



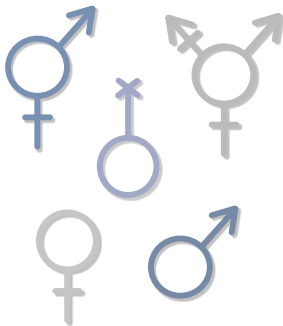
Amarik K. Singh, Inspector General

Neil Robertson, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

August 2023



Special Review

The California Department of
Corrections and Rehabilitation's
Implementation of the Transgender
Respect, Agency, and Dignity Act

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August 31, 2023

Mr. Jeffrey Macomber
Secretary
Department of Corrections and Rehabilitation
1515 S Street
Sacramento, California

Dear Mr. Macomber:

Enclosed is the Office of the Inspector General's (the OIG) report titled *Special Review: The California Department of Corrections and Rehabilitation's Implementation of the Transgender Respect, Agency, and Dignity Act*. California Penal Code section 6126, subdivisions (b) and (c) authorize the OIG to initiate reviews of the California Department of Corrections and Rehabilitation's (the department) policies, practices, and procedures. This special review concerning the Transgender Respect, Agency, and Dignity Act (the Act) assesses only the department's procedures for processing the transfer and bed change requests of transgender, nonbinary, and intersex incarcerated people (transferees), from January 1, 2021, through December 31, 2022, and no other requirements of the Act.

The objectives of the special review were to assess the department's procedures for processing transfer requests under the Act, as well as its policies and procedures for processing bed change requests once incarcerated people transfer to a prison consistent with their gender identity. We also assessed the department's efforts to both protect the safety of the incarcerated populations of Central California Women's Facility (CCWF) and the California Institute for Women (CIW) and respond to allegations of sexual misconduct and assault involving transferees.

The immediate interest in transferring shown by members of the incarcerated population after the Act was passed and the department's slow transfer review process has resulted in a large backlog of transfer requests. Despite the department's ongoing efforts to refine its processes and procedures, prospective transferees waited over 200 days on average for a decision on their transfer requests. However, the Act's broad language has made it challenging for the department to develop specific criteria to evaluate transfer requests and expedite the transfer process.

The department has documented procedures to investigate and has properly responded to allegations of assault and sexual misconduct or assault involving transferees at CCWF and CIW. The department did not substantiate any allegations of sexual assault involving



transferees but did substantiate numerous claims of consensual sexual misconduct involving transferees.

The transfer review process is critically important to both prospective transferees and the incarcerated populations of prisons who receive transferees under the Act. We acknowledge the challenge the department faces in developing policies and procedures that both comply with the broad language of the Act and safeguard the incarcerated population. However, to better facilitate the transfer process, the department should develop specific criteria for reviewing transfer requests, as well as a plan for reducing its backlog. In addition, the department should better communicate the transfer process to the incarcerated population and specifically update prospective transferees on the status of their transfer requests.

Following publication, we request that the department provide its status on implementing our recommendations at intervals of 60 days, six months, and one year from the special review report date.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Amarik K. Singh".

Amarik K. Singh
Inspector General

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| Definitions | |
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| Gender identity | Distinct from sexual orientation and refers to a person's internal, deeply held sense of being male, female, both, or neither. |
| Institutional Classification Committee | An institution's highest level of committee consisting of a minimum of three members and is chaired at the level of Warden or Chief Deputy Warden. The committee determines whether an incarcerated person may transfer to a prison corresponding to their gender identity under the Transgender Respect, Agency, and Dignity Act. |
| Intersex | An umbrella term used to describe natural body variations. Can include external genitalia, internal sex organs, chromosomes, or hormonal differences that transcend typical ideas of male or female. |
| Nonbinary | An umbrella term for people with gender identities that fall somewhere outside the traditional conceptions of, strictly, either female or male. May or may not identify as transgender; may have been born intersex, use gender neutral pronouns, or may use terms such as gender queer or gender fluid. |
| SB 132 unit | The unit at department headquarters that provides direct assistance to implement the Act, including reviewing incarcerated person transfer requests and coordinating case reviews for Institution Classification Committee (ICC). Counselors in the SB 132 unit act as subject matter experts on issues involving transgender incarcerated persons and advise and participate in ICC to ensure consistency and accountability throughout the transfer process, in addition to other related duties. |
| Transgender | A person whose gender identity differs from their assigned sex at birth (birth sex). |
| Transgender female | A person whose assigned sex at birth was male but understands oneself to be female. |
| Transgender male | A person whose assigned sex at birth was female but understands oneself to be male. |

Source: The department's Gender Identity Questionnaire and departmental records as of August 2023.

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Summary

California Penal Code section 6126, subdivisions (b) and (c) authorize the Office of the Inspector General (the OIG) to conduct a review of the department’s policies, practices, and procedures. We initiated this review after receiving a request from four State senators to review the California Department of Corrections and Rehabilitation’s (the department) implementation of Senate Bill 132, known as the Transgender Respect, Agency, and Dignity Act (the Act).¹

Although the Act has many requirements, we limited our review to assessing the department’s implementation of the requirement to house transgender, nonbinary, and intersex (TNI) people at prisons that are consistent with their self-designated gender identities. We reviewed and evaluated the process the department has developed to transfer TNI people to a prison based on their self-designated gender beginning when a transfer request is made to when it is either granted or denied.

We also reviewed and evaluated the department’s policies and procedures for protecting the safety and security of the incarcerated populations of two women’s prisons, Central California Women’s Facility (CCWF) and California Institution for Women (CIW). Finally, we reviewed incidents, including those involving sexual and physical assault allegations and disciplinary actions, involving incarcerated people who had transferred to CCWF or CIW under the Act.

The Transfer Process

The transfer process under the Act begins when incarcerated people complete a Gender Identity Questionnaire (GIQ) designating their gender identity and indicating whether they want to be housed at a different prison that is consistent with their gender identity. The GIQ is the source document used to designate an incarcerated person’s gender identity. At hub institutions—prisons with resources for TNI incarcerated people—prospective transferees are enrolled in a *Right Person, Right Prison* (RPRP) course to inform them about the physical infrastructure, management, and cultural differences between men’s and women’s prisons. Prospective transferees must complete the eight-week course before continuing with the transfer process.

Incarcerated people who request a transfer under the Act are recommended for approval or denied at a hearing following an extensive review of their entire criminal and administrative disciplinary history. If the hearing committee denies the transfer, the incarcerated person may file a grievance with the department. If the committee recommends approval of the transfer, the decision is reviewed by a

1. Chapter 182, Statutes of 2020.

classification services representative at the department's headquarters, and, if confirmed, the transfer order is forwarded to the sending and receiving prisons.

While the Department Has Been Developing Its Process for Evaluating Requests to Transfer Under the Act, Transfer Requests Have Been Significantly Delayed

The department requires four counselors at its SB 132 unit to review, summarize, and analyze all transfer requests statewide. This review process is thorough, but because only four counselors conduct the reviews, there have been significant delays for the nearly 400 incarcerated people seeking transfers under the Act.

In the two years since the Act was implemented, the department has conducted only 55 gender-based transfer hearings, and almost half were held in the first five months after implementation. On average, incarcerated people wait 208 days from the day they complete the GIQ to the day they participate in a transfer hearing. While it is important to thoroughly review an incarcerated person's history, the department's process has resulted in significant delays in scheduling transfer hearings. During these long delays, the department should provide more information about the transfer process to TNI people who are waiting to transfer.

The Act's broad language limiting the bases to deny a transfer request has also made it challenging for the department to develop specific criteria to evaluate transfer requests. Having specific criteria would expedite the review process and decrease the risk of inconsistent transfer decisions.

In addition, the department does not always document a specific, articulable basis for why a transfer request was denied at hearing. In those cases, it is difficult for both the affected TNI person to challenge the committee's basis for its denial in a grievance and for anyone reviewing the decision to determine exactly why the transfer request was denied.

The Department Has Not Designated Alternative Men's Prisons to Safely House Transferees Who Cannot Be Placed at CMF

California Medical Facility (CMF) is the only men's prison designated to house transferees under the Act as of the date of this report. Although CMF has several housing options including cells and dorms, and can accommodate all custody levels, it only has one yard and one administrative segregation unit. Designating only one prison, particularly one with only two housing options, to receive transferees to a men's prison limits the department's ability to move anyone who has or develops enemy or safety concerns at CMF.

Many Incarcerated People at Women's Prisons Still Fear for Their Safety and Privacy When Living With Transferees

Many incarcerated people at CCWF and CIW have expressed safety and privacy concerns living with transferees. Especially concerning to the incarcerated people we interviewed was showering around transferees, particularly those who have not had gender-affirming surgery. However, the department has multiple policies and procedures in place for the safety and security of its incarcerated population. For example, incarcerated people can report safety or security concerns to departmental staff, can request a bed change or be placed in temporary restrictive housing, and may file a grievance if their concerns are not resolved.

We did not observe specific aspects of CCWF's or CIW's living or bathroom spaces that could be modified to provide better protection or modesty to the incarcerated population without compromising security. Additional cameras in common areas and throughout prison grounds may increase security by deterring misconduct, but we acknowledge that it is likely impossible to cover the entirety of both prisons with cameras.

Requirements Imposed by the Act Create Inconsistent and Inequitable Processing of Bed Change Requests, and CCWF's Policies and Procedures for Processing Bed Change Requests Do Not Fully Comply With the Act

The Act creates inequity and tension between TNI people, whose perception of health and safety must be given serious consideration, and the rest of the incarcerated population, who must either accept housing assignments or be subject to disciplinary action. This disparity contributes to a feeling of resentment toward the transferees and the perception that transferees are treated differently.

The Act requires that the department document and share with TNI people the reason that they are denied alternative bed assignments based on their perception of health and safety. However, housing officers at CCWF inconsistently documented, and in some cases failed to document, bed change requests. Housing officers at CIW more consistently documented bed change requests on a specific form.

Although the Act does not specifically require the department to share its reason for the denials in writing, without written documentation, neither the department nor other interested parties can reasonably assess whether a TNI incarcerated person's perception of health and safety was considered. Moreover, without a written reason for denying the bed change request, the incarcerated person will have difficulty filing a grievance against the denial because State regulations and departmental policy require that grievances include all relevant supporting documentation.

The Department Properly Responded to Consensual Sexual Misconduct Allegations We Reviewed Involving Transferees and Investigated All Claims of Sexual and Physical Violence Filed by or Against Transferees

The department properly investigated or responded to all allegations of consensual sexual misconduct and sexual assaults we reviewed. None of the incidents of sexual assault alleged rape or attempted rape, and most alleged that a transferee either touched another incarcerated person in an unwanted sexual manner or forced someone to touch them in an unwanted manner. The department did not substantiate any allegations of sexual assault. In contrast, the department sustained numerous allegations of consensual sexual misconduct between transferees and other incarcerated people at CCWF and CIW.

In addition, many incarcerated people reported witnessing transferees abusing their romantic partners. Forms of abuse reportedly included both physical violence and demeaning behavior. One of the two substantiated incidents of physical violence involving transferees that we reviewed allegedly arose from disputes related to sexual misconduct.

Introduction

Background

On January 1, 2021, Senate Bill 132, also known as the Transgender Respect, Agency, and Dignity Act (the Act), took effect. The Act, which was the culmination of a multiyear effort involving the California Legislature, the California Department of Corrections and Rehabilitation (the department), and stakeholders, is intended to improve conditions for incarcerated people in California’s prison system who do not identify as strictly male or female.² In passing the Act, the Legislature found that transgender, nonbinary, and intersex (TNI) incarcerated people are particularly vulnerable to sexual abuse, harassment, and discrimination. In response, the Act mandates that the department ask incarcerated people to designate their gender identities and house them in prisons consistent with their gender identity or preference.

In producing this report, we limited our review of the department’s implementation of the Act to its procedures for processing transfer requests and its efforts to ensure the safety of incarcerated people at its two prisons for women: Central California Women’s Facility (CCWF) and the California Institution for Women (CIW). We also reviewed the department’s policies and procedures for processing bed change requests and its investigations of incidents involving transferees (transferees) under the Act at CCWF and CIW.³ We did not review the department’s implementation of search preferences or use of proper pronouns, which are both requirements of the Act.

The Transfer Process

The department developed, but is still refining, its process to transfer TNI people under the Act. The transfer process begins when TNI people complete a Gender Identity Questionnaire (GIQ) declaring both their gender identity and wish to be housed at a prison consistent with their gender identity. The GIQ, which incarcerated people are asked to complete when they first enter a California State prison or when they are released and subsequently reincarcerated, serves as the source document to identify an incarcerated person’s gender identity. Incarcerated people are asked a specific series of questions, including whether they identify as transgender, nonbinary, or intersex, what pronouns and honorifics should be used when referring to them, and whether they want to be

2. The OIG’s report on the department’s preparation prior to the passage of the Act can be found online at [The California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals](#).

3. As of February 2021, the Central California Women’s Facility, and the California Institute for Women are the only two prisons in California which are designated to house female incarcerated people. We did not review transfer of transgender men into men’s prison because transfers did not occur until approximately May 2023. We also did not review Folsom Women’s Facility as the department deactivated this facility on February 1, 2023, and none of the transferees were housed there prior to deactivation.

housed in a men’s or women’s prison. Incarcerated people already in the correctional system may complete a GIQ at their annual classification reviews or by contacting their assigned correctional counselor at any time. Figure 1 on the following page depicts the transfer process.

After declaring their gender identity as TNI, incarcerated people may be relocated to one of 13 hub prisons, as shown in Figure 2 on page 9.⁴ Once an incarcerated person requests a transfer under the Act, the prospective transferee is placed on a list to be enrolled in the *Right Person, Right Prison* (RPRP) course. The department developed this mandatory eight-session course in approximately April 2021 to inform prospective transferees in a group setting about cultural and rule differences between men’s and women’s prisons and prepare them for transfer.

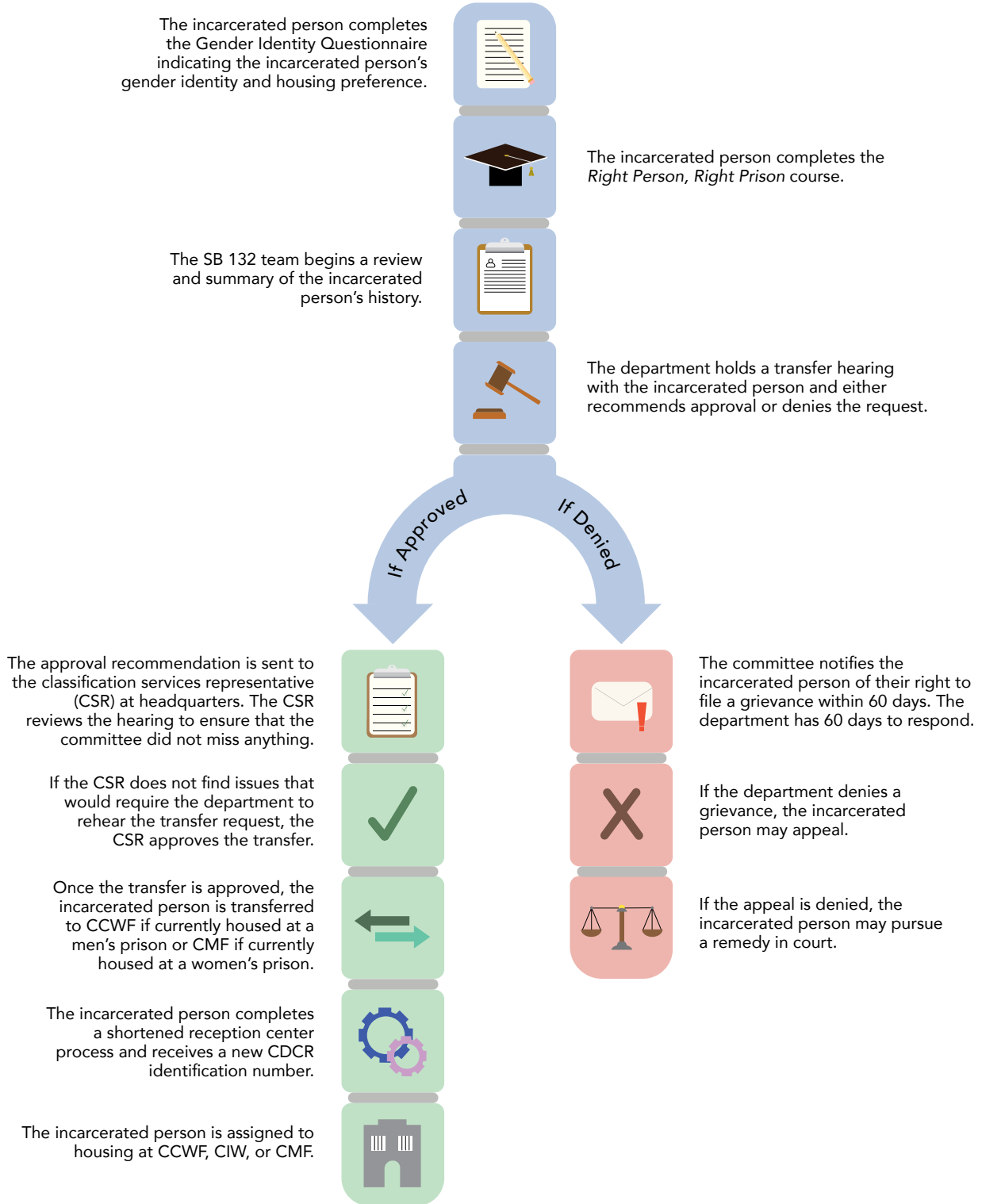
After completing the RPRP course, prospective transferees are added to a list to have a counselor at departmental headquarters review their transfer request. During the review process, the counselor notifies mental health representatives that the prospective transferee must be evaluated and prepares a summary of the transferee’s entire criminal history and history with the department for presentation at an Inmate Classification Committee (transfer hearing). Departmental staff present their findings for the transfer committee at the hearing, and prospective transferees are given the opportunity to respond to the committee’s concerns. After all information is presented, the chairperson of the committee determines whether transferring the prospective transferee would raise “management or security concerns” and should, therefore, be denied.

If the committee recommends the transfer request be approved, the counselor forwards the hearing results to the department’s Classification Services Unit for final confirmation. Once the transfer has been approved, the counselor sends a transfer order to both the sending and receiving prisons, as well as the transferee. The department then generally has 180 days after a transfer is confirmed to move the incarcerated person to a new prison. If the transfer does not occur before the transfer order expires, the department may seek a single 180-day extension in some cases. However, if the order expires, the incarcerated person must participate in a new transfer hearing and receive a second approval before the incarcerated person would be allowed to transfer.

If the department denies the transfer, the prospective transferee may grieve the decision through the department’s standard grievance process. Under this process, the incarcerated person generally has 60 days to file a grievance, and the department generally has 60 days to provide a written decision. The prospective transferee may file an appeal if the department

4. In some cases, TNI people are not transferred to a hub prison if they pose a safety or security risk at the hub prison.

Figure 1. The Department's Process of Implementing the Transgender Respect, Agency, and Dignity Act



Note: CCWF stands for Central California Women's Facility, CIW stands for California Institution for Women, and CMF stands for California Medical Facility.

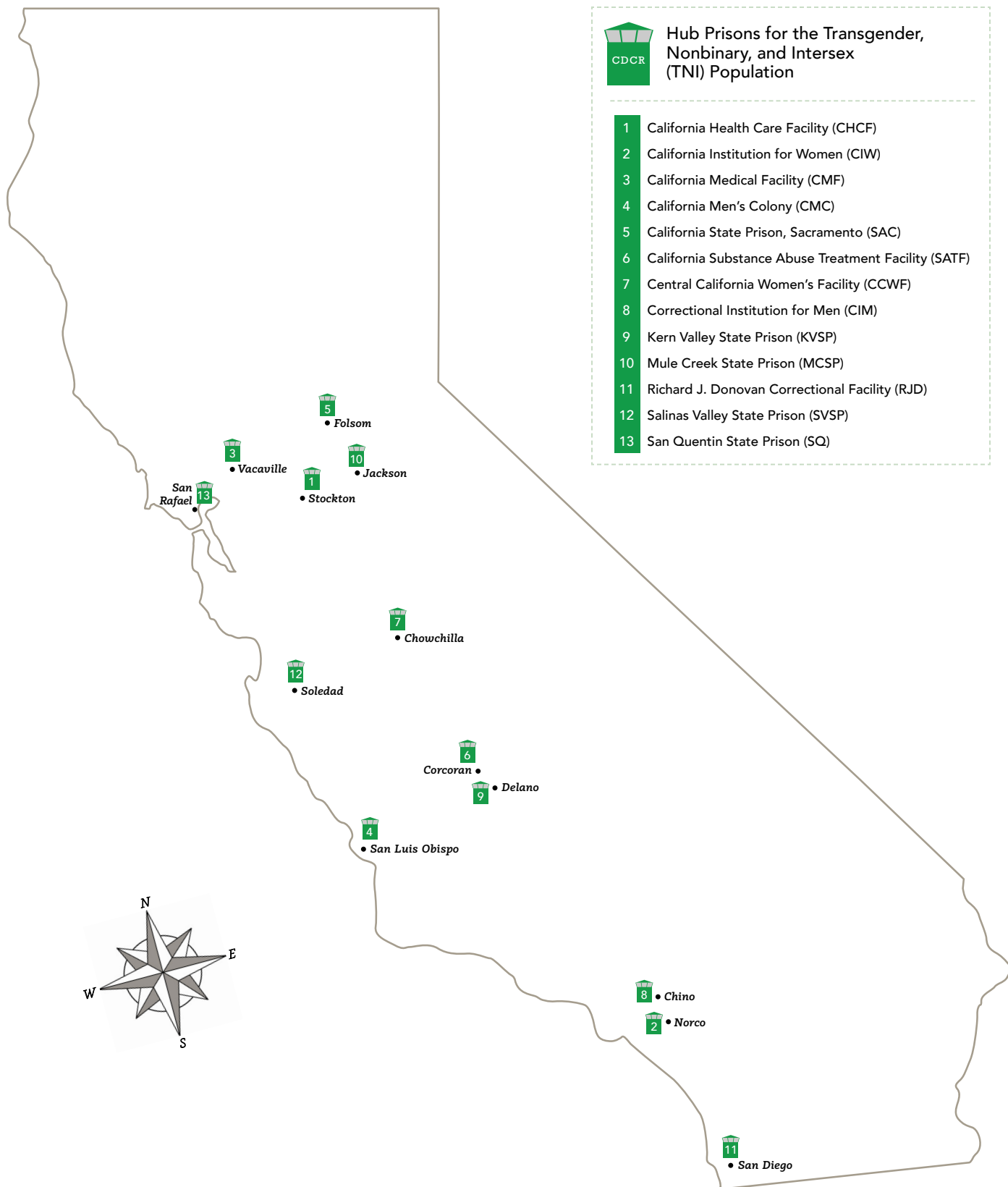
Source: California Department of Corrections and Rehabilitation's records.

denies the grievance. If the department denies the appeal, the prospective transferee's only recourse is to pursue a remedy in the court system.

All transferees to a women's prison are first sent to CCWF to participate in a reception process to prepare them for life in a women's prison. After their initial reception at CCWF, transferees receive a classification hearing to determine whether they will be housed at CCWF or CIW based on specific criteria. Movement between the two prisons, and within each prison, is uniformly processed regardless of gender identity. Transferees to men's prisons under the Act may only be received at CMF.

Some transferees may be returned to their originally designated prison if problems arise after they transfer under the Act. Specifically, a prison may refer a transferee who subsequently raises management or security concerns to the Departmental Review Board to determine whether they will be returned to their original prison. In addition, transferees may voluntarily choose to return to their previously designated prison. Figure 2 on the following page shows a map of the hub prisons throughout the State.

Figure 2. Map of the Department's Hub Prisons



Requirements of Laws, Regulations, and Policies

In relevant part for this review, the Act requires the department to ask incarcerated people to specify their gender identity and whether they identify as male, female, transgender, nonbinary, or intersex. The Act defines the term *transgender* broadly and inclusive of all gender identities different from the gender a person was assigned at birth. The term *nonbinary* is an inclusive term used to describe individuals who may experience a gender identity that is neither exclusively male nor female or is in between or beyond both of those genders, including, but not limited to, gender fluid, agender or without gender, third gender, genderqueer, gender variant, and gender nonconforming. Finally, the Act broadly defines the term *intersex* as an inclusive term referring to people whose anatomy, hormones, or chromosomes fall outside the strict male and female binary.

The Act also generally requires the department to house TNI people at a correctional facility designated for men or women based on the individual's preference. The Act prohibits the department from denying a housing placement based on any discriminatory reason including, but not limited to, anatomy, genitalia, or other physical characteristics of the incarcerated person, the sexual orientation of the incarcerated person, or a factor present among other people incarcerated at the prison where the incarcerated person prefers to be housed.

The department may deny an incarcerated person's preferred housing placement but must certify in writing a specific and articulable basis why it is unable to accommodate the housing preference. The department must provide the incarcerated person a meaningful opportunity to verbally raise any objections to the denial and have those objections documented.

Finally, each TNI person's perception of health and safety must be given serious consideration in any bed assignment, placement, or programming decision within the prison they are housed including granting single-cell status, housing the individual with another incarcerated person whom the individual chooses, or removing incarcerated people who pose a threat from any location where they may have access to the individual who has expressed a safety concern. If a TNI person is not granted an alternative based on their perception of health and safety, the Act requires the department to document the reasons for that denial and share them with the individual. If the TNI person raises health or safety concerns at any time, their housing and placement must be reassessed.

The department must also comply with the Prison Rape Elimination Act (PREA), which established a zero-tolerance standard for prison rape and required the department to make the prevention of prison rape a top priority. PREA requires the development and implementation of national

standards for detecting, preventing, and reducing prison rape, national standards for punishment for prison rape, and to increase the available data and information on incidences of prison rape.

To ensure compliance with PREA since its passage in 2003, the department has implemented policy guidelines for preventing, detecting, responding to, investigating, and tracking sexual violence, staff sexual misconduct, and sexual harassment of the incarcerated population. The department requires that all allegations of sexual violence, staff sexual misconduct, and sexual harassment be investigated, that the findings be documented in writing, as well as staff training. In addition, the department's PREA policy authorizes PREA victims to be removed from the general population and placed on nondisciplinary segregation status, but requires that they be assessed for any ongoing safety concerns.

Roles and Responsibilities

The department has designated 13 prisons as hubs to house TNI people and provide specialized programs and services including necessary medical care and mental health treatment. Each hub prison is responsible for facilitating the RPRP course and for notifying the SB 132 unit at the department's headquarters when an incarcerated person completes the course. The SB 132 unit includes four correctional counselor II staff (counselors) who summarize the prospective transferee's criminal and disciplinary history for consideration at the transfer hearing. Counselors also refer prospective transferees to a mental health professional for an evaluation intended to assess their overall mental health but not to diagnose gender identity disorders.

Before September 2021, transfer hearings were chaired by the wardens of the prisons housing the TNI people requesting to transfer. However, as of the date of this report, transfer hearings for TNI people seeking transfer to women's facilities are only chaired by the warden of either CCWF or CIW.⁵ The warden of the California Medical Facility chairs the transfer hearings for individuals seeking transfer to a men's prison.

Finally, each prison has an Investigative Services Unit (investigators), which is generally responsible for investigating allegations of criminal misconduct or violations of departmental policy. In addition, if an allegation involves a potential violation of PREA, specially trained locally designated investigators are responsible for interviewing witnesses and gathering evidence.

5. The warden of Folsom State Prison also conducted some classification hearings prior to deactivation of Folsom Women's Facility on February 1, 2023.

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Results

Chapter 1. Evaluating Requests to Transfer

While the Department Has Been Developing Its Process for Evaluating Requests to Transfer Under the Act, Decisions on Transfer Requests Have Been Significantly Delayed

While the department continues to develop and refine its transfer review process, TNI people seeking transfers to prisons consistent with their gender identity still face significant delays more than two years after implementation of the Act.

From January 1, 2021, when the Act went into effect, through December 31, 2022, nearly 400 incarcerated people requested to transfer to prisons consistent with their gender identity, but the department only processed 55 of those requests. After reviewing the department's process to approve or deny a transfer, as well as how long the process takes, we found the department's procedures to be appropriately thorough. However, the department's still-evolving transfer review process has resulted in significant delays in processing transfer requests.

Before we began our review, the department contracted with The Moss Group, Inc. (Moss Group) to assess its progress implementing the Act. As of the date of this report, the department is still consulting with the Moss Group to develop specific criteria for reviewing transfer requests. The department is also drafting both formal regulations and additional policies to comply with the requirements of the Act.

Only a Small Percentage of the Department's Transgender, Nonbinary, and Intersex Population Has Requested Transfer Under the Act

The department requested that its TNI population complete a GIQ specifying their gender identities by February 28, 2021. At the end of the first year following implementation of the Act, 756 incarcerated people at men's prisons and 234 at women's prisons identified as transgender, nonbinary, or intersex. By December 31, 2022, the number grew to 957 incarcerated people at men's prisons and 387 at women's prisons.

However, not all TNI incarcerated people indicated they wanted to transfer under the Act. As shown below, TNI people at men's prisons requested transfer to a women's prison at a much higher rate (39 percent) compared to TNI individuals at women's prisons (4 percent).

“A turtle lives in its shell and only comes out when it needs things and that is how I have been living my life. The environment is always at odds with the way I want to live my life.”

— A prospective transferee

Table 1. Overall and TNI Population Numbers

| Characteristics | Men's Prison | Women's Prison |
|--|--------------|----------------|
| Overall Population (including TNI) | 89,344 | 3,262 |
| TNI Population (Including those requesting a transfer) | 957 | 387 |
| TNI Requesting Transfer | 368 | 14 |

Source: Departmental data through December 31, 2022, as analyzed by the OIG.

We found that incarcerated people had different experiences and reasons for requesting to transfer under the Act, but safety concerns were common. Twenty of the 22 transferees (91 percent) and 17 of the 28 prospective transferees (61 percent) we interviewed reported being threatened because of their gender identity. Similarly, 19 transferees (86 percent) and 16 prospective transferees (57 percent) reported being the victim of violence because of their gender identity at their current or previously designated prison. One incarcerated person, a prospective transferee, expressed the following concern: “A turtle lives in its shell and only comes out when it needs things and that is how I have been living my life. The environment is always at odds with the way I want to live my life.”

When asked why they requested a transfer, 14 of 22 transferees and seven of 28 prospective transferees reported requesting a transfer because they wanted to live with people consistent with their gender identity. In addition, 14 transferees and nine prospective transferees requested a transfer due to concerns for their safety because of their gender identity. Nearly half of TNI incarcerated people cited threats and violence as at least one reason they requested transfers under the Act.

The Department's Process for Reviewing Transfer Requests Has Resulted in Significant Delays in TNI Incarcerated People Receiving Transfer Hearings

Generally, prior to any transfer between prisons, an incarcerated person must be approved for transfer by a committee at a hearing and confirmed by the department's classification services unit. However, the transfer hearing and review process for prospective transferees under the Act is significantly longer and more detailed than the processes for other types of transfers.

Before a transfer hearing can be scheduled, counselors must review and prepare a summary of the prospective transferee's entire criminal history and history with the department, which, for some, extends across decades. The committee relies on this summary when determining whether it will recommend approving the incarcerated person's transfer

request. The counselors, however, do not receive formal training on how to complete a gender-based transfer review. Instead, counselors are trained to complete a hearing template for the categories of information they are required to assess and rely on their experience to complete the review.

Counselors ask the prospective transferee a series of questions and may interview staff, such as housing unit officers who are familiar with the prospective transferee. Final review summaries prepared by counselors must articulate the basis for their ultimate recommendations. The review must be supported by case factors identified by the department and cannot be based on the personal conclusions of the counselor.

Selected Transfer Process Interview Questions

- At what age did you start expressing yourself in your current gender, and how did you express yourself (freely or when someone asked)?
- Have you experienced any health or safety-related problems in your current or prior housing assignments?
- Have you ever been housed in a male or female facility/institution (this would include jail or community-based housing)?
- Please explain why you believe that your preferred housing is better for your health and safety than your current housing.

Source: The California Department of Corrections and Rehabilitation records.

When the Act was first implemented, all transfer request reviews were completed by counselors at the department's 13 hub prisons, and the wardens of the hub prisons were responsible for either granting or denying the transfer requests. However, in September 2021, the department updated its transfer hearing process by designating the wardens of the women's prisons as chairpersons for transfer hearings. Shortly thereafter, the department reassigned the responsibility to review transfer requests and prepare for transfer hearings from counselors at the hub prisons to counselors at its newly formed SB 132 unit. This update was made in part to create a more uniform transfer process and ensure that transfer decisions were consistent throughout the State. According to the department, the responsibility to review transfer requests will eventually be returned to counselors at the hub prisons, but as of the date of this report, there is no timeline or plan for when or how this will occur.

The SB 132 unit consists of four counselors, a captain, and an associate warden. In addition, the SB 132 unit collaborates with two mental health representatives provided by the department. Counselors are assigned a region of the State and maintain their own lists of individuals who are eligible for a transfer hearing at each of their assigned prisons. The volume of completed hearings decreased after the hearing process was moved to the departmental headquarters. The department's decision to reduce the number of counselors conducting transfer reviews from at least 13 counselors at the hub prisons to four counselors in the SB 132 unit resulted in lengthy delays for prospective transferees waiting for transfer hearings.

Counselors are responsible for notifying the department's mental health representatives that a prospective transferee must be scheduled for an evaluation. The evaluations are generally conducted by one of the two mental health clinicians assigned to the SB 132 unit. However, if incarcerated people are already part of the mental health delivery system at their assigned prison, a mental health clinician at that prison may conduct the mental health evaluation. This evaluation addresses the incarcerated person's overall mental health and is not intended to diagnose gender identity disorders.

Counselors review TNI people's transfer requests in date order of completion of the RPRP course. However, we found that tying the incarcerated person's place on the list to the date they completed the RPRP course, rather than their GIQ, results in some incarcerated people having to wait longer for a transfer hearing. For example, two prospective transferees who completed their GIQs on the same date may not have their requests reviewed at similar times because not all prisons offer the RPRP course with the same frequency. In addition, RPRP course completion may be interrupted and delayed by various factors including a TNI person's placement in administrative segregation—which would bar the incarcerated person's attendance in the course—or a transfer to another prison. Once it is submitted, the date of the GIQ would not be affected by external factors such as a transfer or housing changes.

Although the department does not require counselors to complete a review within a specific time frame, counselors in the SB 132 unit estimated that a transfer evaluation takes approximately one to two months.⁶ In 2022, the SB 132 unit averaged two hearings per month. Therefore, the unit collectively takes approximately two months to complete each review in preparation for transfer hearings. Several counselors emphasized that they have many other duties besides conducting transfer reviews thus limiting the amount of time they have to conduct reviews. The department should take steps to improve the

6. We attempted to calculate how long it has taken on average for the counselors to complete a review, but the department did not track the date the counselors began their review until early 2023.

processing time for transfer reviews through process improvements or additional resources. Left unaddressed, the backlog will likely continue for years.

According to the department, it began tracking how long each counselor takes to complete a review in early 2023. Before the department tracked completion times, it had no basis for assessing the efficiency and performance of the SB 132 unit. By tracking this information, the department may establish timelines for completing transfer reviews and communicate clear expectations to its staff.

The Department Has Conducted Transfer Hearings for Only a Fraction of Individuals Who Have Requested Transfer Under the Act

The department's extensive and lengthy reviews of transfer requests have correspondingly resulted in few transfer hearings. From January 1, 2021, through December 31, 2022, the department only conducted hearings for 55 out of 382⁷ pending transfer requests, approving 36 and denying 19. None of the transfer hearings during that period were for incarcerated people requesting to transfer from a women's prison to a men's prison.⁸ Of the 36 transfer requests the department granted, five incarcerated people have since been released from the prison system, while eight returned to a men's prison after transferring to CCWF or CIW.

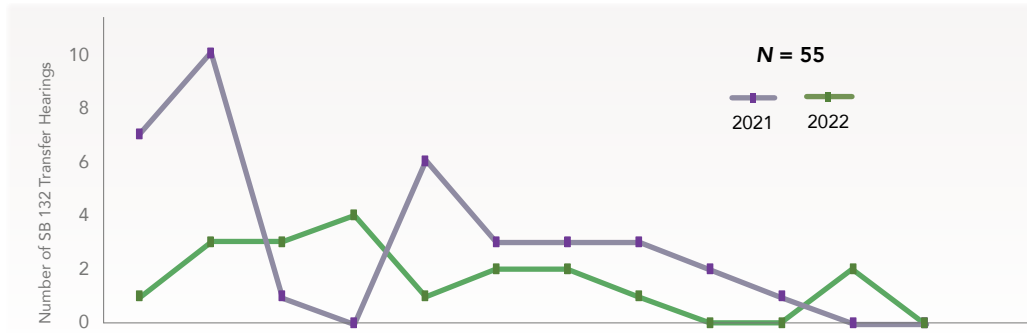
Of the 55 transfer hearings the department has completed, it conducted nearly half of them (24) in the first five months of 2021, at a rate of 4.8 hearings per month. The department only performed another 31 transfer hearings in the subsequent 19 months, at a rate of only 1.6 hearings per month.

As shown in Figure 3 on the next page, we found that the monthly volume of transfer hearings decreased between 2021 and 2022. In 2021, the department completed an average of three hearings per month, totaling 36 hearings for the year. In 2022, however, the department only completed an average of two hearings per month, totaling 19 hearings for the year. As the figure indicates, the number of hearings dropped significantly each month of the year. In addition, the department held no transfer hearings at all during several months in 2021 and 2022. Specifically, in 2021 the department did not conduct hearings in April, November, or December, while in 2022 it held no hearings in September, October, or December. When we asked the department why no hearings occurred during these months, it offered several possible explanations

7. Through December 13, 2022.

8. In 2023, the department began conducting transfer hearings for incarcerated people requesting to transfer from a women's prison to a men's prison. At the time of publishing this report, the department had conducted three transfer hearings and approved all three for transfer to CMF.

Figure 3. Number of Transfer Hearings the Institution Classification Committee Completed in 2021 and 2022



Number of Transfer Hearings Completed

| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. | Total |
|--------------|----------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|
| 2021 | 7 | 10 | 1 | 0 | 6 | 3 | 3 | 3 | 2 | 1 | 0 | 0 | 36 |
| 2022 | 1 | 3 | 3 | 4 | 1 | 2 | 2 | 1 | 0 | 0 | 2 | 0 | 19 |
| Total | 8 | 13 | 4 | 4 | 7 | 5 | 5 | 4 | 2 | 1 | 2 | 0 | 55 |

Source: The OIG's data gathering and analysis.

including staff shortages, competing responsibilities, and prospective transferees rescinding their requests.⁹

The department's failure to conduct transfer hearings during three months in both 2021 and 2022 was in part caused by its lengthy transfer review process. Consequently, many transfer hearings took place long after incarcerated people completed their GIQs. We reviewed 26 transfer hearings that included both a GIQ completion date and a transfer hearing date¹⁰ and found that TNI people waited an average of 208 days to get a transfer hearing after completing their GIQ.

The department also faces a significant backlog of transfer requests to process but lacks a clear plan to address the backlog. According to the department, the initial large volume of transfer requests from incarcerated people immediately after the Act took effect created an immediate backlog. We asked departmental staff whether they had a plan in place to address the significant backlog (382 incarcerated people at the end of December 2022) but were told that there is no plan

9. According to the department, from January 1, 2021, through December 31, 2022, 27 incarcerated people rescinded their transfer requests after completing the *Right Person, Right Prison* course, but before they transferred.

10. For one sampled case, the OIG did not receive a date for the GIQ. For a second sampled case, the GIQ date and ICC date provided by the department were the same.

or proposed solution. Departmental staff stated that they expect to reduce the time it takes to receive a transfer hearing once they eliminate the backlog. While we agree, without a plan in place to reduce the backlog, prospective transferees will continue to experience significant delays in receiving transfer hearings.

The Lack of Specific Criteria to Assess Transfer Requests Contributes to Unclear and Inconsistent Decisions, as well as Noncompliance With Some Requirements of the Act

The Act prohibits the department from denying a transfer for any discriminatory reason including, but not limited to, the anatomy, genitalia, or other physical characteristics of the incarcerated person, the sexual orientation of the incarcerated person, or a factor present among other people incarcerated at the prison where they choose to be housed. The department may, however, deny a transfer request under the Act if it has a management or security concerns with the incarcerated person's preferred housing.

The Act's broad language prohibiting the department from denying a transfer based on a factor present among other people incarcerated at the prison where they choose to be housed, has both made it challenging for the department to develop specific criteria to evaluate transfer requests and increased the risk of inconsistent transfer decisions. For example, if a person with a history of raping women requests to transfer to a women's prison, this language may prohibit the department from denying the person's transfer request based solely on the prospective transferee's history of raping women. If people at the women's prison have been incarcerated for crimes involving rape, this may qualify under the Act as a factor present among other people at the prison and may preclude the department from using it as the sole basis to deny the transfer request.

According to the department, it is currently working with the Moss Group to develop criteria for counselors to analyze, and for transfer hearing committees to consider, when evaluating transfer requests under the Act. We agree that specific criteria are necessary at the department level, in regulation, or by legislative mandate to help expedite the review process and ensure consistency.

Irrespective of what criteria is used, the Act also requires the department to certify in writing a specific and articulable basis explaining why a transfer request was denied. We reviewed nine transfer hearings that resulted in denials and found that the department did not document a specific and articulable basis for the denials it issued in three of the nine cases. In each case, the department referenced only general reasons for the denial and cited the "totality" of its review without identifying which specific aspects of the individual's behavior or history justified the denial. For example, one committee stated:

Based on the totality of [the incarcerated person’s] case factors, serious disciplinary history, mental health assessment along with [the incarcerated person’s] response to questionnaires pertaining to their safety, ICC elects to deny [the incarcerated person’s] request to transfer to a female institution.

Consequently, it would be difficult for either a TNI person to address the committee’s concerns in a grievance or for anyone reviewing the decision to understand exactly why the transfer request was denied.

Moreover, we found that the department made inconsistent decisions on transfer requests in two cases we reviewed. In one hearing, the department granted a prospective transferee’s request to transfer despite their history of sexual abuse involving a minor. At another hearing, however, the department denied a different incarcerated person’s transfer request because of a history of sexual abuse involving a minor. Despite the prospective transferees’ similar histories, the department issued inconsistent decisions in these two cases.

In addition to reviewing departmental records for individual transfer requests, we observed three transfer hearings in part to determine whether the department complied with the Act’s requirement to allow prospective transferees to verbally address any concerns raised during the hearing about their suitability for transfer. We found that the department met the Act’s requirements in each case. In addition, all but one of the 22 transferees we interviewed confirmed they received an opportunity to verbally address the committee at their transfer hearings.

The Department’s Right Person, Right Prison Course Helps Prospective Transferees, but Could Be Improved

As we discussed earlier in this report, under the Act, incarcerated people must complete an eight-session RPRP course before they are eligible to transfer. As of December 31, 2022, 184 incarcerated people have completed the RPRP course. According to departmental staff, developing the course was necessary because some incarcerated people who initially transferred without the benefit of the course felt unprepared and could not adjust to the physical infrastructure, management, and culture of a women’s prison. Some transferees even requested to be returned to their previously designated men’s prisons.

Each hub prison offers the course as needed and based on the availability of the facilitator,¹¹ the availability of the space, or the number of incarcerated people who need to take the course. The RPRP course is led at each of the hub prisons by one or more facilitators who moderate

11. Facilitators, also referred to as self-help sponsors, are prison employees who apply for and are hired to work supplemental hours as rehabilitative program facilitators. The department uses these sponsors to facilitate the *Right Person, Right Prison* course.

discussions among a group of prospective transferees. Facilitators must complete an eight-hour training session before qualifying to teach the RPRP course. According to some RPRP facilitators, prospective transferees had many questions, including some the facilitators were unable to answer even after receiving training, because they lacked knowledge of the specific operations of the transfer prisons. The department has offered some facilitators the opportunity to tour CCWF and a men's prison. Expanding this opportunity to all facilitators during training may more effectively prepare facilitators to understand and communicate the differences between men's and women's prisons.

Selected Questions to Facilitate Discussion in the Department's Right Person, Right Prison Course

- Violations or offenses one might consider "petty" in a male institution may not be viewed as "petty" in a female institution; how will you deal with the consequences and staff interactions for such violations?
- We have talked about the differences in applying disciplinary measures; can you describe ways to remain disciplinary [sic] free?
- List any concerns you may have living with a cisgender person (a person whose gender identity aligns with their sex at birth) inmate.

Source: The California Department of Corrections and Rehabilitation records.

We observed one RPRP session at a men's hub and one session each at CCWF and CIW. During each session, prospective transferees appeared eager to learn about the living conditions and programs available at the prisons where they could be transferred under the Act. As we discuss below, until 2023, the department transferred incarcerated people to women's prisons only, so the RPRP course materials largely describe the conditions at women's prisons. The course materials also describe differences between men's and women's prisons, including the differences in culture, housing, and available programs.

Most, but not all transferees and prospective transferees we interviewed found the RPRP course useful. Specifically, six of 28 prospective transferees and six of 22 transferees, or 21 percent and 27 percent, respectively, did not find the course useful. Some of the complaints about the course included opinions that the department did not give a complete picture of the living conditions and potential problems transferees could face at transfer prisons.

Transfers between hub prisons may also cause a problem for those taking the course. Although some departmental staff stated that incarcerated people who are transferred to another hub in the middle of the course can continue where they left off at their new prison, there is no formal process to share information between prisons and no guarantee that course will be available upon transfer. Furthermore, the course is not offered with the same frequency across each hub prison. Because each prison may have different availability and a different number of TNI incarcerated people, some prisons may offer the course more or less frequently. The RPRP course is a prerequisite to qualifying for transfer, and therefore, the department should ensure that those wishing to transfer under the Act are not delayed the opportunity to do so due to internal transfers or the lack of a course offering.

The Department Has Not Effectively Communicated Its Transfer Process to the TNI Incarcerated Population

Less than half of the transferees and prospective transferees we interviewed, or 36 percent, reported receiving any information about the transfer process after indicating they would like to be housed at a prison consistent with their gender identity. Twelve of the 22 transferees and 16 of the 28 prospective transferees we interviewed stated that they did not receive information about the process. Often, the only information they received came from outside sources such as family members or interest groups. One prospective transferee observed that “everyone is left in limbo about next steps; what is going on, if it is actually going to happen.”

Of those incarcerated people who received information, seven were told only that they had to complete the RPRP course. Four prospective transferees said the only information they received from the prison came from watching videos about the Act on the prison channel or attending a town hall event at their prison. Two reported receiving incorrect information about what is required to transfer. For example, some incarcerated people were told that taking hormones or undergoing gender-affirming surgery was required before they could transfer. The lack of communication about the transfer process was a source of frustration and likely contributed to the confusion and misinformation many incarcerated people reported.

In addition, people who completed the RPRP course stated that they were unable to receive updates about their position on the waitlist for a transfer hearing. Departmental staff also reported they were unable to get information from the SB 132 unit about an individual incarcerated person’s position on the waitlist. Even if information was shared, departmental staff stated they were told they could not provide an update to the incarcerated person with that basic information. Instead, they were only authorized to tell the incarcerated person that their case was in the queue to be reviewed. Because of the uncertainty inherent in

“Everyone is left in limbo about next steps; what is going on, if it is actually going to happen.”

— A prospective transferee

waiting an average of 208 days for a transfer hearing, as we described above, the department should provide updated and accurate information upon request.

The Department Has Not Designated Alternative Men's Prisons to Safely House Transferees Who Cannot be Placed at California Medical Facility

The department designated California Medical Facility (CMF) to receive TNI people transferring from a women's prison to a men's prison in March 2023, two years after the Act was implemented. However, as of the date of this report, CMF is the only men's prison designated to house transferees under the Act. CMF has several housing options including cells and dormitories, and can accommodate all custody levels, but it only has one yard and an administrative segregation unit. Designating only one men's prison to receive transferees, particularly one with only two housing options, limits the department's ability to place those who have, or develop, enemy or safety concerns at CMF.

The department is responsible for ensuring the safety and security of incarcerated people housed in its prisons. One common reason incarcerated people are transferred between prisons is because they develop enemies in prison with whom they can no longer be safely housed. In those situations, one or both incarcerated people may be transferred from their yard or prison. In addition, it may not be possible for incarcerated people to be safely assigned or transferred to a prison where one or more of their known enemies are already housed.

If a transferee has enemies, or develops enemies at CMF, the transferee may be left in an unsafe situation on the prison's sole yard or placed in administrative segregation for the transferee's protection. The transferee could also face the possibility of having to return to a women's prison because the department has not designated an alternative to CMF. The department should, therefore, consider designating at least a second men's prison to receive transferees under the Act.

Recommendations

- The department should develop specific criteria for counselors to evaluate gender-based transfer requests.
- Once specific criteria are established, the department should evaluate how long a review should take with the new criteria, develop a time line for completing the review process, and communicate those expectations to counselors.
- The department should provide training to counselors on how to complete the transfer request reviews once specific criteria are established.

- The department should develop a plan to reduce the number of prospective transferees waiting for transfer request reviews and a time line for implementing the plan.
- Because the RPRP course is a prerequisite to eligibility for transfer, the department should establish procedures to ensure prospective transferees are not delayed from taking or completing the course because of transfers between hub prisons.
- If specifically asked, the department should share information with prospective transferees about the transfer process, where they are in the transfer process, and estimate when the prospective transferee may expect to be scheduled for a transfer hearing.
- The department should evaluate and determine whether designating only one men’s prison to receive transferees under the Act is sufficient to meet its operational needs.

Chapter 2. Addressing Safety and Privacy Concerns

Many Incarcerated People at Women's Prisons Still Fear for Their Safety and Privacy When Living With Transferees

Despite the department's policies and procedures designed to protect and treat the incarceration population of women's prisons equally, many incarcerated people we interviewed at CCWF and CIW expressed safety and privacy concerns about living with transferees. Compounding these concerns was the perception that some departmental staff treat transferees and nontransferees differently.

Nontransferees Perceived Transferees to Be Physically Stronger, and They Questioned Transferees' Reasons for Requesting Transfers

In total, 16 of the 49 nontransferees we interviewed, or 33 percent, said they feared for their safety around transferees and 14, or 29 percent, told us that feeling safe depended on the situation or the individual. Only 19 of the 49 nontransferees we interviewed, or 39 percent, reported they felt safe living with transferees.

Some of the safety concerns expressed by the incarcerated populations of CCWF and CIW derived from the belief that transferees are, generally, physically larger and stronger than nontransferees. This perceived physical disadvantage led some nontransferees at CCWF and CIW to form protection pacts and agree to join in any fight between a transferee and a nontransferee in their pod (see next page for a further explanation of pods in the prison setting).

In addition to safety concerns, 13 of the 49 incarcerated people we interviewed, or 27 percent, said they had negative experiences with transferees. For example, one reported a sexual assault, although the report was later determined to be unsubstantiated as we discuss further in Chapter 4. Another incarcerated person reported seeing a transferee physically assault another incarcerated person. The incarcerated person who witnessed the alleged physical assault said she reported it to a sergeant, but the alleged victim would not tell the sergeant what had happened. Finally, one incarcerated person claimed to have witnessed a transferee make a nontransferee kneel when around her.

Even some transferees and prospective transferees voiced concerns with the Act. Of the 22 transferees we interviewed, 14 (or 64 percent) alleged some prospective transferees were being less than truthful about their gender identity to take advantage of the transfer process. Some believed prospective transferees were seeking to transfer to have sexual relations with incarcerated people who were designated female at birth. Some

“There are a lot of wolves in sheep's clothing. There are a lot of men who are now all of a sudden transgender.”

— A prospective transferee

transferees suggested the department should better screen prospective transferees and deny transfer to those with histories of abuse to increase safety at women’s prisons. In addition, they suggested that to better ensure only sincerely TNI individuals transfer, transferees should be required to take female hormones both before and after transfer. One prospective transferee made the following observation: “There are a lot of wolves in sheep’s clothing. There are a lot of men who are now all of a sudden transgender.”

Some ongoing fears expressed by the incarcerated populations of CCWF and CIW likely result from the belief that departmental staff treat transferees differently from nontransferees. For example, some individuals reported that officers approve transferees’ requests for bed moves, even requests for single cells, more often than they do for nontransferees, a situation we discuss further in Chapter 3. One staff member also reportedly told an incarcerated person that transferees must be treated like an “endangered species” for the department to avoid lawsuits.

Despite 27 of the 49 nontransferees we interviewed (55 percent) expressing ongoing concerns with being housed with transferees, other incarcerated people and departmental staff at CCWF and CIW, including housing officers, acknowledged that fear of transferees has decreased. For example, one nontransferee said she felt less fearful after she got to know transferees, and they were no longer just a “label.” One housing officer said that although he was initially concerned that the transferees would be excluded by the general population, he has not seen that occur. An incarcerated person who was not a transferee stated that “it has become more open. Things are slowly but surely getting better. The transgender women are more accepted now.”

Lack of Privacy Increased Safety Concerns of Nontransferees at CCWF and CIW

Although some incarcerated people overcame their fear of transferees, others found their safety concerns were exacerbated by the inherent lack of privacy at CCWF and CIW. Although the two prisons are very different in design and housing arrangements, privacy is compromised at both.

CCWF has three yards housing the general population, and a reception center that receives and processes all women committed to State prison. Each yard at CCWF has four buildings, and each building has four wings. The three photographs displayed on this page and the next, taken by OIG inspectors in March 2023, depict the living conditions in what are known as *Pods* at the prison. Eight rooms, or pods, are in each building, with each pod housing up to eight incarcerated individuals in a dormitory-like setting (see Photo 1, right).

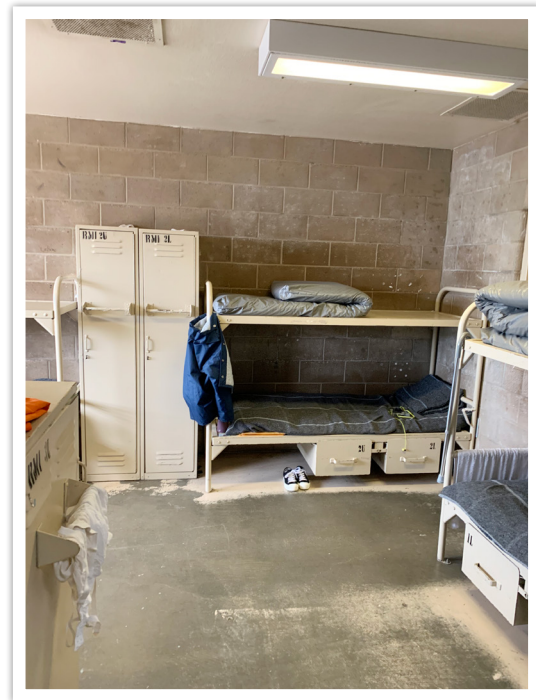


Photo 1. CCWF pod (photographed on 3-29-23).



Each pod has one toilet and one shower (see Photos 2 and 3, left and below right). As shown in Photo 2, the toilet is a single stall and is separated from the shower by a wall, and each stall has a door with a screen halfway down the door to ensure privacy.

Photo 2. CCWF in-pod restroom (photographed on 3-29-23).

The showers at CCWF, like the toilets, are single stalls.

Photo 3. CCWF in-pod shower (photographed on 3-29-23).



In contrast, CIW has one yard with six general population buildings, two psychiatric units, and two restrictive housing units. Unlike the dormitory-like setting at CCWF, all buildings at CIW have double occupancy cells (see Photo 4, right).

Photo 4. CIW cell (photographed on 4-19-23).



Each cell has its own toilet, while each housing unit has a shower room with multiple stalls in the central area of the building. Each shower is separated by a wall and has a curtain for privacy (see Photo 5, left).

Photo 5. CIW housing-unit shower (photographed on 4-19-23).

At both CCWF and CIW, transferees and nontransferees dress in a communal space, and in the case of CIW, may use the toilet in front of a cellmate. In addition, nontransferees at both prisons specifically expressed concern over showering around transferees, particularly those who have not had gender-affirming surgery. Although each prison had adequate shower curtains, privacy was still potentially compromised when entering and exiting the shower stalls.

Living in close spaces with individuals designated male at birth was particularly triggering for the 20 percent of incarcerated people we interviewed who reported a history of abuse. Consequently, being required to house, dress, and undress with transferees triggered past trauma. This type of intimate setting was also problematic for some incarcerated people who expressed religious objections to living with unrelated individuals designated male at birth. To address these privacy concerns, many we interviewed suggested transferees should be housed together in their own yard or building, or even undergo gender-affirming surgery as part of the transfer process. Two nontransferees stated the following:

They are coming into our spaces and moving us out of them. The little rehabilitation that is going on here is being destroyed and evaporated. There will be no rehabilitation for women if this continues. If you are in survival mode every day, you can't rehabilitate (Incarcerated person 1).

.....

I was in all the groups and activities I could; I was very involved. They took all of that away from me (Incarcerated person 2).

As noted above, the department has implemented measures to protect privacy while ensuring security within the constraints of the physical designs of the women's prisons. We did not observe specific aspects of housing or bathroom spaces at CCWF or CIW that could be modified to provide better protection or privacy without otherwise compromising security. Placing additional cameras in common areas and throughout prison grounds may increase security and deter misconduct, but we acknowledge that it is likely impossible to cover the entirety of both prisons with cameras.

The department also has multiple policies and procedures in place for the physical safety and security of the incarcerated population. For example, incarcerated people can report their safety or security concerns to departmental staff and may file a grievance if their concerns are not resolved. An incarcerated person with safety and security concerns can also request a bed change to another living space or be placed in temporary restrictive housing. Temporary restrictive housing, such as administrative segregation, can be used to protect incarcerated people until staff find safer permanent housing.

Finally, we acknowledge it is difficult for the department to accurately assess a prospective transferee’s sincerity in self-identifying their gender identities or their true intentions in requesting a transfer under the Act. Although counselors interview prospective transferees, and departmental staff review their criminal and administrative histories, it may be possible for incarcerated people to purposefully misidentify themselves to facilitate a transfer. This deception may become easier as incarcerated people share information about the process, the interview questions they were asked, and the specific reasons they were denied. However, if the department identifies specific criteria to analyze and apply during transfer reviews as we discussed in Chapter 1, it may reduce the fear that some transferees are not genuinely TNI and are a threat to the nontransferee population.

Chapter 3. Processing Bed Change Requests

Requirements Imposed by the Act Create Inconsistent and Inequitable Processing of Bed Change Requests, and CCWF's Policies and Procedures for Processing Bed Change Requests Do Not Fully Comply With the Act

The Act creates inequity and tension between TNI people, whose perception of health and safety must be given serious consideration when the department assigns them a bed in a prison, and the rest of the incarcerated population, who must generally accept any bed that is assigned. In addition, we found that CCWF does not ensure compliance with the Act by consistently documenting or communicating the reason a TNI person's request to change beds based on health and safety concerns was denied.

Unlike the General Incarcerated Population, a TNI Person's Perception of Health and Safety Must Be Considered Before Denying a Request to Change Beds in Prison

State regulations and departmental policy require that incarcerated people accept housing assignments as directed by departmental staff or be subject to disciplinary action. Incarcerated people are generally not entitled to a single-cell assignment, housing at a prison of choice, or housing with a cellmate of their choice. In fact, prisons can only accommodate a limited number of single-cell assignments. However, the Act carves out exceptions to these rules for the TNI population. Specifically, the Act requires that each TNI person's perception of health and safety be given serious consideration in any bed assignment and placement decision within the facility. This includes granting single-cell status, housing the individual with a cellmate of choice, or removing an individual or individuals who pose a threat from any location where they may have access to the TNI person who has expressed a safety concern.

According to departmental staff and some incarcerated people at CCWF and CIW, this inequity enables transferees to control their bed assignments and cellmates within prisons more than other incarcerated people can. While an incarcerated person with health or safety concerns about being housed with a TNI person cannot refuse a bed assignment or ask a TNI person to move without risking administrative discipline, a TNI person may be able to do so under the Act. That nontransferees must request to move to another bed themselves or face the threat of administrative discipline for refusing a housing assignment with a TNI person fosters a perception of disparate treatment. The disparity also likely contributes to resentment of transferees and the perception, described by one incarcerated person we interviewed, that transferees "get what they want."

CCWF Does Not Ensure Its Staff Comply With the Act's Requirement That Housing Officers Document and Communicate Why They Denied a TNI Person's Bed Change Request

The Act requires that the department document the reason a TNI person is denied an alternative bed assignment based on their perception of health and safety and share it with the individual. However, we found that housing officers at CCWF inconsistently documented, and in some cases failed to document, bed change denials.

CCWF policy requires that housing officers complete all bed change requests using a “bed batch request,” maintained in the department’s records for the incarcerated population, which is reviewed by a sergeant or lieutenant. The reviewing officer then either recommends the move or recommends denial of the request. If the recommendation is to deny, the bed change request is returned to the staff member who submitted it to make changes or corrections, or to cancel the request.

Only one housing officer we interviewed at CCWF claimed to routinely document bed change requests in a personal notebook, while others confirmed that staff members each handle bed change requests in various ways. One officer told us that bed change requests at CCWF were generally made verbally and documented by staff. However, because bed change requests, including requests made by TNI people, could also be verbally denied, not all requests were documented in writing. If housing officers do not routinely document bed change requests using bed batch requests as required by CCWF policy, supervisors cannot complete their reviews. Moreover, the inconsistent documentation and failure to document described by housing officers at CCWF will continue.

The Act does not specifically require sharing the reason for denying a TNI person’s bed change request in writing. However, without written documentation, neither the department nor anyone else can reasonably assess whether a TNI person’s perception of health and safety was considered. Moreover, without written documentation of the reason for denying a bed change request, TNI people will have difficulty filing a grievance challenging the decision because State regulations and departmental policy require that grievances include all relevant supporting documentation.

In contrast to CCWF, CIW has a form that is completed when making a bed change request. The form identifies the incarcerated person requesting the bed change, the current housing assignment, their desired housing option, any prospective cellmates, the reason for the request, and the date the request was made. The form directs CIW staff in the following manner: “If [the bed change request is] disapproved or rejected, note reason below and return a copy to the inmate.” If this procedure is followed, an assessment of the reasons a TNI person’s bed change request was denied can be made.

However, two of the three transferees at CIW who reported they were denied bed change requests ¹² told us they were not given a copy of the form documenting the reason for the denials. Even though TNI people at CIW may not have been given written documentation of the reason for denial, the department or any other interested party could review the denial forms to assess whether an individual's perception of health and safety was considered.

Recommendations

- All prisons housing TNI people should document in writing the specific reason a TNI person's bed change request was denied in order to ensure compliance with the Act.
- All prisons housing TNI people should give them a copy of the written reason their bed change request was denied in order to ensure compliance with the Act.

12. The third transferee was not asked the question.

Chapter 4. Responding to Claims of Sexual and Physical Misconduct

The Department Properly Responded to Sexual Misconduct Involving Transferees and Investigated All Claims of Sexual and Physical Violence Filed by or Against Transferees We Reviewed

Although consensual sexual acts are reportedly common between incarcerated people at both CCWF and CIW, they are prohibited by State law and are considered sexual misconduct. We found that the department properly imposed administrative discipline against transferees and nontransferees when they were caught engaging in consensual sexual acts or other sexual misconduct. In addition, we found that the department imposed administrative discipline when consensual sexual acts between transferees and nontransferees led to violence. Finally, the department properly investigated, but did not substantiate any of the allegations of sexual assault made by or against transferees.

Transferees Frequently Received Administrative Discipline for Participating in Consensual Sexual Acts or Other Sexual Misconduct That, in at Least Two Incidents, Likely Led to Violence

To determine if transferees were either the perpetrators or the victims of sexual misconduct or sexual assaults after transferring to CCWF or CIW, we reviewed all documented allegations of sexual misconduct and sexual and physical assaults involving transferees from January 1, 2018, through December 31, 2022. Three of the 29 incidents¹³ we reviewed involved transferees exposing their penises to staff or other incarcerated people, while one involved a transferee making lewd comments during an unclothed body search. The transferees received administrative discipline in each case.

Thirteen of the 29 incidents we reviewed involved consensual sexual encounters between transferees and other incarcerated people. In each of these 13 incidents, the transferees and their partners received administrative discipline.

The frequency of consensual sexual acts between transferees and nontransferees was commonly mentioned in interviews we conducted with both incarcerated people and staff at CCWF and CIW. In addition, several of the incarcerated people we interviewed alleged that transferees solicited sexual favors from them. Because not all transferees have undergone gender-affirming surgery, the potential exists for pregnancies resulting from consensual relationships in prison. Indeed, we reviewed

13. For two incidents, we received and reviewed both an alleged PREA violation report and subsequent administrative disciplinary action taken for the same incident.

one report of sexual acts that allegedly resulted in a pregnancy, but the claim ultimately could not be substantiated.

In addition to the allegations of consensual sexual acts, some of the incarcerated people we interviewed reported witnessing transferees abusing their romantic partners. Forms of abuse reportedly included both physical violence and demeaning behavior such as a transferee requiring her partner to get on her knees around the transferee. In one such incident, video cameras reportedly showed a transferee physically striking an incarcerated person with whom she was allegedly in a relationship. However, in a separate incident also captured on a surveillance camera, the transferee was seen as the victim of the other incarcerated person's abuse.

Two reports we reviewed involving transferees alleged claims of physical battery. In the first incident, an officer witnessed a transferee being battered by multiple incarcerated people allegedly because of the transferee's involvement in a suspected relationship. All but one of the incarcerated people who battered the transferee received administrative discipline. In the second incident, an officer witnessed a transferee spitting on another incarcerated person. In that instance, the transferee received administrative discipline.

The Department Investigated All Claims of Sexual Assaults Involving Transferees

The remaining 12 of the 29 incidents we reviewed alleged sexual assaults or batteries, which, if substantiated, would violate PREA. None of the incidents included alleged rape or attempted rape, and most incidents involved allegations that the transferee either touched another incarcerated person in an unwanted sexual manner or forced someone to touch them in an unwanted manner.

When investigating alleged PREA violations between incarcerated people, the Investigative Services Unit (investigators) reaches one of three conclusions after completing its inquiries: *substantiated*, *unsubstantiated*, or *unfounded*. Investigators conclude an allegation is sustained if they determine the alleged violation occurred, while a conclusion of unfounded means investigators determined the alleged violation did not occur. If investigators cannot determine whether alleged misconduct occurred, it is deemed unsubstantiated. Generally, investigations in which there are no independent witnesses or other evidence result in determinations that the allegations are unsubstantiated even if an alleged victim reported in detail that the incident had occurred.

Of the 12 alleged violations of PREA we reviewed, transferees were the named suspect in five cases. Of these five cases, investigators concluded that one of the claimed violations was unsubstantiated because it

involved consensual sexual intercourse between a transferee and another incarcerated person. In two cases, investigators determined allegations of unwanted touching were unfounded because video evidence did not support the claims made against the transferees. In the first case, video evidence showed that the alleged victim and alleged suspect were in different rooms when the incident was reported to have occurred. In the second, investigators reviewed video evidence that did not show the transferee touching the alleged victim in an unwanted sexual manner.

The remaining two PREA allegations we reviewed in which transferees were named suspects also involved claims of unwanted touching. Investigators determined that the allegations were unsubstantiated after interviewing the alleged victims and potential witnesses. In both cases, the potential witnesses denied seeing the transferee grope the alleged victims.

We also reviewed seven cases in which transferees were alleged to be victims of sexual assault. Investigators determined six of the seven cases were unsubstantiated and one incident involved sexual misconduct. Many of the reports in which the transferee was the named victim involved allegations of unwanted touching. For example, in one case, a transferee reported that a nontransferee groped her genitals multiple times while soliciting a sexual relationship. However, despite being in close contact with the alleged victim, none of the potential witnesses told investigators they saw the alleged acts occur.

Prison Investigators Properly Investigated All Allegations of Sexual Misconduct and Sexual and Physical Assault Involving Transferees and Properly Separated Incarcerated People in Response to the Allegations

We found that investigators properly investigated and responded to all 29 incidents we reviewed. In several cases, additional investigation was unnecessary because departmental staff directly witnessed a physical assault, or a transferee engaged in sexual activity with another incarcerated person. However, in instances when PREA violations were alleged or when officers did not directly witness the reported violence, investigators conducted adequate inquiries into the allegations. In addition to conducting appropriate interviews, investigators met with confidential informants, collected physical evidence when available, and used other investigative techniques including reviewing electronic mail, camera recordings, audio recordings, and internal departmental computer databases.

We also found that the department separated the alleged suspects and victims in accordance with law and departmental policy. In particular, the department separated the alleged suspect and alleged victim in each of the 12 reported PREA violations we reviewed. Moreover, none of the alleged victims of sexual assaults were placed in administrative segregation.

However, in one instance both participants in a consensual sexual act were placed in administrative segregation while the department addressed their safety and security concerns. In addition, one transferee who was the victim of physical violence was placed in administrative segregation for approximately six and a half months while the department addressed her enemy concerns.

Because the department adequately investigated the incidents we reviewed, properly separated the alleged suspect and victims in sexual misconduct and sexual and physical assault cases, and properly addressed safety and security concerns, we determined that the department's response to all allegations was appropriate. Nevertheless, none of the incarcerated people found to have committed sexual misconduct or physical battery were referred to a district attorney for prosecution.

The Department Appropriately Responded to Three of the Four Grievances We Reviewed

As we explained earlier in this report, we reviewed all allegations of sexual misconduct and physical battery involving transferees that departmental staff documented. Consequently, if there were any instances in which an incarcerated person alleged misconduct that departmental staff did not document, we could not have discovered it during our review and could not have reviewed the department's response to the allegation.

This is important because if an incarcerated person disputes a decision, an error, or an omission by the department, the incarcerated person may generally file a grievance within 60 days of the incident. We reviewed a sample of grievances filed by incarcerated people at CCWF and CIW to determine whether there was evidence that staff had failed to document and investigate reported allegations of misconduct by or against transferees. Because the department does not track grievances filed against specific individuals, we could not efficiently review grievances filed against transferees. We did, however, select a sample of five grievances filed by transferees and reviewed departmental records to verify whether some incarcerated people who claimed to have filed grievances alleging misconduct by transferees did, in fact, file grievances.

We did not analyze one of the five grievances filed by transferees we selected because it was unrelated to the topic of this report. Of the four we analyzed, we determined that the department took appropriate action in three, and that the department's action in one case was questionable. Specifically, the department properly concluded that one grievance was untimely because the transferee did not file it within 60 days of the incident. In response to another grievance, the department properly interviewed the transferee while investigating her claim that she had been improperly denied a roommate. The transferee ultimately stated that she did not want to pursue the grievance.

The final two grievances we reviewed were filed by a single transferee alleging she had been assaulted on different occasions by different incarcerated people. In the first case, the department properly rejected the grievance after concluding that it was a duplicate of another grievance the transferee had already filed. In the second, the department also rejected the transferee's grievance as a duplicate to grievances previously filed. However, we found no evidence that the department investigated the transferee's original grievance or that it properly responded to the transferee's claim of assault.

As noted above, we also reviewed departmental records to determine whether the department documented and properly investigated grievances against transferees that incarcerated people claimed to have filed. In one case we reviewed, a nontransferee claimed that she filed a grievance after a transferee had repeatedly threatened both her and her family. We reviewed departmental records and could not find evidence that a grievance had been filed. However, the incarcerated person's relative reported the threats, and investigators served the transferee with a "cease and desist order" prohibiting her contact with the incarcerated person's family.

In another instance, an incarcerated person stated that she had filed multiple grievances against transferees. After reviewing the 20 grievances she had filed from February 2021 through June 2023, we did not find specific transferees identified in any of her grievances. However, the department responded to the grievances she had filed expressing general privacy and safety concerns stemming from being housed around transferees.

Finally, we confirmed one incarcerated person's report that she had filed a grievance alleging staff did not respond to her allegation that a transferee touched her in a sexual manner. When we reviewed departmental records, we confirmed that the incarcerated person's grievance had been documented and investigated. Investigators properly categorized the incident as an alleged violation of PREA, reviewed camera recordings, and interviewed both the alleged victim and suspect. Because surveillance video did not verify the allegation, investigators determined the claim to be unsubstantiated.

Recommendations

The Transfer Process

- The department should develop specific criteria for counselors to evaluate gender-based transfer requests.
- Once specific criteria are established, the department should evaluate how long a review should take when applying the new criteria, develop a time line for completing the review process, and communicate those expectations to counselors.
- The department should provide training to counselors on how to complete the transfer request reviews once specific criteria are established.
- The department should develop a plan to reduce the number of prospective transferees waiting for transfer request reviews and a time line for implementing the plan.
- Because the RPRP course is a prerequisite to eligibility for transfer, the department should establish procedures to ensure prospective transferees are not delayed from taking or completing the course because of transfers between hub prisons.
- If specifically asked, the department should share information with prospective transferees about the transfer process and estimate when the prospective transferee may expect to be scheduled for a transfer hearing.
- The department should evaluate and determine whether designating only one men's prison to receive transferees under the Act is sufficient to meet its operational needs.

Bed Change Requests

- All prisons housing TNI people should document in writing the specific reason a TNI person's bed change request was denied to ensure compliance with the Act.
- All prisons housing TNI people should give them a copy of the written reason their bed change request was denied to ensure compliance with the Act.

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The Department's Response and the OIG's Replies

The following paragraphs list the department's responses to the draft version of this report and our replies. Page numbers listed refer to those in the draft and may have changed slightly in this final version of the report.

1. Page 1, Paragraph 5, Sentence 1

The department: "Incarcerated people who request a transfer under Senate Bill 132 are recommended for approval or denial for transfer by the Institution Classification Committee ~~approved or denied by the Institution Classification Committee for transfer at a hearing~~ following an extensive review of their entire criminal and administrative disciplinary history."

The OIG: We partially agree with suggested edit. Duplicative text is removed, but we will use the term "transfer hearing" for clarity and readability.

2. Page 1, Paragraph 5, Sentence Last

The department: Draft report states: "If the committee approves the transfer, the decision is reviewed at the department's Headquarters and, if confirmed, the transfer order is forwarded to the sending and receiving prisons."

CDCR recommends: "If the Institution Classification Committee (ICC) recommends the transfer, the case is referred to the Classification Staff Representative and if approved, the sending and receiving institutions are notified. The SB132 unit assists with tracking and coordinating the transfer."

The OIG: We partially agree with the suggested edit. Text is revised to show the recommendation to allow is forwarded to a CSR. The remaining text was not revised.

3. Page 2, Paragraph 2, Sentence 1

The department: "The use of the term 'transfer hearings' is used throughout the document. SB132 cases are reviewed by an Institution Classification Committee. OIG is labeling this a transfer hearing. In order to be consistent with our terms we recommend that instead of using 'transfer hearings' they note that it is an ICC."

The OIG: We disagree with the suggested edit and will use the term "transfer hearing" for clarity and readability.

4. Page 2, Paragraph 4

The department: "All ICC's must articulate the basis for denial and the specific reasons should be listed. CDCR would like to inquire as to whether the cases OIG referenced, that did not include that information, occur prior to the SB 132 units completing the ICC?"

The OIG: Requested information was provided to the department on August 24, 2023.

5. Page 2, Paragraph 6, Sentence 2

The department: “Especially concerning to the incarcerated people we interviewed was showering around transferees, particularly those who have not had gender **reassignment** affirming surgery.”

CCHCS recommends the language be updated to: “‘gender affirming surgery’ AND clarify if the people are referencing genital surgery or not. Additionally, not every person can and wants to have genital gender affirming surgery, and that should be taken into consideration and highlighted in the report. Transition is individualized, complex and deeply personal for each person.”

The OIG: We partially agree with the suggested edit. Text is revised to use the term “gender-affirming surgery.” However, the concern expressed is personal to nontransferees and the perspective raised in the report. The remaining text was not revised.

6. Page 5, Paragraph 1, Sentence 2

The department: **Draft Report states:** “in California’s prison system who do not identify as strictly male or female.² [footnote 2: The OIG’s report on the department’s preparation prior to the passage of SB 132 can be found at <https://www.oig.ca.gov/wp-content/uploads/2020/09/Special-Review-Incarcerated-Transgender-Nonbinary-Intersex-Individuals.pdf>.”

CCHCS recommends the language be updated: “‘to improve conditions for incarcerated people in California’s prison system for people who are transgender, nonbinary or intersex or not identifying with their gender assigned at birth,’ as many transgender people do identify as women or men, and nonbinary, but their identity does not match their gender assigned at birth.”

The OIG: We disagree with the suggested edit. The qualifying term “strictly” is intended to help summarize the intent of the law and the population the law was intended to help for clarity and readability.

7. Page 5, Paragraph 3, Sentence 2

The department: **Draft Report states:** “The transfer process begins when TNI people complete a Gender Identity Questionnaire (GIQ) declaring both their gender identity and wish to be housed at a prison that matches their gender identity.”

The department recommends the following revision: “Incarcerated people are asked to complete the GIQ upon entry to the California State prison system or when subsequently reincarcerated, this serves as the source document to identify an incarcerated person’s gender identity and housing preference.”

The OIG: We disagree with the suggested edit. The text identifies the beginning of the transfer process, and the suggested language is contained in the next sentence of the report.

8. Page 6, Figure 1

The department: **Draft report states:** “The department holds a transfer hearing with the incarcerated person and either approves or denies the request.”

CDCR recommends updating the sentence to the following: “The department holds an ICC with the incarcerated person and makes recommendations for approval or denial of the request.”

“If denied... We recommend the language for the first denied box be modified to: ‘The ICC notifies the incarcerated person of the incarcerated person’s right to appeal during committee. The incarcerated person has 60 days to appeal the decision.’”

“CDCR would like to note the use of the term ‘transfer hearings’ is used throughout the document. SB132 cases are reviewed by an Institution Classification Committee. OIG is labeling this a transfer hearing. In order to be consistent with our terms, we recommend updating the term to ICC.”

“CDCR recommends modifying box 2, under approved to: ‘If the CSR does not find issues that would require the department to rehear the transfer request, the Classification Staff Representative approves the transfer.’”

“CDCR recommends modifying the 4th green box to: ‘The incarcerated person participates in a 14 day orientation process and receives a new CDCR identification number.’”

“CCHCS requests to include that both for approvals and denials, Mental Health completes an Urgent follow up with a Mental Health Clinician to process the decision with the patient.”

The OIG: We partially agree with suggested edit. The figure is revised to clarify the approval recommendation process. However, OIG will use the term “transfer hearing” for clarity and readability. The remaining text was not revised.

9. Page 7, Paragraph 1, Sentence 1

The department: **Draft Report states:** “After declaring their gender identity as TNI, incarcerated people may be relocated to one of thirteen hub prisons (as shown on the map on the next page).⁴ [footnote 4: In some cases, TNI people are not transferred to a hub prison if they pose a safety or security risk at the hub prison.]”

CDCR recommends: “After declaring their gender identity as TNI, incarcerated people are referred to a classification committee for review of all case factors and determination of appropriate institutional placement and housing assignment. In order to ensure incarcerated people receive the necessary medical care/mental health treatment, they are housed at one of the thirteen hub prisons.”

The OIG: We partially agrees with the suggested edit. Text was added to the “Roles and Responsibilities” section of the report clarifying the services available at hub prisons. The remaining text was not revised.

10. Page 7, Paragraph 2, Sentence 2

The department: **Draft Report states:** “During the review process, the counselor arranges a mental health assessment for prospective transferees and prepares a summary of transferees’ entire criminal history and their history with the department for presentation at an Inmate Classification Committee (transfer hearing).”

CDCR recommends: “During the review process, the counselor arranges a mental health assessment for prospective transferees and prepares a summary of transferees’ entire criminal history and their history with the department for review by the Institution Classification Committee.”

The OIG: We disagree with the suggested edit and will use the term “transfer hearing” for clarity and readability.

11. Page 7, Paragraph 2, Sentence Last

The department: **Draft Report states:** "...management or safety concerns"

CDCR would like to note: "Language of PC 2606 is 'management or security concerns' and the quote in the report does not have a citation. 2606 (4) (b)"

The OIG: We agree with the suggested edit. Text is revised.

12. Page 7, Paragraph 3, Sentence 1

The department: **Draft Report states:** "If the transfer is approved, the counselor forwards the hearing results to the department's Classification Services Unit for final confirmation."

CDCR recommends: "If the transfer is recommended, the institution forwards the case to the CSR for approval. Once the gender based housing review has been approved, the SB 132 CCII notifies the sending and receiving institution and oversees that the transfer is completed and notifies stakeholders."

The OIG: We partially agree with the suggested edit. Text is revised to reflect approval recommendation, but remaining text was not revised.

13. Page 7, Paragraph 4, Sentence Last

The department: **Draft Report states:** "If the department denies the appeal, the prospective transferee's only recourse is to pursue a remedy in the court system."

CDCR recommends: "If after the incarcerated person has exhausted the appeal process, the perspective transferee's only recourse is to pursue a remedy in the court system."

The OIG: We disagree with the suggested edit. Text was not revised.

14. Page 7, Paragraph Last, Sentence 2

The department: **Draft Report states:** "Specifically, a prison may refer a transferee who subsequently raises management or security concerns to the Departmental Review Board to determine whether they will be returned to their original prison."

CDCR recommends: "Specifically, the institution will conduct an ICC and may refer a transferee who subsequently raises management or security concerns to the Departmental Review Board to determine whether they will be returned to their original prison."

The OIG: We disagree with the suggested edit and will use the term "transfer hearing" for clarity and readability.

15. Page 10, Paragraph 1, Sentence 2

The department: **Draft Report states:** "...mental health professional for an evaluation intended to assess their overall mental health but not to diagnose ~~gender identity disorders~~ Gender Dysphoria."

CCHCS recommends consider using language such as: "but not to evaluate for the absence or presence of meeting criteria for Gender Dysphoria as in The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition."

The OIG: We disagree with suggested edit and will use the term "gender identity disorders" for clarity and readability.

16. Page 12, Paragraph 4, Sentence 3

The department: **Draft Report states:** “The counselors, however, do not receive formal training on how to complete a gender-based transfer review. Instead, counselors follow a hearing template for the categories of information they are required to assess and rely on their experience to complete the review.”

“CDCR would like it noted each counselor assigned to the SB132 unit received training on the completion of the template. The Department also provides formal training for counselors on how to complete casework and file reviews.”

The OIG: We partially agree with the suggested edit. Evidence from multiple sources supports the assertion that counselors in the SB 132 unit do not receive formal training on completing gender-based reviews. However, text was revised to reflect that counselors receive training on completing the review template.

17. Page 13, Paragraph 2, Sentence 1

The department: **Draft Report states:** “The SB 132 unit consists of four counselors, three mental health (MH) representatives, a captain, and an associate warden. Counselors are assigned a region of the State..”

CDCR would like to note: “The SB 132 unit does not have 3 MH representatives assigned to the unit. We work in collaboration with MH, who provides 2 MH representatives.”

The OIG: We agree with the suggested edit. Text is revised.

18. Page 13, Paragraph 3, Sentence 1

The department: **Draft Report states:** “Counselors are responsible for arranging a mental health evaluation for the prospective transferee.”

CDCR Recommends: “Counselors are responsible to notify mental health representatives that an evaluation is needed for the prospective transferee.”

CCHCS would like to note: “There are two clinicians that facilitate the mental health evaluations to be done at the institutions and provide technical and clinical support to the evaluators at the institutions.”

The OIG: We disagree with the suggested edit. Text was not revised.

19. Page 16, Paragraph 1, Sentence 1

The department: “The word backlog used in multiple areas. It should be noted that the incarcerated people are pending ICC or in process, and are not considered backlogged. Currently Gender Based Housing Reviews do not have a set time constraint just like other ICC’s with the exception of Administrative Segregation Unit.”

The OIG: We disagree with the suggested edit. The term backlog is defined as uncompleted work not by time constraints.

20. Page 16, Paragraph Last

The department: “All ICC’s must articulate the basis for denial and the specific reasons should be listed. CDCR would like to inquire as to whether the cases OIG referenced, that did not include that information, occur prior to the SB 132 units completing the ICC?”

The OIG: Requested information was provided to the department on August 24, 2023.

21. Page 17, Paragraph 2, Sentence Last

The department: **CDCR would like to note:** “A word seems to be missing in the last sentence... ‘histories, we the department issues inconsistent decisions in these two cases.’ It appears maybe the word ‘believe’ or something similar should be placed between ‘we’ and ‘the.’”

The OIG: We agree with the suggested edit. Text is revised to correct typographical errors.

22. Page 25, Paragraph 1, Sentence 3

The department: **Draft Report states:** “In addition, nontransferees at both prisons specifically expressed concern over showering around transferees, particularly those who have not had gender ~~reassignment~~ affirming surgery.”

“CCHCS recommends the language be updated AND clarify if the people are referencing genital surgery or not. Additionally, not every person can and wants to have genital gender affirming surgery, and that should be taken into consideration and highlighted in the report. Transition is individualized, complex and deeply personal for each person. Nontransferees may be referring to genital surgery. Please update language ‘reassignment’ to ‘affirmation.’”

The OIG: We partially agree with the suggested edit. Text will be revised to use the term “gender-affirming surgery.” However, the concern expressed is personal to nontransferees and the perspective raised in the report. The remaining text was not revised.

23. Page 25, Paragraph 4, Sentence 2

The department: **Draft Report states:** “For example, incarcerated people can report their safety or security concerns to departmental staff and may file a grievance if their concerns are not resolved. An incarcerated person with safety and security concerns can also request a bed change to another living space ~~or to temporary restrictive housing.~~”

CDCR would like to note: “Incarcerated people can request a bed change to another living space. Requests for moving to temporary restrictive housing area is ordered by the Lieutenant based on reported safety or security concerns.”

The OIG: We agree with the suggested edit. Text is revised.

24. Page 30, Paragraph 4, Sentence 3

The department: **Draft Report states:** “Because not all transferees have undergone gender ~~reassignment~~ affirming surgery, the potential exists for pregnancies resulting...”

“CCHCS recommends the language be updated from ‘reassignment’ to ‘affirming’ AND indicate that specifically that the report is referring to gender affirming surgery of the genitals. There are multiple and various gender affirming surgeries that a person can request and undergo, and it is important to indicate that specifically genital surgery is what is referenced.”

The OIG: We partially agree with the suggested edit. Text will be revised to use the term “gender-affirming surgery.” However, the concern expressed is personal to nontransferees and the perspective raised in the report. The remaining text was not revised.

25. Pages All

The department: “CCHCS recommends consider renaming ‘SB 132’ to TRADA (Transgender Respect, Agency & Dignity Act) where it humanizes the act and instead of a bill number which is being re-used by the legislature, i.e., new bills will be introduced using that number.”

The OIG: We disagree with the suggested edit. The text refers to the Transgender Respect, Agency & Dignity Act as “the Act” and was not revised.

Appendix

Scope and Methodology

California Penal Code section 6126, subdivisions (b) and (c) authorize the OIG to initiate reviews of the department's policies, practices, and procedures. This review was initiated following receipt of a letter signed by four members of the California State Senate, raising concerns about the department's implementation of Senate Bill 132 (Chapter 182, Statutes of 2020), the Transgender Respect, Agency, and Dignity Act.

The review assessed the department's process for reviewing transgender, nonbinary, or intersex incarcerated people's requests to be housed at a prison designated for men or women based on their individual preference, the department's policies and procedures for ensuring safety and security of the incarcerated population after transferees arrived at two women's State prisons, and whether any sexual assault allegations or disciplinary actions for illegal sexual acts occurred involving transferees at women's prisons.

The table on the following two pages presents the objectives of our review and the methods we used to address them.

Table A–1. The OIG’s Objectives and the Methods Used to Address Them

| Review Objectives | Methodology |
|--|--|
| <p>1. Evaluate the department’s process for reviewing transfer requests and housing preferences of transgender, nonbinary, or intersex incarcerated people to determine:</p> <p>a. Factors the department considers when determining whether to grant a transfer pursuant to SB 132.</p> <p>b. Reasons the department denies transfer requests.</p> <p>c. Whether the department certifies in writing a specific and articulable basis it is unable to accommodate a housing preference.</p> <p>d. Whether the department provides the individual whose transfer request was denied with a meaningful opportunity to verbally raise any objections to that denial, and have those objections documented.</p> <p>e. What steps the department takes to ensure the health and safety of incarcerated people if their requests to transfer are denied.</p> <p>f. Determine whether the department’s time frames for processing SB 132 transfer requests are reasonable.</p> | <ul style="list-style-type: none"> • Reviewed and analyzed policies, guidance, and directives issued by the department relative to the department’s implementation of Senate Bill (SB) 132, including transfer requests, transfer process, criteria for determining transfer eligibility, incarcerated person grievances, procedures for housing transferees after transfer, and ensuring safety of transferees both before and after transfer. • Reviewed information submitted to the OIG by stakeholders including the American Civil Liberties Union, the Women’s Liberation Front, Freeman Mathis and Gary LLP, and Medina Orthwein LLP regarding the SB 132 transfer request process. • Interviewed executive staff, supervisory staff, medical staff, and Institutional Classification Committee (ICC) staff responsible for reviewing transfer requests and housing of transferred incarcerated people to determine what factors the department considers when determining whether to grant a transfer pursuant to SB 132 and staff responsible for investigating complaints of violence or threats against incarcerated people. • Interviewed incarcerated people who have transfer requests pending, those denied transfer, and those who have been transferred, regarding their experiences with the SB 132 transfer request process, and experiences as a TNI individual pre- and post-SB 132. • Reviewed all SB 132 transfer requests from January 1, 2021, through December 31, 2022, to determine the following: the time frames for processing requests and whether they are reasonable; how many transfer requests were made; how many transfer requests are pending; stage of pending transfer requests; number of transfer requests denied; number of transfer requests allowed; whether there is documentation that those individuals denied transfer were given information on submitting a grievance. • Reviewed a sample of denied and allowed SB 132 transfer requests from January 1, 2021, through January 30, 2023, and supporting documentation to determine what factors the department considered when deciding transfer requests; the reasons transfer requests were denied; the reason transfer requests were allowed; whether the department’s decisions are consistent; time lines from initiating the transfer requests through appeal; whether incarcerated people were given right-to-appeal denials of transfer requests; and whether a specific and articulable basis for the denial documented whether a posttransfer housing assignment request was denied. • Interviewed executive staff, supervisory staff, and correctional officers regarding the posttransfer housing of transferees at CIW and CCWF to determine what procedures were implemented to accommodate housing assignment preferences after transfer; criteria for assigning housing reasons for denying requested housing assignments; and how the safety concerns of TNI incarcerated people related to housing assignments are addressed. • Interviewed SB 132 transferees, who have been granted or denied housing preferences after transfer regarding the housing request process to determine their perception of the fairness of the process, whether their safety concerns related to housing assignments were timely addressed, and whether they feel safe in their housing assignments. • Observed ICC hearings to determine: whether incarcerated people were given the opportunity to adequately present their requests for transfer; the factors the committee considers when determining whether to grant or deny a transfer request; whether the reasons for allowing or denying transfer requests were explained to the incarcerated people; whether incarcerated people received a copy of the ICC chrono at the conclusion of the hearing; whether those denied transfer were notified of the grievance process; and whether individuals whose transfer request was denied are given a meaningful opportunity to verbally raise any objections, and have those objections documented. |

Continued on next page.

Table A-1. The OIG's Objectives and the Methods Used to Address Them (Continued)

| Review Objectives | Methodology |
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| <p>2. Evaluate the department's policies and procedures for ensuring the safety and security of the incarcerated populations at the Central California Women's Facility (CCWF) and the California Institution for Women (CIW) after the arrival of SB 132 transferees.</p> | <ul style="list-style-type: none"> • Reviewed policies, guidance, and directives issued by the department concerning the safety and security of the incarcerated populations after the implementation of SB 132. • Analyzed whether existing policies are appropriate and sufficient to ensure the safety and security of incarcerated people at CIW and CCWF. • Interviewed executive staff, supervisory staff, medical staff, and ICC staff who are responsible for reviewing transfer requests and housing of transferred incarcerated people. We asked about safety and security concerns (before and after transfers) raised by SB 132 transferees and what measures, if any, were taken to address the concerns. • Interviewed pertinent incarcerated people regarding safety and security concerns related to incoming SB 132 transferees; what actions were taken, if any, to prepare incarcerated people for incoming transferees; what safety and security concerns remain. • Observed housing accommodations at CIW and CCWF to determine how safety and security are maintained; determine what accommodations are made, if any, for incarcerated people who request housing separate from transferees and how those requests are handled; determine how safety and security are addressed in different settings including restrooms, showers, and dressing areas; understand the housing options and current placement of TNI individuals at CIW and CCWF to assess the adequacy of safety and security of non-TNI incarcerated people. |
| <p>3. Determine whether any incidents, such as sexual assault allegations or disciplinary actions against incarcerated people for illegal sexual acts, occurred involving any SB 132 transferees.</p> <p>a. Were investigations into the incidents conducted, and were they adequate?</p> <p>b. Were the department's responses to allegations of misconduct appropriate?</p> | <ul style="list-style-type: none"> • Reviewed the department's policies, guidance, and directives for investigating allegations of sexual assault or sexual misconduct to determine the total number of allegations made involving SB 132 transferees from January 1, 2021, through December 9, 2022, whether an investigation was conducted into each allegation, and whether the investigations were adequate. • Interviewed Investigative Services Unit staff at selected prisons to understand allegations made against SB 132 transferees, how such allegations are investigated, and how, if at all, the department responded to allegations of misconduct. • Determined the total number of allegations and the number of sustained allegations involving SB 132 transferees after transfer. The allegations reviewed included sexual assault, sexual battery, behavior that encourages illegal sexual acts, consensual participation in oral copulation, sexual disorderly conduct, indecent exposure, assault, and battery. • Determined whether the department investigated each allegation in the categories identified above by reviewing a random sample of incident reports from each category for adequacy and determining whether postinvestigation outcomes were appropriate. • Interviewed incarcerated people who had reported allegations involving SB 132 transferees to determine whether they had concerns with the handling of the allegations. |

Source: The Office of the Inspector General.

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Special Review

The California Department of Corrections and Rehabilitation's Implementation of the Transgender Respect, Agency, and Dignity Act

OFFICE *of the*
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OIG