate appropriate steps to identify and correct employee misconduct when it occurs or to refute allegations found to be false. PREA and UOF allegations raise important issues with respect to how CDCR manages its core responsibilities to ensure the safety and welfare of incarcerated persons and parolees. Facts gathered through investigations can provide critical information regarding CDCR's need to take immediate action to cease and prevent further instances of misconduct, take appropriate action, and improve training or supervision. These steps are paramount in effectively serving the incarcerated and parolee population, reducing liabilities, and enhancing public trust.

### D. Justification

OIA is structured to be distinctly separate from CDCR institutions. To maintain objectivity, OIA staff in charge of employee complaint investigations are not located within institutions where

## **Analysis of Problem**

they would be more susceptible to local bias and influence from working relationships with the staff they investigate. CDCR is committed to becoming more proactive with its employee misconduct investigation process, particularly for sensitive and personal safety misconduct violations such as UOF and PREA. These allegations, regardless of institution, will be sent to OIA for review by specially trained, independent, and objective personnel directed to utilize standardized methods for more comprehensive investigation results. This new model will enhance employee conduct, performance accountability, and disciplinary outcomes.

CDCR requests additional staffing to conduct investigations into all allegations against employees concerning UOF and PREA statewide. After accounting for allegations at RJD, LAC, SATF, CIW, COR, and KVSP, CDCR estimates an average 1,063 UOF allegations and 328 PREA allegations annually (based on historical data). When applied to CDCR's data for AIMS inquiries and regional averages of travel time to institutions to conduct interviews, CDCR anticipates a need for an additional 4.0 Captains and 24.0 Lieutenants to complete these inquiries. CDCR also requests 1.0 Staff Services Manager 1, 4.0 Associate Governmental Program Analysts, and 4.0 Office Technicians for additional support workload, including: coordinating and organizing the employee misconduct screenings, performing technical and analytical tasks related to the employee misconduct screening, and clerical assistance. This resource request also includes 3.0 Associate Wardens, one per regional OIA office, to supervise the new and existing Captains. This request also includes funding for staff training in interviewing and interrogation techniques.

## **E. Outcomes and Accountability**

CDCR will evaluate the results of this process by monitoring data for improved quality and timeliness of investigations into allegations of employee misconduct. Successful implementation will provide hiring authorities the independent and objective investigative reports needed to take appropriate corrective or adverse disciplinary action, consistent with departmental policy and time constraints when misconduct is sustained.

## F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve \$7.9 million General Fund and 40 positions in 2021-22 and ongoing, to expand the Office of Internal Affairs' regional investigation process to include all allegations against employees associated with either potential violations of Use of Force policy (UOF) and the Prison Rape Elimination Act (PREA).

### Pros:

- Timely, independent and effective investigations deter instances of employee misconduct and unprofessional behavior.
- Enhances the effectiveness and transparency of employee misconduct investigations.
- Enhances the ability to prove or disprove the allegation and take corrective or adverse action when warranted.
- Quality investigations, coupled with appropriate evidence enhances opportunities for discipline to be upheld through the State Personnel Board process.
- Quality investigations and appropriate evidence enhance the opportunities for prosecutors to accept a referral.
- Provides an objective record of incidents that can be used to manage and reduce litigation.

### Cons:

- Results in additional General Fund costs.

**Alternative 2:** Approve funding to support 31 new positions in 2021-22 and ongoing, to expand the Office of Internal Affairs regional investigation process to include all allegations associated with potential employee violations of Use of Force policy (but not PREA allegations).

### Pros:

- Timely, independent and effective investigations deter instances of excessive or unnecessary UOF.
- Enhances the effectiveness, integrity and transparency of UOF investigations and provides executive review committees with comprehensive information to consider.
- Enhances the ability to prove or disprove the allegation and take corrective or adverse action, when warranted.
- Quality investigations, coupled with appropriate evidence enhances opportunities for discipline to be upheld through the State Personnel Board process.
- Enhances the ability to make referrals for criminal prosecution, when warranted.
- Quality investigations, coupled with appropriate evidence enhances opportunities for prosecutors to accept referrals.
- Provides an objective record of incidents that can be used to manage and reduce litigation.

### Cons:

- Results in additional General Fund costs.
- Will provide for an independent, objective review process for Use of Force allegations, but not PREA allegations, which will remain under the current institution-based review process.

**Alternative 3:** Approve funding to support 12 new positions in 2021-22 and ongoing, to expand the Office of Internal Affairs regional investigation process to include all allegations of employee misconduct associated with only the Prison Rape Elimination Act (PREA).

## Analysis of Problem

### Pros:

- Timely, independent and effective investigations deter instances of staff sexual misconduct and sexual harassment.
- Enhances the effectiveness, integrity and transparency of PREA investigations.
- Enhances the ability to prove or disprove the allegation and take corrective or adverse action, when warranted.
- Quality investigations, coupled with appropriate evidence enhances opportunities for discipline to be upheld through the State Personnel Board process.
- Enhances the ability to make referrals for criminal prosecution, when warranted.
- Quality investigations, coupled with appropriate evidence enhances opportunities for prosecutors to accept referrals.
- Provides an objective record of incidents that can be used to manage and reduce litigation.

### Cons:

- Results in additional General Fund costs.
- Will provide for an independent, objective review process for PREA allegations, but not all Use of Force allegations, which will remain under the current institution-based review process with the exception of when a serious bodily injury is sustained (which is covered under the existing AIMS review process)

## G. Implementation Plan

Beginning July 2021, the Office of Internal Affairs will begin hiring additional staff and implement specialized training within the fourth quarter of 2021.

## H. Supplemental Information

Click or tap here to enter text.

## I. Recommendation

Approve Alternative 1—\$7.9 million General Fund and 40 positions in 2021-22 and ongoing, to expand the Office of Internal Affairs' regional investigation process to include all allegations against employees associated with either potential violations of Use of Force policy and the Prison Rape Elimination Act.

**Analysis of Problem**

## BCP Fiscal Detail Sheet

BCP Title: Statewide Process for Use of Force and Prison Rape Elimination Act Allegations

BR Name: 5225-456-BCP-2021-MR

Budget Request Summary

### Personal Services

Personal Services	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
Positions - Permanent	0.0	40.0	40.0	40.0	40.0	40.0
<b>Total Positions</b>	<b>0.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>
Salaries and Wages Earnings - Permanent	0	4,354	4,354	4,354	4,354	4,354
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>
Total Staff Benefits	0	2,402	2,402	2,402	2,402	2,402
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>

### Operating Expenses and Equipment

Operating Expenses and Equipment	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
5301 - General Expense	0	338	338	338	338	338
5302 - Printing	0	49	49	49	49	49
5304 - Communications	0	95	95	95	95	95
5306 - Postage	0	23	23	23	23	23
5320 - Travel: In-State	0	121	121	121	121	121
5322 - Training	0	59	59	59	59	59
5340 - Consulting and Professional Services - External	0	35	35	35	35	35
5340 - Consulting and Professional Services - Interdepartmental	0	12	12	12	12	12
5368 - Non-Capital Asset Purchases - Equipment	0	85	56	56	56	56
539X - Other	0	377	377	377	377	377
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$1,194</b>	<b>\$1,165</b>	<b>\$1,165</b>	<b>\$1,165</b>	<b>\$1,165</b>

### Total Budget Request

Total Budget Request	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$7,950</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>



**Analysis of Problem**

**Fund Summary**

**Fund Source**

Fund Source	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
State Operations - 0001 - General Fund	0	7,950	7,921	7,921	7,921	7,921
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$7,950</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$7,950</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>

**Program Summary**

**Program Funding**

Program Funding	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
4500027 - Internal Affairs	0	7,950	7,921	7,921	7,921	7,921
<b>Total All Programs</b>	<b>\$0</b>	<b>\$7,950</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>	<b>\$7,921</b>

## Analysis of Problem

### Personal Services Details

#### Positions

Positions	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
- (Eff. 07-01-2021)	0.0	3.0	3.0	3.0	3.0	3.0
1139 - Office Techn (Typing) (Eff. 07-01-2021)	0.0	4.0	4.0	4.0	4.0	4.0
4800 - Staff Svcs Mgr I (Eff. 07-01-2021)	0.0	1.0	1.0	1.0	1.0	1.0
5393 - Assoc Govtl Program Analyst (Eff. 07-01-2021)	0.0	4.0	4.0	4.0	4.0	4.0
9646 - Capt (Adult Institution) (Eff. 07-01-2021)	0.0	4.0	4.0	4.0	4.0	4.0
9656 - Corr Lieut (Eff. 07-01-2021)	0.0	24.0	24.0	24.0	24.0	24.0
<b>Total Positions</b>	<b>0.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>

#### Salaries and Wages

Salaries and Wages	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
- (Eff. 07-01-2021)	0	525	525	525	525	525
1139 - Office Techn (Typing) (Eff. 07-01-2021)	0	182	182	182	182	182
4800 - Staff Svcs Mgr I (Eff. 07-01-2021)	0	86	86	86	86	86
5393 - Assoc Govtl Program Analyst (Eff. 07-01-2021)	0	291	291	291	291	291
9646 - Capt (Adult Institution) (Eff. 07-01-2021)	0	547	547	547	547	547
9656 - Corr Lieut (Eff. 07-01-2021)	0	2,723	2,723	2,723	2,723	2,723
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>	<b>\$4,354</b>

#### Staff Benefits

Staff Benefits	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
5150450 - Medicare Taxation	0	63	63	63	63	63
5150500 - OASDI	0	35	35	35	35	35
5150600 - Retirement - General	0	1,471	1,471	1,471	1,471	1,471
5150800 - Workers' Compensation	0	98	98	98	98	98
5150820 - Other Post-Employment Benefits (OPEB) Employer Contributions	0	165	165	165	165	165
5150900 - Staff Benefits - Other	0	570	570	570	570	570
<b>Total Staff Benefits</b>	<b>\$0</b>	<b>\$2,402</b>	<b>\$2,402</b>	<b>\$2,402</b>	<b>\$2,402</b>	<b>\$2,402</b>

**Analysis of Problem**

**Total Personal Services**

Total Personal Services	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>	<b>\$6,756</b>