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

1. Date
   08/23/2022

2. Department
   California Department of Corrections and Rehabilitation

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, CIU

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, Central Intake Unit (CIU) serves as a high-level legal advisor of the Employment Advocacy and Prosecution Team (EAPT) and will be responsible for the management and oversight 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) Central Intake Unit (CIU) process process. This position is also responsible for the formulation and implementation of policies, procedures, and protocols pertaining to the Central Intake Unit (CIU) process. The position reports to the Chief Deputy General Counsel, EAPT, Office of Legal Affairs (OLA). EAPT ensures that the cases that arise out of the CIU process are 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, and to ensure accountability of staff for any misconduct engaged in.

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.
   ✔ 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 employee disciplinary matters relating to the Department's internal affairs investigations designated through the OIA CIU process. Provides legal advice and recommendations on issues and cases arising through the Central Intake Unit (CIU) process, including recommendations regarding CIU's policies as they relate to the Department's consistent evaluation of cases.

8. Organizational Level (Select one)
   □ 1st  □ 2nd  □ 3rd  ✔ 4th  □ 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 Office of Legal Affairs (OLA), Employment Advocacy and Prosecution Team (EAPT) is responsible for 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) Central Intake Unit (CIU) process and Centralized Screening Team (CST) process. Under the general direction of the Chief Deputy General Counsel, EAPT, the Assistant Chief Deputy General Counsel, CIU is responsible for supervising and managing the operations of the EAPT for EAPT matters designated through the CIU process for the California Department of Corrections and Rehabilitation (CDCR). The Assistant Chief Deputy General Counsel, CIU organizes, directs, coordinates, reviews and monitors EAPT’s CIU process legal caseload; recommends policy impacting the operations of EAPT or OLA; and may act in the absence of the Chief Deputy General Counsel. The Assistant Chief Deputy General Counsel, CIU directly supervises EAPT’s Assistant General Counsels (AGC) and attorneys assigned to cases arising out of the Central Intake process.

Duties include, but are not limited to:

Assigns, directs, and monitors the work of EAPT legal staff, including the litigation and administrative hearings occurring in Federal and State Courts and before the State Personnel Board (SPB) and Administrative Law Judges (ALJ); participates in hiring and provides recommendations regarding termination of EAPT attorneys and office staff; supervises the EAPT attorneys assigned to provide legal advice to hiring authorities prior to submission of matters to the CIU process; evaluates performance of supervisory and attorney staff and recommends appropriate action. Provides recommendations regarding revisions to policy impacting EAPT operations in general. Makes policy decisions relating to EAPT operations specific to cases arising out of the CIU process.

Provides legal expertise during the OIA CIU process. Provides direction to attorneys assigned to Central Intake whom review cases, case designations and provide legal advice to OIA. Reviews CIU decisions, identifies matters that require investigative work beyond what was authorized by CIU, and elevates decisions of CIU to OIA management and leadership for review and management action. Provides advice regarding policies and procedures as they relate to employee misconduct investigations. Evaluates the impact of laws, rules and court decisions on the investigative process and Department policies, and makes recommendations regarding modifications to the process or policies based on legal changes.

Provides direction to the EAPT AGCs and other professional staff for particular cases of a complex nature; interacts with program and legal management of CDCR and other departments, the Office of the Inspector General (OIG), and other public and private entities.

Provides legal advice to executive staff, hiring authorities, and other staff on issues relating to employee discipline matters; formulates legal strategies and recommendations for management action; personally performs assignments on high profile or high sensitivity matters. Provides advice to departmental management of potential legal liabilities resulting from employee misconduct, or the investigation or disciplinary processes. Attends various stakeholder meetings and performs other legal work as required.
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 humane 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, CIU is responsible for supervising and managing EAPT operations for matters designated through the EAPT Central Intake Unit 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.
B. SUMMARY OF REQUEST (continued)

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. EAPT has become drastically larger as a result, which requires OLA to effectively manage and implement the two sides of the EAPT practice, one of which being the Central Intake Unit (CIU)-dedicated side.

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 CIU 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.

3. Since the inception of EAPT within OLA, there has been a 23% increase in caseload volume. OIA has seen an overall increase in matters submitted for discipline, and the cases have become more complicated due to the number of employees-subjects or the nature of those cases, so the Department is requiring counsel's assistance.

EAPT has not increased staffing during this time, therefore the workload has become unmanageable and thus, has prompted the request for a multi-year staffing increase request and a reorganization of the EAPT.

4. Along with the changes to OLA's structure, additional staffing is required at all levels within OLA. A reorganization was recommended to effectively manage the two sides of EAPT's practice. The CIU analyzes, classifies and assigns the investigation to a regional internal affairs office or returns to the hiring authority for local resolution. The OLA EAPT provides legal advice to the CIU about whether their decisions are correct. These changes within OLA necessitated the establishment of two Career Executive Assignment (CEA) positions, Assistant Chief Deputy General Counsel, Allegation Investigation Unit (AIU) [concept established May 2022] and this concept, Assistant Chief Deputy General Counsel, Central Intake Unit (CIU). The re-organization structure aligns with the structure of the Office of Internal Affairs (OIA). Due to the critical need to maintain the standards achieved through the court reforms mandated, CDCR OLA is requesting an additional CEA position to be responsible for the statewide formulation and implementation of policies, procedures, and protocols pertaining to the Central Intake Unit (CIU).

EAPT is to receive an additional 10 budgeted positions that are anticipated to be approved July 1, 2022. The positions will be funded over the next three fiscal years. These positions are to address the increased workload and enable OLA to provide a more thorough investigative service on most EAPT designated cases. 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, CIU will plan, develop, implement, administer, and interpret statewide policies and procedures relative to CDCR's risk management and litigation of employee disciplinary matters for the Department via the CIU process, including, the Division of Adult Institutions, Division of Adult Parole Operations, and California Correctional Health Care Services. The Assistant Chief Deputy General Counsel, CIU 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 CIU Training Policy

As part of The Employment Advocacy and Prosecution Team (EAPT), the Assistant Chief Deputy General Counsel, CIU will be responsible for developing, implementing, administering new policy relating to the CIU process, 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.

3. Investigation and Discipline Process Policies

The Assistant Chief Deputy General Counsel, CIU 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. The Assistant Chief Deputy General Counsel, CIU will make recommendations to CDCR's and OIA's leadership, regarding changes to the policies and procedures that govern the Central Intake Unit process, and will assist in identifying training for the investigators in OIA's CIU.
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, CIU requires a high-level of independent judgment and has full decision-making authority regarding policy for statewide policies and procedures relative to CDCR's investigation and disciplinary processes for cases arising out of the CIU process. Decisions made by the Assistant Chief Deputy General Counsel, CIU impacts adult institutions, parole regions, and department-wide operations. The Assistant Chief Deputy General Counsel, CIU 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 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, CIU will develop, implement and interpret new and existing policy relating to risk management and litigation of employee disciplinary matters via the CIU process 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 cases arising from the Central Intake Unit in order to ensure compliance with 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, OIA’s policies and procedures will be subject to evaluation. The Assistant Chief Deputy General Counsel, CIU will make recommendations to CDCR's and OIA's leadership, regarding changes to the policies and procedures that govern the CIU process, and will assist in identifying training for the investigators in OIA's CIU.