



October 17, 2011

The Honorable Darrell Steinberg, Chair
Senate Rules Committee
California State Capitol Building
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Steinberg:

On September 22, 2011, as a result of pending re-initiation of inmate hunger strikes, the Office of the Inspector General (OIG) was authorized by the Senate to review and assess the California Department of Corrections and Rehabilitation's (CDCR or department) response to the inmate hunger strike occurring between July 1 and July 20, 2011. It was requested that an expedited report be completed with findings and recommendations as early as possible and no later than October 22, 2011.

July 2011 Hunger Strike

During this event, inmates housed in Pelican Bay State Prison (PBSP) led inmates from across the state in a mass hunger strike to protest their conditions in the Security Housing Unit (SHU), a maximum security housing assignment for inmates who have been identified as gang members or for other placement reasons. On July 1, 2011, approximately 5,300 inmates at nine institutions began refusing meals; the number of inmates peaked to more than 6,500 inmates two days later. The number of inmate participants gradually decreased until the strike concluded on July 20, 2011.

PBSP inmate leaders published five core demands:

1. Individual accountability rather than group punishment, indefinite SHU status, and restricted privileges.
2. Abolish the debriefing policy and modify active/inactive gang status criteria.
3. Comply with U.S. Commission 2006 Recommendations regarding an end to long-term solitary confinement.
4. Provide adequate food.
5. Expand and provide constructive programming and privileges for indefinite SHU status inmates.

At the end of the first strike, CDCR met with the inmates and agreed to the following:

Short-term action items in response to the fifth demand:

- Authorization of watch caps for purchase and state issue.
- Authorization of wall calendars for purchase in canteen.

- Authorization of exercise equipment in SHU yards (installation of permanent dip/push-up bar (under consideration).
- Authorization of annual photographs for disciplinary free inmates.
- Approval for proctors for college examinations.
- Use of CDCR ombudsman for monitoring and auditing of food services.
- Authorization of sweat pants for purchase/annual package.
- Authorization of hobby items (colored chalk, pen fillers, and drawing paper).
- One photo to family per year.

Mid-term action items in response to demands 1, 2 and 3:

The department agreed to conduct a comprehensive review of SHU policies that includes behavior based components, increased privileges based on disciplinary free behavior, a step down process for SHU inmates, and a system that better defines and weighs necessary points in the validation process.

OIG Review

Precipitated by the initiation of a second hunger strike and in response to the request by the Senate, the OIG conducted interviews of staff and inmates as well as an inspection at PBSP the week of September 28, 2011. In addition, OIG staff made multiple contacts with CDCR headquarters personnel involved in the issues under review. The OIG requested and received numerous memos, documents, and policies related to hunger strikes in general, the July and September 2011 hunger strikes, and the attendant issues under review.

The OIG's primary review objectives were as follows:

- To determine the cause for a re-initiation of hunger strikes.
- To assess efforts made by CDCR to review SHU policies and the gang validation processes.
- To verify whether the department had acted in good faith by honoring commitments made to inmates at the conclusion of the July 2011 hunger strike regarding expanded privileges.
- To check on the complaints regarding food.

Secondary objectives of the OIG review included:

- An assessment of rules violations meted out to PBSP hunger strike participants before and after the July 2011 hunger strike to determine if any retaliation had occurred.
- To review the department's after action report from the July 2011 hunger strike, and its implementation of medical and custodial policies regarding hunger strikes on a consistent, safe, and fair basis.

A. Primary Inmate Concern re SHU and Gang Validation Issues

The OIG interviewed the principle hunger strike representatives at PBSP. They each recommended CDCR implement a mechanism to allow release of inmates from the SHU back to the general population using a model similar to the Max B custody program used in San Quentin State Prison in the 1980s. They stated this Max B model would bring an end to the hunger

strike. On October 6, 2011, the OIG interviewed a former CDCR executive to obtain historical perspective on the Max B program and its feasibility of implementation today. Considering the youthful demographic of the inmates serving lengthy indeterminate sentences, the inadequate physical plant of San Quentin, and the lack of clear criteria for inmates to be considered for integration, it was believed that by contemporary accepted correctional standards, the Max B program would be considered irresponsible. Specifically referenced were the numerous inmate assaults and prison disruptions associated with the Max B model while the program was in use. However, considering current older inmate demographics, and modern facilities, a phased step down program as an approach to gang management was recommended. It was believed an educational component would be a key to the success of such a program.

It was apparent from the interviews, department contacts, and all other materials reviewed, that the inmates' main complaint was based upon their concerns that CDCR review and revise the SHU policies and gang validation processes.

As a result of the July 2011 hunger strike, the department formed a Warden's Advisory Group (WAG) to review the current gang management program and to develop recommendations for improvement. The group consists of wardens, Office of Correctional Safety (OCS) staff, a former prison director from another state, and several high-ranking CDCR executives. On October 11 and 12, 2011, the group met to begin development of an improved, meaningful gang management strategy that is consistent with national standards, including: a review of validation and debriefing policies; SHU inmate programming; criteria for SHU placement, retention and release; and the improvement of inmates' due process protections in relation to gang validation and SHU placement. The OIG monitor attended and participated in this work group's activities and will continue to monitor the group's progress and report results back to the Inspector General.

B. Increased Privileges Promised

The OIG staff personally observed and were told by inmates and staff that the items agreed to previously by the department were being provided.

- Watch caps. The inmates reported that they did receive watch caps from the institution per their request. Inspectors met with procurement staff and were given a copy of the storeroom supply order indicating that 1,152 watch caps were delivered to inmates in the SHU per hunger strike settlement.
- Sweat suits. Sweat suits were ordered and made available for purchase by inmates if they desired. Twenty-one sweat suits had been delivered to inmates as of September 21, 2011. OIG staff observed additional packages of sweat suits awaiting delivery on the following day.
- Calendars. Warden Lewis and the inmates stated that calendars were available for purchase through the canteen. Lewis also stated that calendars were routinely provided to indigent inmates upon request.
- Exercise equipment. Warden Lewis told inspectors that he planned to install the exercise equipment; however, it was pending approval as a non-budgeted expenses item. Inmates had been told it would be considered.

- Photographs. As of September 28, 2011, inmates had begun the process of having their digital photographs taken. Warden Lewis advised that there had been a delay due to the purchase of a digital photo machine to process the photographs.
- Education. During interviews, inmates confirmed that they were allowed correspondence courses and proctored exams. On October 3, 2011, OIG staff spoke with PBSP Principal Nancy McMahan, and she stated that as of September 2011, twelve SHU inmates were enrolled in Coastline Community College courses. These courses will contain proctored exams for mid-terms in November 2011, and final exams in January 2012.
- Hobby materials. OIG staff verified that requested hobby items had been purchased by the institution and were in the warehouse for distribution at the next canteen.

While not all inmate privilege requests from the July 2011 hunger strike were agreed to by the department, the department is delivering what was promised.

C. Food

The OIG reviewed the food preparation process. OIG staff found the food preparation process to be satisfactory. The PBSP warden provided two SHU food spot check reports from the Office of the Ombudsman dated September 19, 2011 and September 22, 2011. Both reports gave satisfactory reviews of the food preparation process at the SHU.

On September 29, 2011, OIG staff observed the preparation of the dinner meal in the SHU kitchen. They watched as inmates and staff heated the meal, selected and served portions, packaged, and organized the trays for delivery. The food trays appeared to be of appropriate temperature, portion, and cleanliness. OIG staff followed the prepared food trays to the SHU, and observed as the inmates were served through the food ports in their cells. The entire process took approximately 30 minutes to feed hundreds of inmates.

D. Retaliation Claims

The OIG also looked into allegations that officers at PBSP retaliated against inmates for their participation in the hunger strike. Specifically, inmates complained about increased rules violations. OIG staff visited PBSP and obtained copies of all Rules Violations Reports (RVR) for the period of May 1, 2011 through September 19, 2011 (which includes two months preceding the hunger strike, the period during the hunger strike, and two months after the hunger strike). Staff analyzed the frequency, nature, and severity of the RVRs and classified them into eight broad categories (refer to Appendix 1). The review revealed the following:

- Officers issued 60 RVRs during the two-month period before the hunger strike, 9 during the hunger strike, and 53 during the two-month period after the hunger strike. Thus, there were 7 fewer RVRs issued after the hunger strike than before, a decrease of 12 percent. All of the offenses appeared to warrant the action taken by the officers.
- Inmates received 38 RVRs for talking in the law library; 23 of them occurred prior to the hunger strike, none during, and 15 after.

- In some RVR categories there was a reduction after the hunger strike; in others there was an increase. Viewed separately, two categories had noticeable post-July hunger strike increases. The two categories were gang related activity and miscellaneous. The gang activity category merited additional examination, because the core demand at issue for hunger strikers is gang validation.
- Appendix 1 shows an increased enforcement by Institutional Gang Investigators after the July hunger strike. A close review of each RVR showed the rules violations were justified. However, from the limited statistical data it could appear that a crackdown on enforcement was occurring. Nevertheless, it cannot be established that any misconduct or misapplication of the rules was applied by the institution, or that any particular individual was inordinately targeted.

E. Hunger Strike Policies

Prior to 2008, CDCR's restricted Department Operations Manual section 55010, Resource Supplement 43 Inmate Hunger Strike, covered hunger strike procedures. Since 2008, each institution prepares and maintains its own Local Operations Procedure (LOP) for response to a hunger strike. These LOPs are reviewed annually and signed by the institution's Chief Executive Officer of Health Care Services and the Warden.

The OIG reviewed 11 LOPs and learned there are differences in the local policies. Some of the most significant differences are:

- Definition of hunger strike.
- Definition of nourishment.
- Possession of food by declared hunger striker.
- Food consumption by declared hunger striker.
- Definition of when a hunger striker is no longer defined as a hunger striker.
- Base weight measurement definition.
- Reported weight loss measurement.
- When Medical becomes involved.

These inconsistent policies allow for inaccurate hunger strike reporting.

Following the July 2011 hunger strike, CDCR's OCS produced a draft After Action Report Improvement Plan (AAR/IP) and the Division of Adult Institutions prepared a Corrective Action Plan draft. The AAR/IP acknowledges clarification is needed in statewide hunger strike policies. The California Correctional Health Care Services (CCHCS) advised they were working on an after action report. The report was not yet complete on October 12, 2011; however, CCHCS did issue a policy on September 29, 2011, providing some clarification, including definitions of a hunger strike and its participants.

On September 26, 2011, the PBSP inmates re-initiated the hunger strike that had ended on July 20, 2011. It was learned on the day of this report's preparation (October 13, 2011) that the second hunger strike was ending.

OIG Review Findings

1. The department's working group is an encouraging start in an effort to address inmates' primary concerns regarding SHU policies and validation processes.
2. The department has made good faith efforts to provide the privileges promised at the end of the July hunger strike.
3. The Ombudsman's office and the OIG reviewed food services and found it in compliance with all food service requirements.
4. While no specific instance of retaliation can be substantiated, limited statistical evidence suggests an increase of enforcement of RVRs by PBSP Institutional Gang Investigations staff after the July hunger strike for gang violations. The post-hunger strike RVRs were examined and while they appear to be legitimately justified, the increase in enforcement immediately after the first hunger strike indicates inmates were being treated differently.
5. Hunger strike policies prior to July 2011 were inconsistent at best throughout the department. As a result of that strike, the department has made progress in establishing policies for medical services and other procedures to be followed statewide relative to hunger strikes.

OIG Recommendations

1. The department should continue to develop and implement consistent policies for dealing with statewide mass hunger strikes.
2. The department should continue good faith efforts and work towards a new step down process for SHU inmates, and a system that better defines and weighs necessary points in the validation process.
3. The department should continue the WAG review of validation and debriefing policies; SHU inmate programming; criteria for SHU placement, retention and release; and the improvement of inmates' due process protections in relation to gang validation and SHU placement.
4. The department should complete an after action report regarding the second hunger strike, to see if practices and policies created after the July 2011 hunger strike were effectively implemented.
5. The department should examine the increase in gang related RVRs post-July hunger strike for those inmates involved to insure fairness and consistency.
6. The OIG should continue to monitor the department's efforts to resolve the hunger strike issues.

Future OIG Monitoring of Issues

The OIG will continue to assess the department's efforts by assigning an OIG monitor within the WAG. The monitor will observe and make recommendations to the committee. The monitor will also report on the progress of the Committee to the Inspector General. Ultimately, the OIG will

review the final revised policies established by CDCR in the area of SHU policy and gang processes.

The OIG appreciates the opportunity to address the Legislature's concerns in this matter, and to the degree possible, will work to bring transparency to CDCR's efforts in this arena, in the hope that future incidents can be avoided.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Barton", with a long horizontal line extending to the right.

ROBERT A. BARTON
Inspector General

Attachment: Appendix 1

Appendix 1

Appendix 1: Summary of Rules Violation Reports Issued to Inmates at Pelican Bay State Prison by Category (for the Period of May 1, 2011 thru September 19, 2011)

Category of Rules Violation Reports (RVR)	(A)	(B)	(C)	(C - A)	
	May 1 – Jun 30	Jul 1 – Jul 20	Jul 21 – Sep 19	Total	Change From Pre Hunger Strike
Failure to Meet Program Expectations – violating library procedures <i>(RVRs in this category relate only to talking in the law library)</i>	23	0	15	38	-8
Physical Violence and Verbal Threats <i>(Battery on inmates or staff, and verbally threatening officers)</i>	8	2	5	15	-3
Contraband Found <i>(Possession of weapons and alcohol)</i>	5	1	8	14	3
Refusal to Obey Orders <i>(Communicating with other inmates, and refusing escorts)</i>	4	3	6	13	2
Destruction of State Property <i>(Altering state issued clothing, laundry bags, and bedding materials)</i>	10	0	2	12	-8
Gang Related Activity <i>(Possession of letters, messages, and artwork)</i>	3	1	8	12	5
Miscellaneous <i>(Harassing staff, mail violations, and solicitation of gifts and gratuitous acts)</i>	2	2	7	11	5
Conspiracy <i>(Avoiding restitution)</i>	5	0	2	7	-3
Total	60	9	53	122	-7

Note: There were two RVRs issued during the five-month period of our review where the incidence occurred prior to May 1, 2011. For the purpose of this summary, we have included the two RVRs in the pre-hunger strike period.

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September 22, 2011

Robert A. Barton, Inspector General
California Department of
Corrections and Rehabilitation
Post Office Box 348780
Sacramento, CA 95834

Re: Request for Immediate and Expedited Review by the Office of the Inspector General

Dear Inspector General Barton:

In accordance with the provisions of Penal Code section 6126, subdivision (b), the California Senate Committee on Rules hereby expressly authorizes the Office of the Inspector General to conduct an immediate and expedited review and assessment of the Department of Corrections and Rehabilitation's response to the issues raised by the inmate hunger strike that ended in July of this year.

We request that the initial completion of this expedited report occur as early as possible and in no event later than 30 days from the date of this request, and include recommended corrective actions as well as any other findings or recommendations that the Inspector General deems appropriate.

Sincerely,

A handwritten signature in cursive script that reads "Darrell Steinberg".

DARRELL STEINBERG

DS:awek