Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

### A. GENERAL INFORMATION

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<td>03/21/2022</td>
<td>California Department of Corrections and Rehabilitation</td>
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3. Organizational Placement (Division/Branch/Office Name)
Office of Legal Affairs/Employment Law Group/Employment Advocacy and Prosecution Team

4. CEA Position Title
Assistant Chief Deputy General Counsel

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)
The Assistant Chief Deputy General Counsel serves as the highest-level legal advisor of the Employment Advocacy and Prosecution Team (EAPT) and will be responsible for centralized leadership, strategic oversight and policy development of the statewide operations of the EAPT for matters designated through the Centralized Screening Team (CST) process for the California Department of Corrections and Rehabilitation (CDCR). EAPT ensures that the department is legally, consistently and objectively evaluating allegations of misconduct to ensure the safety of individuals in the Department's care, so they may be successfully integrated into society.

6. Reports to: (Class Title/Level)
Chief Deputy General Counsel, Office of Legal Affairs / CEA, Level C

7. Relationship with Department Director (Select one)
- [ ] Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- [x] Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain): Advises the Chief Deputy General Counsel, Office of Legal Affairs, the executive leadership team and the extended executive management team within the Department on the legality of allegations and investigations, and develop, formulate and implement policy in all employee discipline programs which are under intense scrutiny by the federal court, legislature, media, and public. They will also provide legal insight on all issues related to administrative investigations and employee discipline.

8. Organizational Level (Select one)
- [x] 4th
- [ ] 1st  [ ] 2nd  [ ] 3rd  [ ] 5th (mega departments only - 17,001+ allocated positions)
9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The CEA is responsible for the management and supervision of staff dedicated to investigating allegations of staff misconduct toward incarcerated persons and parolees and completing confidential investigative reports; reviewing inquiry reports completed by Locally Designated Investigators at institutions and parole regions, and tracking the stages of the staff misconduct inquiry and investigation process from identification by the Centralized Screening Team to final submittal of inquiry and investigation reports to hiring authorities. Provide general oversight and coordination of the regional Allegation Investigation Unit (AIU) offices and assume responsibility and accountability ensuring unbiased, objective, efficient, timely and accurate interpretation and application of laws, rules, and administrative standards related to conducting investigations and completing investigations related to allegations of staff misconduct toward incarcerated persons and parolees. Management and oversight of policy development and implementation, program planning, program analysis, budget monitoring, funding proposals and development, and investigation coordination.

Duties include, but are not limited to:

- Ensure ongoing system-wide compliance with court-ordered Armstrong, Clark, Madrid, and Plata remedial plans through formulation of policies and procedures to maintain consistent evaluation staff misconduct allegations; appropriate assignment of investigations; standardization of procedures; timeliness of statutes; enforcement of mandated training to all staff to meet industry standards including firearms, defensive tactics, and legal use of force; and monitoring status of investigations into allegations of staff misconduct conducted by OIA.

- Establish guidelines, priorities, and management systems to ensure an efficient and effective investigation operation; develop policies and procedures as they relate to investigations into allegations of staff misconduct; evaluate the impact of laws, rules and court decisions on the investigation process; and identify and recommend changes to departmental policies which may contribute to situations where misconduct has been alleged.

- Develop the OIA AIU Field Guide to provide direction and information to field staff related to applicable procedures and processes, and to ensure compliance with court decisions, laws, rules, regulations, and policy and procedure. Develop and implement policies related to interaction with internal and external stakeholders related to the staff misconduct investigation policies and procedures.

- Serve as a top advisor to Department management on staff misconduct investigation issues; and oversee the investigations routed to OIA-AIU by the Centralized Screening. Update the Deputy Director, OIA on matters requiring resolution with hiring authorities or external stakeholder inquiries.

- Track data that can be used by Enterprise Risk Management to develop indicators to identify high-risk employees, institutions, and program areas within the Department. Apprise Department management of potential legal liabilities incurred due to inconsistent and/or inappropriate application of laws, policies, procedures, etc. Develop and recommend solutions when appropriate. Testify in State and federal court and before the Legislature regarding the Department’s internal affairs investigation process. Identify proposed changes in Memorandums of Understanding, laws, rules, and policies relative to the staff misconduct investigation procedures and related processes.

- Participate in the development, implementation, and evaluation of the departmental strategic and operational plans; and serve as liaison to maintain effective working relationships with federal, State, legislative, departmental and external stakeholders.
B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.  

- Program is indirectly related to department's primary mission.

- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The mission of the California Department of Corrections & Rehabilitation (CDCR) is to facilitate the successful reintegration of the individuals in our care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, rehabilitative, and restorative justice programs, all in a safe and human environment.

EAPT handles employee discipline, and does so utilizing a vertical advocacy model. EAPT participates in internal investigations and provides advice to the investigators throughout the investigation, provides legal advice to the Department's decision makers regarding whether to impose discipline and what discipline should be imposed, prosecutes employee discipline (including preparation of all necessary adverse actions), litigates employee appeals of discipline before the State Personnel Board and before superior and appellate Courts, litigates requests to file charges and whistleblower complaints before the State Personnel Board, and interfaces with the Office of the Inspector General regarding investigations and discipline of employee misconduct.

The Assistant Chief Deputy General Counsel is responsible for supervising and managing EAPT operations for matters designated through the EAPT Centralized Screening Test process for CDCR. They also recommend policy impacting the operations of EAPT and the Office of Legal Affairs (OLA), and ensures that the Department is consistently and objectively evaluating allegations of employee misconduct, of which is directly related to the Department's mission, to ensure the safety of individuals in our care.
11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

1. Armstrong v. Newsom Court Order & Compliance. In September 2020, the United States District Court ordered CDCR in Armstrong v. Newsom (No.4:94-cv-02307-CW N.D. Cal.) to develop measures in order to reform its staff complaint, investigation, and discipline processes. The court order expands the responsibility of the Office of Legal Affairs (OLA) to provide legal support with investigations on not only staff complaints likely to lead to adverse action, but also alleged violations of staff misconduct pertaining to other categories such as ADA, ARP, Health Care, Use of Force, and the Prison Rape Elimination Act, requiring significant development of new policy for OIA.

2. Office of the Inspector General (OIG) Report Findings. As a result of report findings from the OIG in December 2020, the OIA established new executive-level initiatives related to allegations of staff misconduct to be implemented across all statewide prisons. These initiatives are driven from the directive to ensure investigations into serious allegations of staff misconduct are conducted by staff that are a separate, independent and objective entity outside of the prisons. To maintain objectivity, OIA staff in charge of serious staff complaint inquiries and investigations are no longer located within institutions where they would be more susceptible to local bias and influence from working relationships with the staff they investigate. This requires an increased level of policy-setting authority, increased resources, and a divisional reorganization to support this effort.

Additionally, as a result from the OIG report findings and in an effort to demonstrate CDCR’s commitment to providing independent, objective, industry-standard investigations into allegations of staff misconduct toward incarcerated persons and parolees and our commitment to providing fact-based reports to the hiring authority for an appropriate decision, in an effort to support the OIG finding, the OLA is requesting the addition of the CEA.

Due to the OIG report findings, additional legal counsel will be required to support the increase in workload providing legal support to the OLA's EAPT and will be responsible for overseeing the operation of the Vertical Advocacy Model associated with employee disciplinary matters and matters relating to the Department’s internal affairs investigations designated through the Office of Internal Affairs (OIA) and will address management needs through the Centralized Screening Team (CST) process.

Effective March 1, 2022 the OLA has received 18 budgeted positions for the EAPT. Additionally, 42 budgeted positions are anticipated to be approved come July 1, 2022 for EAPT. These positions are noted on the proposed organizational chart enclosed in this CEA allocation request package.
C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

1. Legal and Policy Advice, Office of Legal Affairs
The Assistant Chief Deputy General Counsel will create policy and make decisions relating to risk management and litigation of employee disciplinary matters for the Department, including, the Division of Adult Institutions, Division of Adult Parole Operations, and California Correctional Health Care Services. The Assistant Chief Deputy General Counsel will oversee OLA attorneys who will advise CDCR regarding employee discipline and risk management, as well as litigate employee discipline, including evidentiary hearings before the State Personnel Board, and writs before superior and appellate courts.

2. EAPT Training Policy
As part of The Employment Advocacy and Prosecution Team (EAPT), the Assistant Chief Deputy General Counsel will be responsible for creating new policy, as well as revising existing training policy regarding the investigation and prosecution of employees who have engaged in misconduct as specified in the Government Code. They will be responsible for identifying and implementing training that is specific to the CST program in order to ensure compliance with the requirements of the Armstrong Remedial Plan.

3. Investigation and Discipline Process Policies
The Assistant Chief Deputy General Counsel will oversee the disciplinary unit and will be making recommendations regarding the investigation and discipline process and will be responsible for the implementation of process changes arising out of policy changes. As part of ongoing monitoring or review by outside stakeholders, including the OIG and under the Armstrong Remedial Plan, OIA’s policies and procedures will be subject to evaluation. The Assistant Chief Deputy General Counsel will make recommendations to CDCR’s and OIA’s leadership, regarding changes to the policies and procedures that govern the CST program, and will assist in identifying training for the investigators in OIA’s CST program.
C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The Assistant Chief Deputy General Counsel exercises high-level policy and decision-making authority for statewide programs and program support functions. Decisions made by the Assistant Chief Deputy General Counsel impacts adult institutions, parole regions, and department-wide operations. The Assistant Chief Deputy General Counsel is responsible for developing, implementing, and/or revising policies and procedures governing institutional operations relative to the Office of Legal Affairs and allegations of staff misconduct toward incarcerated persons and parolees on a statewide basis and enables the department to make disciplinary decisions and support those decisions through the discipline/appeal process. Decisions made by the incumbent will affect current and future inmates, parolees, Department employees, and the general public statewide.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The Assistant Chief Deputy General Counsel will develop, implement and interpret new and existing policy relating to risk management and litigation of employee disciplinary matters for the Department, including, the Division of Adult Institutions, Division of Adult Parole Operations, and California Correctional Health Care Services – in the following ways:

- Will oversee OLA attorneys who will advise CDCR regarding employee discipline and risk management, as well as litigate employee discipline, including evidentiary hearings before the State Personnel Board, and writs before superior and appellate courts.
- Will be responsible for creating new policy, as well as revising existing training policy regarding the investigation and prosecution of employees who have engaged in misconduct as specified in the Government Code.
- Will be responsible for identifying and implementing training policy that is specific to the CST program in order to ensure compliance with the requirements of the Armstrong Remedial Plan. Investigation and Discipline Process Policies.
- Will oversee the disciplinary unit and will be making policy recommendations regarding the investigation and discipline process and will be responsible for the implementation of process changes arising out of policy changes.
- As part of ongoing monitoring or review by outside stakeholders, including the OIG and under the Armstrong Remedial Plan, OIA's policies and procedures will be subject to evaluation. The Assistant Chief Deputy General Counsel will make recommendations to CDCR's and OIA's leadership, regarding changes to the policies and procedures that govern the CST program, and will assist in identifying training for the investigators in OIA's CST program.