

Correctional Officer Health and Safety

Some State and County Correctional Facilities Could Better Protect Their Officers From the Health Risks of Certain Inmate Attacks

Report 2018-106

COMMITMENT
INTEGRITY
LEADERSHIP



CALIFORNIA STATE AUDITOR

621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814



916.445.0255 | TTY **916.445.0033**



For complaints of state employee misconduct,
contact us through the **Whistleblower Hotline:**

1.800.952.5665

Don't want to miss any of our reports? Subscribe to our email list at

auditor.ca.gov



September 18, 2018

2018-106

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report detailing our review of the health and safety of correctional staff who were subject to a particular type of assault at three correctional facilities we visited—the California Department of Corrections and Rehabilitation’s California Institute for Men (CIM), the Los Angeles County Sheriff’s Department’s Men’s Central Jail (Men’s Central), and the Alameda County Sheriff’s Office’s Santa Rita Jail (Santa Rita). This assault, known as a gassing attack, involves an inmate throwing bodily fluids at correctional staff. These attacks can expose the victim to a communicable disease and cause psychological trauma. Inmates convicted of a gassing attack can receive increases of two to four years to their current sentences. This report concludes that the three correctional facilities we visited should improve their processes to ensure that they provide all available aftercare to victims of gassing attacks, investigate such attacks more quickly and thoroughly, and better prevent and respond to gassing attacks.

The three correctional facilities did not adequately inform victims immediately following the gassing attacks of aftercare services, such as medical and counseling services. Further, these three correctional facilities did not consistently document that they advised victims of their right to request that the inmate who committed the gassing attack be tested for a communicable disease. In fact, CIM and Santa Rita were aware in some cases that inmates were infected with a communicable disease at the time of gassing attacks that occurred in 2017, but they failed to notify the victims of the exposure risk until we made inquiries in August 2018.

Because the three correctional facilities did not consistently investigate gassing attacks in a thorough and timely manner, only 31 percent of gassing attacks at these facilities from 2015 through 2017 resulted in inmate convictions. In fact, district attorneys declined to prosecute four of the 45 cases we reviewed because the three correctional facilities did not collect sufficient physical evidence of the crime—such as the container the inmate used to throw the bodily fluids or the victim’s uniform. Additionally, the three correctional facilities did not refer cases for prosecution in a timely manner: Men’s Central and CIM unnecessarily extended their investigations of gassing attacks and took an average of seven months and three months, respectively, while Santa Rita did not refer all of the cases we reviewed for prosecution. CIM and Santa Rita often did not impose discipline on inmates, such as the loss of privileges or sentence reduction credits, to deter them from committing future gassing attacks. Finally, the three correctional facilities did not provide officers sufficient training about how to respond to gassing attacks.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Selected Abbreviations Used in This Report

CDCR	California Department of Corrections and Rehabilitation
CIM	California Institute for Men
correctional facilities	prisons and jails
investigations unit	jail investigations unit
LASD	Los Angeles County Sheriff's Department
Men's Central	Los Angeles County Sheriff's Department's Men's Central Jail
psychological bureau	Psychological Services Bureau
Santa Rita	Alameda County Sheriff's Office's Santa Rita Jail

CONTENTS

Summary	1
Introduction	5
The Three Correctional Facilities Do Not Have Adequate Procedures to Ensure That They Provide Care to Victims of Gassing Attacks	13
The Three Correctional Facilities Did Not Consistently Investigate Gassing Attacks in a Thorough and Timely Manner	21
The Three Correctional Facilities Have Not Established Adequate Internal Processes to Prevent and Respond to Gassing Attacks	31
Scope and Methodology	41
Responses to the Audit	
California Department of Corrections and Rehabilitation	45
California State Auditor's Comment on the Response From the California Department of Corrections and Rehabilitation	47
Los Angeles County Sheriff's Department	49
California State Auditor's Comments on the Response From the Los Angeles County Sheriff's Department	55
Alameda County Sheriff's Office	57
California State Auditor's Comments on the Response From the Alameda County Sheriff's Office	61

Blank page inserted for reproduction purposes only.

SUMMARY

Officers and staff members who work in California's 35 state prisons and the 58 counties' local detention facilities (correctional facilities) face threats to their health and safety, including being subject to a type of assault in which an inmate throws bodily fluids at them—commonly known as a *gassing attack*. A gassing attack can have serious health implications for the victim, including the potential transmission of communicable diseases from the bodily fluids and psychological trauma from the incident. Under state law, any inmate in a correctional facility who commits a gassing attack on an officer or employee of the facility is guilty of an aggravated battery, and the inmate can face an increase of two to four years to his or her current sentence. The three correctional facilities we visited—the California Department of Corrections and Rehabilitation's California Institute for Men (CIM), the Los Angeles County Sheriff's Department's (LASD) Men's Central Jail (Men's Central), and the Alameda County Sheriff's Office's Santa Rita Jail (Santa Rita)—oversaw 9,900 inmates as of January 2018 and identified 111 gassing attacks during 2017. For this audit, we reviewed these correctional facilities' policies and responses to 45 gassing attacks that occurred between 2015 and 2017—15 at each location—to determine how the facilities protect the health and safety of their correctional officers and staff. This report draws the following conclusions:

The Three Correctional Facilities Do Not Have Adequate Procedures to Ensure That They Provide Care to Victims of Gassing Attacks

Page 13

Santa Rita has not consistently documented that it informed gassing victims of all available aftercare services, including medical evaluations for communicable diseases and workers' compensation benefits. None of the three correctional facilities consistently documented that they informed gassing victims of their right to request that the inmates involved be tested for communicable diseases. In fact, CIM and Santa Rita were aware in some cases that inmates had communicable diseases at the time of the 2017 attacks but they did not notify all the victims of the exposure until August 2018 after we inquired about such notifications. Finally, none of the correctional facilities consistently documented that they notified victims of the availability of counseling services.

The Three Correctional Facilities Did Not Consistently Investigate Gassing Attacks in a Thorough and Timely Manner

Page 21

To deter inmates from committing gassing attacks, the Legislature established a criminal penalty of two to four years to be added to their current imprisonment if convicted of this crime. However, only 31 percent of gassing attacks at the three correctional facilities we reviewed from 2015 through 2017 resulted in convictions. District attorneys declined to prosecute a substantial number of cases that

CIM and Men's Central referred from 2015 through 2017, 61 percent and 49 percent, respectively, in part because the correctional facilities' investigations were not always thorough or timely. Specifically, the correctional facilities did not collect the physical evidence needed to prosecute in four of the 45 cases we reviewed. In addition, Men's Central and CIM took an average of more than seven months and more than three months, respectively, to investigate the gassing attacks we reviewed before referring them to the district attorney, delaying resolution of the legal process. In contrast, Santa Rita took only 17 days on average to complete its investigations and refer the cases we reviewed to the district attorney. However, Santa Rita did not refer four of those 15 cases to the district attorney because of staff oversight or because the victim did not wish to file a criminal complaint.

The Three Correctional Facilities Have Not Established Adequate Internal Processes to Prevent and Respond to Gassing Attacks

We found that CIM and Santa Rita inconsistently followed their internal discipline procedures designed to deter inmates from committing gassing attacks, such as reducing privileges, placing inmates into secured housing, and revoking sentence reductions that the inmates earned. For the gassing attacks we reviewed, Men's Central appropriately imposed disciplinary action for all inmates who committed gassing attacks while CIM and Santa Rita did not always impose discipline. Further, the three correctional facilities provided limited training to officers on how to prevent and mitigate the harm from gassing attacks, and, as a result, their officers may not be sufficiently prepared to react to gassing attacks. In addition, CIM and Santa Rita do not actively track gassing attacks or attempted attacks. Although state laws and regulations do not require such tracking, both correctional facilities asserted they know which inmates are most likely to commit these attacks. Nevertheless, such tracking could help them identify the characteristics of inmates who commit gassing incidents, inmates who are repeat offenders, and other factors that create a higher risk of gassing attacks.

Summary of Recommendations

CIM

To ensure the health and safety of its employees, CIM should do the following:

- Revise its policies to document that it notifies victims of counseling services available following a gassing attack, as well as their right to request that the inmate be tested for a communicable disease.
- Develop goals for how long investigations should take and consistently collect physical evidence of the crime.
- Impose internal discipline to deter inmates from committing future gassing attacks.
- Provide training that is specific to preventing and responding to gassing attacks.
- Consistently track all gassing attacks to use as a tool to identify best practices for preventing future gassing attacks.

Men's Central

To ensure the health and safety of its employees, Men's Central should do the following:

- Revise its policies to document that it notifies victims of counseling services available following a gassing attack, as well as their right to request that the inmate be tested for a communicable disease.
- Develop goals for how long investigations should take and consistently collect physical evidence of the crime.
- Provide training that is specific to preventing and responding to gassing attacks.

Santa Rita

To ensure the health and safety of its employees, Santa Rita should do the following:

- Revise its policies to document that it notifies victims of all medical and counseling services available following a gassing attack, as well as their right to request that the inmate be tested for a communicable disease.
- Refer all gassing attacks to the district attorney when probable cause exists.
- Impose internal discipline to deter inmates from committing future gassing attacks.
- Provide training that is specific to preventing and responding to gassing attacks.
- Consistently track all gassing attacks to use as a tool to identify best practices for preventing future gassing attacks.

Agency Comments

In response to the audit, CDCR and the LASD concurred with our conclusions and generally agreed to implement our recommendations at CIM and Men's Central, respectively. However, the Alameda County Sheriff's Office partially agreed with our recommendations for Santa Rita, asserting that it had sufficient procedures already in place.

INTRODUCTION

Background

The California Department of Corrections and Rehabilitation (CDCR) operates 35 prisons, and the State's 58 counties operate local detention facilities. As of 2018, these state prisons and county jails (correctional facilities) were confining a total of nearly 200,000 individuals. Officers who work in correctional facilities face threats to their health and safety, including a type of assault known as a *gassing attack* during which an inmate throws bodily fluids at them. The text box identifies the elements of a gassing attack. Under state law, inmates in correctional facilities who commit gassing attacks on officers or employees of the facilities are guilty of an aggravated battery.

Definition of a Gassing Attack

Intentionally placing or throwing or causing to be placed or thrown any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances (bodily fluids) that results in actual contact with the skin or membranes of a correctional officer or employee of the institution, by a person confined in that institution.

Source: Penal Code sections 243.9 (b) and 4501.1 (b).

Correctional facilities have a number of responsibilities following these gassing attacks. For example, correctional facilities provide care to employees exposed to communicable diseases in the course of performing their job duties. This care includes health care, access to workers' compensation benefits, and psychological counseling, as Figure 1 on the following page details. In addition, correctional facilities must conduct criminal investigations to potentially file charges against the inmates involved. Correctional facilities can also impose several types of internal discipline on inmates, including reducing their privileges; segregating them in disciplinary housing; and taking away their credit time, which inmates earn to reduce their sentences. If convicted of a gassing attack, the inmates can face increases of two to four years to their current sentences.

To determine the degree to which correctional facilities are meeting these responsibilities, we reviewed the CDCR's California Institute for Men (CIM), the Los Angeles County Sheriff's Department's (LASD) Men's Central Jail (Men's Central), and the Alameda County Sheriff's Office's Santa Rita Jail (Santa Rita). In January 2018, these three correctional facilities were overseeing 9,900 inmates and they had identified 111 gassing attacks during 2017.

Figure 1
Procedures After a Gassing Attack



AFTERCARE



Medical

Victim offered

- Medical treatment
- Communicable disease testing
- Inmate communicable disease testing

Victim can file workers' compensation*

Victim informed of

- Facility knowledge of inmate communicable disease
- Inmate's test results
- Personal test results



Psychological

Victim offered

- Mental health counseling
- Peer counseling
- Employee Assistance Program

INVESTIGATION AND PROSECUTION



Correctional Facility Incident Report

Correctional facility

- Investigates and collects evidence
- Sends gassing substance for testing
- Refers case to district attorney

District Attorney

- Charges the inmate with a crime
- Declines to prosecute

Inmate

- Guilty with two, three, or four years added to sentence
- Not guilty

INTERNAL DISCIPLINE AND PREVENTION



Facility Discipline

Correctional facility

- Notifies inmate of violation
- Conducts discipline hearing

Inmate may receive discipline

- Secured housing
- Loss of privileges
- Loss of credit time
- Disciplinary diet



Preventative Measures

Correctional facility implements preventative measures

- Secured housing
- Door barriers
- Hand-held or portable shields
- Cell "gasser" tags
- Face shields
- Biohazard suits
- Gloves

Source: Review of policies and procedures for each of the three correctional facilities.

* Workers' compensation provides victims with services such as medical care and temporary disability benefits.

Victims' Right to Aftercare

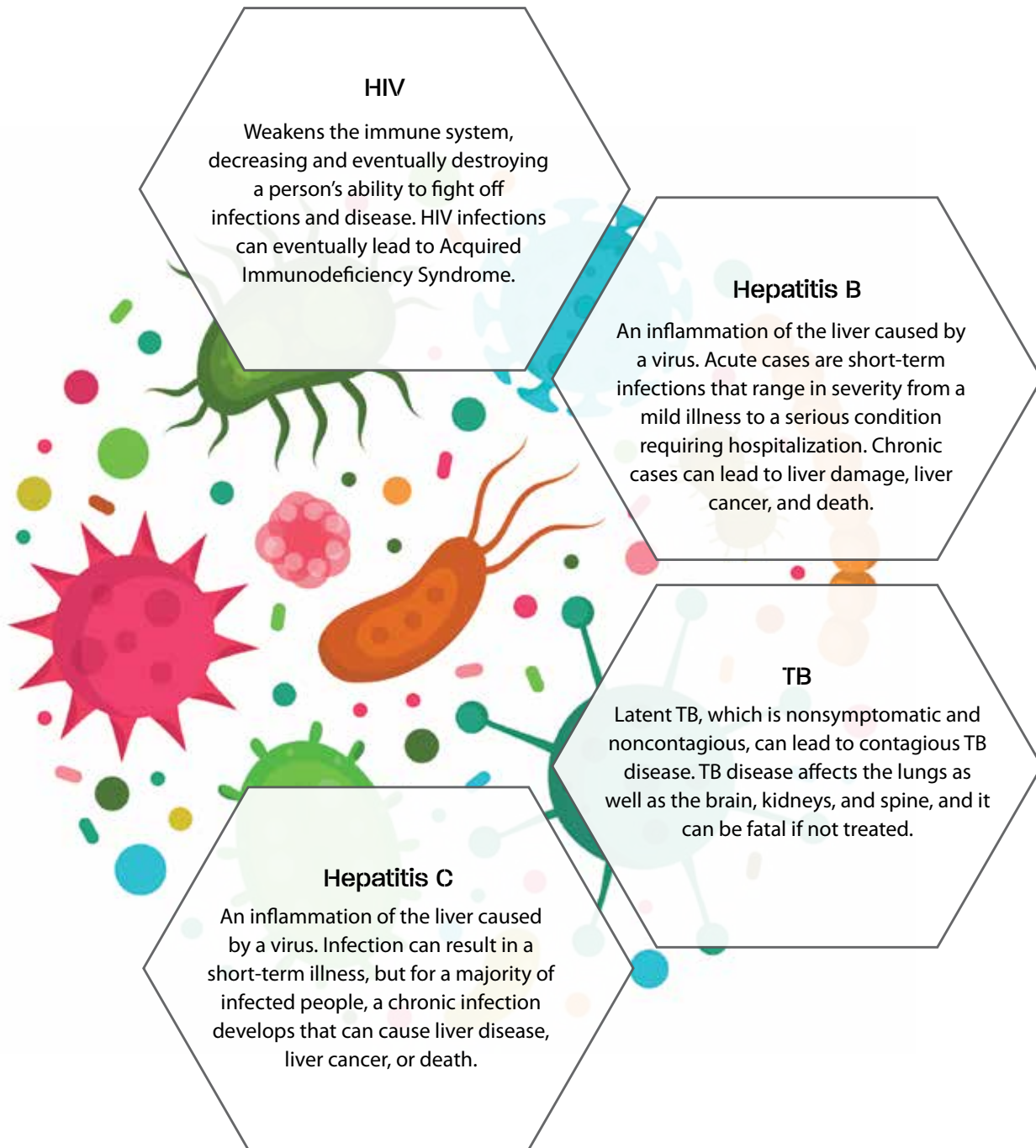
Gassing attacks can have serious potential health implications for victims, including the transmission of communicable diseases from the bodily fluids that the inmate used. Potential communicable diseases that a victim can contract from the bodily fluids include human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and tuberculosis (TB). Each of these diseases can result in serious health consequences, as Figure 2 on the following page notes. Further, the transmission of communicable diseases can threaten not only the health of victims of gassing attacks but also the health of the victims' family members, who may become unknowingly infected.

To address these risks, state law requires that correctional facilities provide information to employees who are exposed to communicable diseases in the course of performing their job duties. For example, when any employee has had direct contact with the bodily fluids of an inmate, state law requires that the correctional facilities' supervisory and medical personnel notify the employee if the inmate has a communicable disease. Also under state law, victims of gassing attacks have the right to request that the inmates who attacked them be tested for a communicable disease. Test results can confirm in less than a week whether the inmate involved in the attack has an existing communicable disease, so testing the inmate can provide the victim with timely information about the risk of exposure.

At all correctional facilities in California, the chief medical officer, or the facility equivalent, is responsible for ensuring that victims of gassing attacks have access to counseling at the time they request inmate medical tests, and when medical staff provide the test results to them. Gassing victims may experience psychological trauma from the attack, and counseling may help them cope. Additionally, counseling may help victims if they have trouble handling the uncertainty over their exposure to a communicable disease.

State law also requires California employers—including CDCR prisons and county jails—to provide workers' compensation insurance for their employees who are injured or disabled in the course of employment. These benefits can include covering the health care costs and providing temporary and permanent disability payments if the employee is unable to return to work.

Figure 2
Effects of Communicable Diseases



Source: Centers for Disease Control and Prevention.

Investigations and Discipline

State law further requires that correctional facilities use all means necessary to investigate possible gassing attacks and to refer cases for which there is probable cause to believe that a gassing attack occurred to the local county district attorney for prosecution. To prove that an inmate used bodily fluids in the attack, state law requires correctional facilities to preserve and test the substance that struck the victim in order to confirm the presence of bodily fluids. State law does not have a statute that specifically addresses *attempted* gassing attacks, that is, an incident in which there is insufficient evidence to prove a gassing attack occurred. Nonetheless, such an incident can be prosecuted under one of several other statutes, based on the circumstances of each case. For example, the district attorney can charge the inmate who attempted to commit a gassing attack with a nonaggravated battery. If convicted, the inmate can face up to a year of additional imprisonment for incidents occurring in a jail, and two to four years of additional imprisonment for incidents occurring in a prison. In other instances, the district attorney can prosecute the case as an assault with a penalty of a fine, an addition to the inmate's sentence of up to six months in jail, or both.

To ensure order within correctional facilities, the facilities can pursue internal discipline for inmates who commit gassing attacks. For example, if an inmate violates the rules of the correctional facility by assaulting an officer, the correctional facility can restrict the inmate's privileges, such as access to the phone or the commissary. The correctional facility also can move the inmate into disciplinary housing, which is generally isolated housing. Sentence reductions that inmates have earned can also be revoked as a disciplinary measure. In these instances, state regulations require correctional facilities to provide a written notification of a violation to the inmate and to conduct a disciplinary hearing. Correctional facilities also must keep a thorough record of disciplinary actions. The three correctional facilities we reviewed have adopted policies to evaluate the mental health and competency of an inmate when determining whether to impose internal discipline.

Prevention and Risk Reduction

As Table 1 on the following page shows, the three correctional facilities we visited vary in age, security levels, and other characteristics—and these all affect the risk of gassing attacks. Some infrastructure layouts can provide greater opportunities for gassing attacks than others. For example, an open-bar cell, unlike cells with solid walls, does not provide a complete barrier between the inmates and officers. In this type of cell, inmates can throw items,

including bodily fluids, outside of their cells. Some correctional facilities have a linear layout that features a straight row of cells, which limits an officer's ability to observe multiple cells at once and limits the officer's ability to see into a particular cell until he or she is close enough to be struck by an inmate throwing a bodily fluid. Others may use dormitory-style housing in which a large group of low-security inmates are housed in one large room. In this layout, the risk associated with the dormitory setting may be mitigated partly by the fact that correctional facilities typically place only low-security inmates, who are less prone to committing gassing attacks, in such housing.

Even when facilities have infrastructure that better protects employees from gassing attacks, inmates can still commit them. For example, in cells with solid doors, inmates can strike officers by shoving bodily fluids through the gap between the cell wall and a closed door. Inmates also can commit gassing attacks when officers interact with them through the food or speaker port on the door, or when officers are removing them from their cell. We discuss further infrastructure concerns and potential gassing attack hazards in the Audit Results.

Table 1
Characteristics of the Three Correctional Facilities

FACILITY	CURRENT FACILITY CONSTRUCTED*	INMATE POPULATION (JANUARY 2018)	FACILITY CAPACITY†	SECURITY LEVEL OF INMATES	LAYOUT FEATURES
CIM	1941	3,500	3,000	Largely low-level but temporarily houses all levels	Both open-bar and hard-door (solid metal) cells
Men's Central	1963	4,200	4,600	Largely medium-level	Open-bar cells and dormitory-style housing, with limited hard-door cells
Santa Rita	1989	2,200	2,900	All levels	Both open-bar and hard-door cells

Source: Administrative records for the three correctional facilities we reviewed.

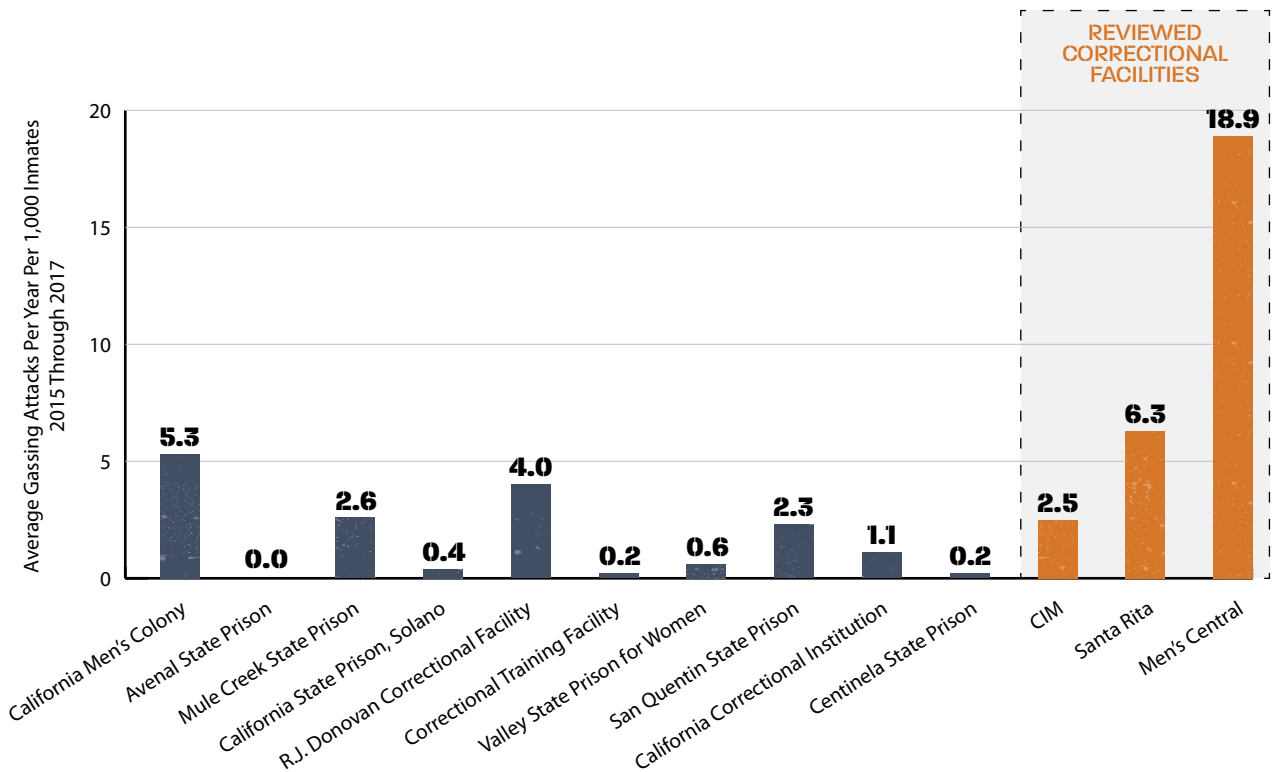
* CIM and Men's Central have undergone renovations since their initial construction.

† This number represents the operational capacity of the facility as of January 2018. The design capacity for CIM is from a report that CDCR must submit to comply with a federal court order on reducing the in-state adult inmate population. The correctional facility capacity can change based on the security level of inmates housed. For example, a cell that can house four low-security inmates may hold only one high-security inmate.

Men's Central experienced significantly more gassings than CIM and Santa Rita from 2015 through 2017, both in total number of incidents and when controlling for the varied population sizes at the three facilities, as shown in Figure 3. We also compared the rate of gassing attacks at these three correctional facilities with the rate that occurred at other CDCR prison facilities. Specifically, we examined 10 CDCR prison facilities with similar populations

and security levels as Men’s Central. Based on this analysis, Men’s Central and Santa Rita have far more gassing attacks than any of the CDCR facilities: 19 and six attacks per 1,000 inmates on average from 2015 through 2017, respectively. The CDCR prison facilities, including CIM, had zero to five gassing attacks per 1,000 inmates during this same period. As we discuss later, Men’s Central likely has experienced a higher rate of gassing incidents partly because of its outdated infrastructure.

Figure 3
Two Correctional Facilities Have Higher Rates of Gassing Attacks Than Selected State Prisons



Source: Analysis of gassing attack data from CDCR, Men’s Central, and Santa Rita.

Blank page inserted for reproduction purposes only.

The Three Correctional Facilities Do Not Have Adequate Procedures to Ensure That They Provide Care to Victims of Gassing Attacks

Key Points

- Santa Rita lacks effective procedures to ensure that it immediately informs victims of all available aftercare services—including medical evaluations for a communicable disease and workers’ compensation benefits.
- None of the three correctional facilities adequately informed victims of their right to request that inmates involved in gassing attacks be tested for a communicable disease.
- Although the correctional facilities had policies to provide counseling services to victims, they did not consistently document that they notified the victims of the availability of these services, nor did they document such notifications.

Table 2
Aftercare Scorecard

AFTERCARE PRACTICE	CIM	MEN'S CENTRAL	SANTA RITA
Medical treatment			
The facility documented whether it informed the victims of their medical treatment options following a gassing attack.	15/15	15/15	Undetermined*
Victims’ responses indicated that they were informed of all medical options available following a gassing attack.†	5/6	6/7	6/6
Inmate testing			
The facility documented whether it informed the victims of their right to request that the inmate be tested for communicable disease.	Undetermined*	Undetermined*	Undetermined*
Victims’ responses indicated that they were informed of their right to request that the inmate be tested for communicable diseases.†	0/6	0/7	2/6
Counseling			
The facility documented whether it informed the victims of counseling options after a gassing attack.	Undetermined*	Undetermined*	Undetermined*
The facility documented that it sought out victims for counseling following a gassing attack.	Undetermined*	7/15	Undetermined*
Victims’ responses indicated that they were notified of the availability of counseling services.†	4/6	2/7	2/6

Source: Analysis of policies and procedures and attacks that occurred at CIM, Men’s Central, and Santa Rita, as well as responses to our questionnaires by victims involved in 45 gassing attacks that we reviewed.

* The correctional facility does not specifically track this information, and we could not determine if it complied with its policies and procedures.

† A gassing attack can have multiple victims. We identified 55 victims of the 45 gassing attacks we reviewed and sent questionnaires to each victim. We received responses from victims of 19 attacks—six from CIM, seven from Men’s Central, and six from Santa Rita.

- Generally complied
- Partially complied
- Did not generally comply

Santa Rita Needs to Take Additional Steps to Inform Victims of the Medical Services Available to Them

As we discuss in the Introduction, gassing attacks pose a serious health risk to correctional staff because of potential exposure to communicable diseases. All three correctional facilities we visited have policies that require supervisors to encourage victims to obtain an immediate medical evaluation for infectious diseases following an attack. In addition, all three correctional facilities require supervisors to provide informational materials to the victims on available aftercare services, including forms on medical treatment options and communicable disease testing. State law also requires the correctional facilities to provide victims with information on their rights to workers' compensation benefits, which can provide them with medical benefits if they are injured from a gassing attack. However, as indicated in Table 2 on the previous page, we found that Santa Rita did not track whether supervisors notified victims of their medical options following a gassing attack. Therefore, it was not clear if Santa Rita was notifying victims of all available medical services. In fact, we noted that victims in 12 of the 15 gassing attacks at Santa Rita did not seek medical evaluations. Moreover, Santa Rita could not demonstrate that victims in these 12 attacks filed for workers' compensation benefits. In contrast, we noted that CIM and Men's Central generally complied with their process to notify victims of their medical treatment options in all cases we reviewed.

We contacted the victims of the gassing attacks we reviewed to find out if the correctional facilities provided them adequate information on the medical options available to them. We received responses from victims of 19 attacks—six from CIM, seven from Men's Central, and six from Santa Rita. Although we were unable to verify that Santa Rita consistently notified victims of their medical options, because of the lack of documentation noted above, most victims responding to our questionnaire indicated that they were informed of medical services following the gassing attack, as shown in Table 2.

Santa Rita acknowledged that it could improve its procedures and indicated it will review its notification procedures and make changes to document that it notifies victims of aftercare services. These changes will include a requirement that supervisors record that they have advised victims of their rights to aftercare benefits.

The Three Correctional Facilities Do Not Have Processes to Ensure That They Inform Victims of Their Right to Request That Inmates Be Tested for Communicable Diseases

The three correctional facilities are not fulfilling their responsibility to inform victims whether they were exposed to a communicable disease. State law requires that correctional facilities notify victims of a gassing attack when they have been exposed. At CIM, inmates coming into custody are tested for communicable diseases and it has the results of these tests available. However, CIM does not actively notify victims of gassing attacks whether the inmate involved was infected with a communicable disease. Citing federal medical privacy law, the chief medical officer at CIM asserted that he would not disclose to the victim whether the inmate involved has a communicable disease. However, federal medical privacy law provides an exception that allows correctional facilities to disclose an inmate's medical information to a victim in these situations. In fact, in one of the 15 gassing attacks we reviewed, CIM was aware that the inmate had a communicable disease at the time of the March 2017 attack but it did not notify the victim of the exposure.

.....

The three correctional facilities are not fulfilling their responsibility to inform victims whether they were exposed to a communicable disease.

.....

In addition to the one victim we noted in our testing, CIM failed to inform an additional victim that was attacked by the same inmate of the exposure to a communicable disease. When we raised this issue with CIM's warden, he agreed that CIM did not have a process to notify victims of potential exposure. To address the problem, the warden implemented a policy in June 2018 that requires the chief medical officer to immediately notify a victim when an inmate involved in a gassing attack is known to be infected with a communicable disease. However, we are concerned that CIM may not effectively implement this new policy. Even though CIM notified the victims in August 2018 of the March 2017 exposure to a communicable disease, the chief medical officer at CIM confirmed he did not notify the victims until after one of the victims specifically requested this information in August 2018. However, the chief medical officer's duty to notify the victim is not dependent on the request of the victim.

Although Santa Rita does not test inmates for communicable diseases when they come into custody, in two of the 15 cases we reviewed, the inmates had indicated to Santa Rita that they were infected. Santa Rita has a process to notify the victims of exposure to communicable diseases following a gassing attack when the victim requests notification, but it did not immediately notify the victims in either case following the attack in October 2017. Specifically, one victim requested the information at the time of the attack and Santa Rita provided the information. However, as indicated above, Santa Rita's duty under state law is to immediately notify a victim when it is aware an inmate is infected with a communicable disease and not to wait until the victim requests the information.

In two of the 15 cases we reviewed, the inmates had indicated to Santa Rita that they were infected.

In the other instance, Santa Rita confirmed that it did not notify the victim and the commanding officer could not explain why the notification did not occur. In response to our concern, Santa Rita notified the other victim of the exposure in August 2018. Going forward, the commanding officer indicated that Santa Rita will revise its policies to notify a victim immediately if an inmate involved in a gassing attack is known to be infected with a communicable disease.

Moreover, Men's Central could better inform victims when the inmate perpetrator has a communicable disease. It generally does not test inmates for communicable disease when they come into custody, citing the high volume of incoming inmates. However, Men's Central indicated that it sometimes becomes aware that an inmate has a communicable disease. The public health nurse at Men's Central indicated that she would inform victims that the inmate is infected, but that she may not always know who to inform unless the victim files a request to have the inmate tested. To address this problem, Men's Central stated that it will modify its procedures to ensure that the public health nurse is notified of all victims in gassing attacks. In the 15 cases we reviewed at Men's Central, its medical records indicated that none of the inmates involved in the gassing attacks were infected.

None of the three correctional facilities consistently documented whether their supervisors notified victims of their right to request that inmates involved in gassing attacks be tested. As the Introduction explains, state laws provide victims of gassing attacks with the right to request such testing. However, in our review of 45 gassing attacks, none of the three correctional facilities could provide documentation that any victims requested such testing. Because the three correctional facilities could not provide this information, we attempted to directly contact victims involved in the 45 cases we reviewed. Only two of the 19 victims who responded—both of them from Santa Rita—stated that the correctional facility informed them that they could request the testing. In response to our concerns, the three correctional facilities indicated they will update their policies to ensure that victims are notified that they can request that inmates be tested for communicable diseases immediately following gassing attacks.

The Three Correctional Facilities Did Not Consistently Document That They Informed Victims of Available Counseling Services

Each of the correctional facilities has counseling services available for victims following gassing attacks, but they did not consistently document that they notified these victims that they can use these services. Specifically, CIM and Santa Rita do not document whether they informed victims of counseling services. Both correctional facilities offer victims peer support counseling to discuss the incident with officers trained in critical incident responses, and they provide information and resources to victims to address concerns following the gassing attack. Both facilities also offer an employee assistance program, which allows employees to attend a number of sessions with a licensed counselor for any reason.

CIM policy requires officers to notify gassing attack victims of counseling options directly after an incident. Santa Rita, in contrast, reminds employees and supervisors about counseling options during annual trainings. CIM stated that CDCR policy does not require that it track whether it notifies victims of counseling services, but it asserted that counselors do contact victims after these incidents. Santa Rita also does not track whether victims are notified, asserting that its employees and supervisors are well aware of counseling services through policies and training. However, as indicated in Table 2 on page 13, only six of the 12 victims at CIM and Santa Rita responded that they were aware of the availability of counseling services, suggesting that the correctional facilities' current approaches to informing victims could be improved. If the correctional facilities do not document these notifications, they cannot ensure that all gassing attack victims are aware that they can seek counseling.

Men's Central offers professional counseling from psychologists within the LASD, but it lacks a process to document when it offers the counseling services. LASD policy requires the jail to notify all gassing attack victims of the availability of optional counseling services through its internal Psychological Services Bureau (psychological bureau). Moreover, following a gassing attack, an operations sergeant has the discretion to require the employee to attend a counseling session. However, Men's Central does not provide any guidance for its operations sergeants to determine when to require counseling, and those sergeants generally do not record their decision or if they notified the psychological bureau that an officer was a victim of a gassing attack.

LASD lacks a process to document how it decides to offer counseling services to victims of gassing attacks.

Regardless of whether an operations sergeant determines that counseling is required, LASD policy also requires the psychological bureau to reach out to the victim to offer counseling services. However, we found that Men's Central informed victims of the availability of counseling in only seven of the 15 cases we reviewed. As a result, we could not conclude that Men's Central consistently refers victims to counseling. As indicated in Table 2, only two of the seven victims who responded to our questionnaire stated that Men's Central made them aware that counseling services were available. In response to our concerns, Men's Central agreed that it needs to better ensure that victims know about the available mental health services. It further stated that it plans to document when victims receive information regarding counseling services.

Recommendations

CIM

To ensure the health and safety of its employees and hold its supervisors accountable, CIM should revise its policies and procedures to require documentation that its supervisors are notifying victims of gassing attacks in a timely manner of the following:

- Their right to request that the inmates involved be tested for communicable diseases.
- The counseling services available to them.

To make certain that victims are aware of threats to their health, CIM should follow state law and ensure that its medical personnel immediately inform victims of gassing attacks of any evidence suggesting that the inmates involved have a communicable disease. It should further document that it has provided this information to victims.

Men's Central

To ensure the health and safety of its employees and hold its supervisors accountable, Men's Central should revise its policies and procedures to require documentation that its supervisors are notifying victims of gassing attacks in a timely manner of the following:

- Their right to request that the inmates involved be tested for communicable diseases.
- The counseling services available to them.

To make certain that victims are aware of threats to their health, Men's Central also should follow state law and ensure that its medical personnel immediately inform victims of gassing attacks of any evidence suggesting that the inmates involved have communicable diseases. It should also document that it has provided this information to victims.

Santa Rita

To ensure the health and safety of its employees and hold its supervisors accountable, Santa Rita should revise its policies and procedures to require documentation that its supervisors are notifying victims of gassing attacks in a timely manner of the following:

- The medical services and workers' compensation benefits available to them.
- Their right to request that the inmates involved be tested for communicable diseases.
- The counseling services available to them.

To make certain that victims are aware of threats to their health, Santa Rita should follow state law and ensure that its medical personnel immediately inform victims of gassing attacks of any evidence suggesting that the inmates involved have a communicable disease. It should further document that it has provided this information to victims.

The Three Correctional Facilities Did Not Consistently Investigate Gassing Attacks in a Thorough and Timely Manner

Key Points

- At the three correctional facilities we reviewed, only 31 percent of gassing attacks from 2015 through 2017 resulted in convictions, in part because district attorneys declined to prosecute 44 percent of the cases.
- The three correctional facilities did not routinely collect all evidence necessary to prosecute gassing attacks. This resulted in district attorneys declining to prosecute four of the 45 cases we reviewed.
- Men’s Central and CIM extended their investigations of gassing attacks, significantly delaying consequences for the inmates involved. Only Men’s Central followed the state law requirement to test the gassing substance to confirm the presence of bodily fluids, which extended its investigations by nearly five months on average. Santa Rita did not refer four of the 15 cases we reviewed for prosecution, primarily because staff did not follow policies and procedures.

Table 3
Investigation and Prosecution Scorecard

INVESTIGATION AND PROSECUTION PRACTICE	CIM	MEN'S CENTRAL	SANTA RITA
Evidence collection			
The facility collected physical evidence of the gassing substance.	4/15	9/15	1/15
The facility tested the physical evidence to confirm the presence of a bodily fluid.	0/4	9/9	0/1
Referral for prosecution			
The facility referred gassing attacks to the district attorney.	15/15	15/15	11/15
Timeliness			
The facility referred gassing attacks to the district attorney in a reasonable time frame.	2/15	6/15	11/11

Source: Analysis of policies and procedures and attacks that occurred at CIM, Men's Central, and Santa Rita.

- Generally complied
- Partially complied
- Did not generally comply

Few Gassing Attacks Have Resulted in Successful Prosecutions

To deter inmates from committing gassing attacks, the Legislature established criminal penalties for gassing attacks, as we discuss in the Introduction. However, as Table 4 shows, district attorneys were able to obtain a conviction in only 31 percent of the completed cases that the correctional facilities referred from 2015 through 2017. Ensuring prompt consequences is an important component of the correctional facilities' processes to deter gassing attacks. If an inmate commits a gassing attack on an officer without repercussion, it conveys that committing gassing attacks may go unpunished.

Table 4
Prosecution Outcomes of Gassing Attacks From 2015 Through 2017
As of May 2018

OUTCOME OF CASES	CIM		MEN'S CENTRAL		SANTA RITA		TOTAL	
Filed—convicted*	9	39%	66	33%	5	15%	80	31%
Filed—dismissed	0	0	23	12	10	30	33	14
Declined by district attorney†	14	61	98	49	1	3	113	44
Not referred by facility‡	0	0	11	6	17	52	28	11
Subtotal—Completed cases	23		198		33		254	
Open cases	3		43		8		54	
Totals	26		241		41		308	

CONVICTION RATE

Source: Prosecution records from the three correctional facilities and the county district attorneys.

* Convictions include plea bargains for a conviction for another offense.

† The district attorney declined to prosecute gassing cases for insufficient evidence or prosecutorial discretion, among other reasons.

‡ The correctional facilities did not refer cases to the district attorney for lack of probable cause, among other reasons.

As Table 4 shows, district attorneys declined to prosecute a substantial number of cases that CIM and Men's Central referred from 2015 through 2017, 61 percent and 49 percent, respectively. In contrast, the Alameda County District Attorney declined to prosecute only 3 percent of cases that Santa Rita referred during this same time frame. District attorneys have discretion to decide whether to prosecute gassing attacks. For example, one district attorney declined to prosecute a case that we reviewed because the inmate was in state prison serving time for another crime and the district attorney concluded that seeking an additional sentence for the gassing attack would not substantially affect the inmate's current sentence. However, the correctional facilities were responsible for the district attorneys declining to prosecute some cases because they did not always collect sufficient evidence or conduct timely investigations, as we discuss in the next section.

None of the Three Correctional Facilities Consistently Collected Sufficient Evidence to Prosecute Gassing Attacks

The correctional facilities we reviewed have not consistently met their responsibility to ensure that their officers gather sufficient evidence for district attorneys to prosecute gassing attacks. As the text box shows, officers can collect various forms of evidence at the scene of a gassing attack. Of the 45 attacks we reviewed, the correctional facilities referred 41 cases to district attorneys. However, those district attorneys declined to prosecute four of these 41 cases because the correctional facilities did not collect sufficient evidence. Further, as Table 4 indicates, district attorneys' offices declined to prosecute a significant number of the total gassing attacks that CIM and Men's Central referred. Based on our review, the three correctional facilities may be able to improve the conviction rates on their cases by more consistently collecting evidence.

Types of Evidence in Gassing Attacks

- Sample of the gassing substance
- The victim's clothes that were struck with the gassing substance
- Victim, inmate, and witness statements
- Video and photographs of the attack
- The container used to throw or propel the gassing substance

Source: Review of policies of the three correctional facilities.

None of the three correctional facilities regularly collected physical evidence, such as the gassing substance or the container used to throw the substance, yet state law requires correctional facilities to use every available means to investigate a gassing attack—including preserving and testing the substance to determine if it is a bodily fluid. However, the three correctional facilities generally did not collect physical evidence in gassing attacks involving an inmate spitting on an officer. Of the 45 cases we examined, 13 involved spitting—six at CIM, three at Men's Central, and four at Santa Rita. In these types of attacks, the physical evidence could have included the officer's uniform or the item used to clean the officer's skin, such as a cloth or paper tissue. Although we acknowledge that preserving evidence of spitting can create challenges, state law still obligates correctional facilities to use all means possible to investigate gassing attacks.

The remaining 32 of the 45 gassing attacks involved a bodily fluid other than spittle. In these attacks, the investigation reports from the correctional facilities indicated that the inmate often used a container to throw the gassing substance at the officer, with the substance making contact with officer's skin and uniform. The container and contaminated clothing can provide strong evidence that the inmate committed a gassing attack because the correctional facilities can test them to confirm the presence of bodily fluids. However, we found that the three correctional facilities often did not collect and retain physical evidence, such as the container or the contaminated uniform. For example, as shown in Table 3 on page 21, CIM collected physical evidence in only four of the

15 gassing attacks we reviewed, despite having a memorandum of understanding with the San Bernardino County district attorney that requires CIM to preserve a sample of the substance that the inmate threw as well as the victim's clothing. Further, the San Bernardino County district attorney chose not to file criminal charges in one of these four cases at CIM, specifically citing that CIM did not collect the evidence necessary to support prosecution of the crime.

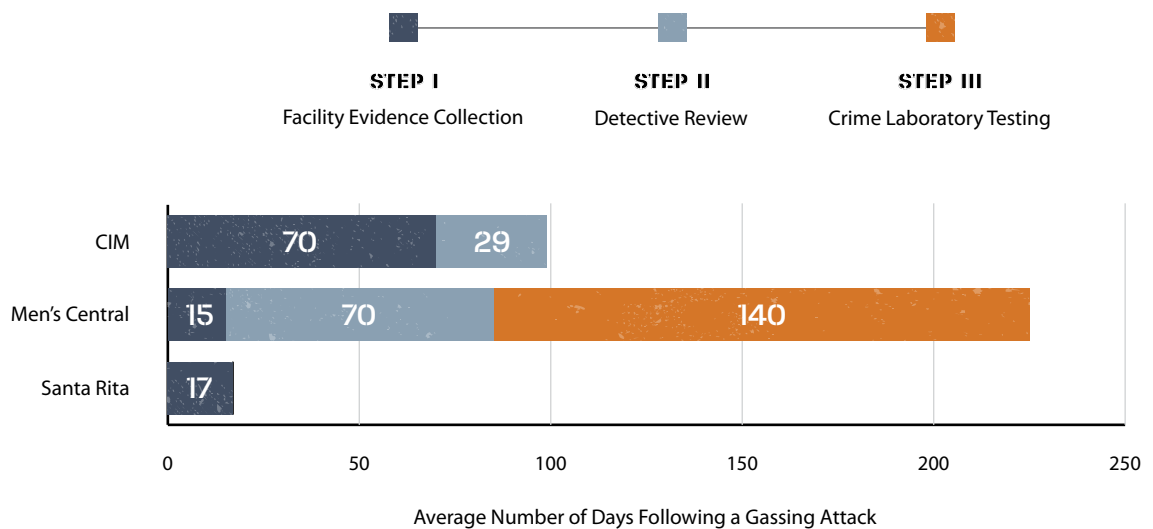
Men's Central collected physical evidence in nine of the 15 gassing attacks that we reviewed. In two of the six cases in which it did not collect physical evidence, the Los Angeles County district attorney declined to prosecute because of insufficient evidence. In both cases, the officers did not collect the container or the soiled uniform, and Men's Central could not prove that the substance was a bodily fluid. Men's Central agreed that its officers should collect the containers used to throw or propel the gassing substance and that it will provide training incorporating the need for staff to do so. Santa Rita did not collect physical evidence in 14 of the 15 gassing attacks that we reviewed and instead relied on video footage, photographs, and witness statements. Santa Rita had the lowest conviction rate and highest dismissal rate among the three correctional facilities, which could be in part because it does not collect physical evidence. However, the Alameda County district attorney declined to prosecute only one case that we reviewed and it did so only because the inmate faced other criminal charges.

Further, only Men's Central follows the state law requirement to preserve and test gassing substances to confirm that they are bodily fluids. Of the 12 gassing attacks that did not involve spittle, Men's Central collected physical evidence in nine of these cases and submitted a sample of the substance to the county crime laboratory for testing. In contrast, CIM stated that it does not test the gassing substance unless the district attorney requests it. However, CIM indicated that the district attorney did not request testing for any of the 15 cases that we reviewed. Nevertheless, CDCR stated that it expects CIM to collect physical evidence of the gassing substance to determine whether it is a bodily fluid. Santa Rita also does not test the gassing substance. The Alameda County district attorney indicated that it does not generally require Santa Rita to test the gassing substance before it files a case because the county crime laboratory has limited resources and the district attorney believes that other forms of evidence—video footage, photographs, victim testimony, and witness statements—often are sufficient to prosecute the crime. Santa Rita's commanding officer acknowledged that the correctional facility should comply with the state law requirement to test the gassing substance and stated that it plans to do so for future gassing attacks.

Two Correctional Facilities Took an Unreasonable Amount of Time to Conduct Their Internal Investigations of Gassing Attacks

Men’s Central and CIM took significantly longer than Santa Rita to investigate the 15 gassing attacks that we reviewed at each correctional facility, as Figure 4 shows. Men’s Central’s investigations, including crime laboratory testing, took an average of more than seven months, CIM’s investigation took an average of more than three months, and Santa Rita’s investigations took an average of just 17 days. One of the reasons for Men’s Central’s longer investigations may be justified: it follows the state law requirement to submit gassing substances for laboratory testing, which prolongs the time it takes to refer cases to the district attorneys. However, Men’s Central and CIM unnecessarily extended the time they took to investigate cases, delaying resolution of the legal process. In fact, the district attorney declined to prosecute one Men’s Central case because of the length of the facility’s investigation. Nonetheless, as Table 4 on page 22 shows, CIM and Men’s Central had higher conviction rates than Santa Rita, indicating that the additional time they took to investigate cases may have helped produce better results.

Figure 4
Testing the Gassing Substance Significantly Lengthens the Investigation



Source: Analysis of 15 gassing attacks that occurred at each of the three correctional facilities.

Note: Santa Rita does not require a detective to review the investigation. Neither CIM nor Santa Rita submit the gassing substance for testing. Further, Men’s Central collected and tested the gassing substance in nine of the 15 cases we reviewed.

Men's Central took an average of more than seven months to complete its investigations of the 15 cases that we reviewed. In one extreme case, its investigation took 16 months. Part of this delay is attributable to its decision to follow state law by regularly testing gassing substances for the presence of bodily fluids, a process that took an average of nearly five months in the nine cases where it was conducted. As we previously discussed, CIM and Santa Rita have not tested the gassing substances and they rely on other forms of evidence.

Men's Central took an average of more than seven months to complete its investigations of the 15 cases that we reviewed.

Although testing the gassing substance created a delay at Men's Central, it appears to have merit as the correctional facility had a conviction rate that was only slightly lower than CIM's rate and significantly higher than Santa Rita's rate. However, CIM and Santa Rita did obtain convictions without testing the gassing substances. Both the Alameda and San Bernardino county district attorneys told us that they generally do not require laboratory testing of the gassing substance if the other evidence gathered is compelling. Therefore, testing the gassing substance may be beneficial in obtaining sufficient evidence needed for a conviction, but it may not be necessary in all cases. For example, officers at Santa Rita wear body cameras, which combined with a victim's testimony may provide clear evidence that the substance thrown was a bodily fluid. In other cases, an inmate may admit that the substance thrown was a bodily fluid, making testing unnecessary. If the correctional facility can obtain sufficient evidence of the gassing incident, a timely prosecution may promote the interest of justice rather than to delay prosecution because it is waiting for the results of laboratory testing.

Laboratory testing aside, Men's Central still took nearly three months on average to investigate gassing attacks. The LASD jail investigations unit (investigations unit) investigates all crimes that inmates commit in Men's Central, including gassing attacks, while the Men's Central staff are responsible for notifying the investigations unit of the crime and initially collecting the evidence. We identified unreasonable and avoidable delays in nine of the 15 gassing attacks at Men's Central that we reviewed, with one resulting in the district attorney declining to prosecute the case. Specifically, in that case the investigations unit did not

deliver evidence of the gassing substance to the Los Angeles County crime laboratory until 10 months after the gassing attack occurred. Subsequently, because of the time needed to obtain laboratory test results, the investigations unit did not refer the case to the district attorney until 16 months after the incident. The district attorney declined to prosecute the inmate, citing that the inmate was now in state prison and that the delay in receiving the crime laboratory test results could provide the defendant with a viable defense of not receiving a speedy trial.

Laboratory testing aside, Men's Central still took nearly three months on average to investigate gassing attacks.

A sergeant from the investigations unit believes that staff members mistakenly put this evidence into storage instead of sending it to the crime laboratory. In another instance, the detective sent evidence to the crime laboratory three months after the attack occurred, but the investigations unit could not provide the reason for this delay. When the investigations unit finally referred the case for prosecution, the district attorney chose not to file charges because the inmate was in state prison and a conviction would not have substantially affected the inmate's sentence. However, in both of these cases, the district attorney's comments indicate that it may have chosen to prosecute the inmate had Men's Central completed its investigation in a timelier manner.

In the remaining seven cases, the delays were either because of excessive time for Men's Central to submit the case for investigation or for the detective to submit the case for prosecution, or both. Men's Central stated that the delays were caused by multiple steps in the incident report approval process, and to address our concerns, it agreed to implement a general guideline of five days to forward incident reports to the investigations unit. The investigations unit sergeant asserted that the facts of each case impact how quickly detectives can refer cases to the district attorney, and that in recent years the investigations unit has dedicated more resources to improving the timeliness of investigations. Nonetheless, in an October 2017 investigation that we reviewed, the detective took nearly three months to refer the case to the district attorney because of delays in collecting witness statements, indicating that delays continue to be present even with additional resources.

Although state law requires correctional facilities to immediately investigate all gassing attacks, CIM took an average of 70 days to complete its investigations, which included preparing an incident report and collecting evidence. We identified unnecessary and avoidable delays in 13 of the 15 gassing attacks we reviewed. CIM noted that the delays in the investigations process were due to the multiple layers of review by various staff members in approving the incident report. In addition, when officers use force to subdue an inmate who commits the gassing attack, CIM incorporates an evaluation of the use of force by the officers into its investigation process. For the seven cases we reviewed that involved the use of force, this evaluation created a delay that averaged one month. Although CIM's practice is to evaluate the use of force as part of its investigation, this evaluation is unrelated to whether the inmate committed a criminal act. Therefore, CIM's current approach prolongs the investigation and delays any consequences for the inmate.

Santa Rita completed its investigations in a more timely manner than CIM and Men's Central, but it did not refer four of the 15 gassing attacks that we reviewed to the Alameda County district attorney. For three of those four cases, Santa Rita did not refer them because staff did not follow its policies and procedures. Santa Rita did not refer the other case because the victim did not wish to file a criminal complaint. However, in response to our inquiry, the commanding officer at Santa Rita indicated that the correctional facility would review the four cases and refer them to the Alameda County district attorney for prosecution if the required elements of a crime are present.

Recommendations

Legislature

To shorten the time to submit cases of gassing attacks for prosecution, the Legislature should modify state law to provide correctional facilities the discretion to omit testing the gassing substance for the presence of a bodily fluid when the correctional facility, in consultation with its district attorney, finds that such testing is unnecessary to obtain sufficient evidence of a crime.

CIM

To ensure that it properly investigates gassing attacks and refers cases for prosecution, CIM should do the following:

- Implement procedures to ensure that it collects sufficient physical evidence and submits the gassing substance for laboratory testing, as state law requires.
- Develop goals for how long investigations should take and ensure that its officers adhere to these goals.
- Separate its evaluation of officers' use of force from the investigation process it uses to refer cases to the district attorney.

Men's Central

To ensure that it properly investigates gassing attacks and refers cases for prosecution, Men's Central should do the following:

- Implement procedures to ensure that it collects sufficient physical evidence.
- Develop goals for how long investigations should take and ensure that its officers adhere to these goals.

Santa Rita

To ensure that it properly investigates gassing attacks and refers cases for prosecution, Santa Rita should do the following:

- Implement procedures to ensure that it collects sufficient physical evidence and submits the gassing substance for laboratory testing, as state law requires.
- Develop practices to ensure that it submits all cases for prosecution when probable cause of a crime exists. Further, it should expedite its review of the four cases that we identified, and if probable cause exists, submit those cases to the district attorney for prosecution.

Blank page inserted for reproduction purposes only.

The Three Correctional Facilities Have Not Established Adequate Internal Processes to Prevent and Respond to Gassing Attacks

Key Points

- Two of the correctional facilities we visited—CIM and Santa Rita—have not taken full advantage of internal discipline procedures to deter and reduce gassing attacks. Although the two correctional facilities have procedures for using internal discipline to maintain control and promote desirable changes in inmate attitude and behavior, they only followed these procedures in 13 of the 30 cases that we reviewed.
- The three correctional facilities provide limited training to officers on how to prevent and mitigate the harm from gassing attacks, and as a result, their officers may not be sufficiently prepared to react to gassing attacks. Seven of 19 victims of gassing attacks at the three correctional facilities indicated that they were not aware of training available to them.
- CIM and Santa Rita do not actively track gassing attacks. However, such tracking could help them identify inmates who are repeat offenders, inmates whose characteristics make them more likely to commit gassing incidents, and other factors that create a higher risk of gassing attacks.

Table 5
Internal Discipline and Prevention Scorecard

INTERNAL DISCIPLINE AND PREVENTION PRACTICE	CIM	MEN'S CENTRAL	SANTA RITA
Discipline			
The facility documented whether it imposed appropriate disciplinary actions in accordance with its policies, including a consideration of the inmate's mental health status.	12/15	15/15	1/15
Training and prevention			
The facility trained its employees, at least annually, how to prevent and respond to gassing attacks.	Partial*	Partial*	Partial*
The facility has protective gear readily available for employees and requires its employees to wear it when dealing with potential or known inmate gassers.	Yes	Yes	Yes
Victims' responses indicated that they did not have concerns with the facilities' training to prevent and mitigate gassing attacks. [†]	4/6	4/7	4/6
Tracking			
The facility specifically tracked gassing attacks and attempted gassing attacks.	No	Yes	No

Source: Analysis of policies and procedures and attacks that occurred at CIM, Men's Central, and Santa Rita, as well as responses to our questionnaires of the victims involved in 45 gassing attacks that we reviewed.

* The facilities provide annual training on subjects such as the use of force and officer safety, but the training is not specific to gassing attacks.

† A gassing attack can have multiple victims. We identified 55 victims of the 45 gassing attacks we reviewed and sent questionnaires to each victim. We received responses from victims of 19 attacks—six from CIM, seven from Men's Central, and six from Santa Rita.

- Generally complied
- Partially complied
- Did not generally comply

Two Correctional Facilities Often Did Not Take Disciplinary Action Against Inmates Involved in Gassing Attacks

CIM and Santa Rita are not taking full advantage of internal discipline to deter inmates from committing gassing attacks. As we discuss in the Introduction, internal discipline can include actions such as reducing inmates' privileges, placing inmates into secured housing, and taking away credit time that inmates earn to reduce their sentence. All three correctional facilities have policies and procedures to use internal discipline to maintain control and promote desirable changes in inmate attitude and behavior. In addition, internal policies and state regulations for CDCR facilities require that correctional facilities evaluate the mental health and competency of an inmate when determining whether to impose internal discipline and what method to use. However, as shown in Table 5 on the previous page, CIM and Santa Rita imposed internal discipline in 12 and one, respectively, of the 15 incidents we reviewed at each correctional facility. For CIM, five of the 12 incidents included inmates for whom it believed it was appropriate to waive internal discipline due to the inmates' mental health condition. Nonetheless, because these two correctional facilities did not impose internal discipline in the remaining cases, this may result in inmate perpetrators not receiving any consequences for their crimes. In fact, as Table 4 on page 22 shows, from 2015 through 2017 district attorneys obtained convictions for only 39 percent and 15 percent of gassing attacks at CIM and Santa Rita, respectively.

.....

Two of the three correctional facilities do not consistently use internal discipline to maintain control and promote desirable changes in inmate attitude and behavior.

.....

CIM acknowledged that the three cases in which it did not impose internal discipline were the result of staff not following policies and procedures. To address this problem, CIM has developed a tracking system to ensure that it holds inmates accountable. Santa Rita indicated that it does not always impose internal discipline for gassing attacks because it relies on criminal prosecution instead. Specifically, the commanding officer of Santa Rita indicated that discipline is not always the most effective way to prevent and deter gassing attacks because inmates who commit these attacks often are already in segregated housing and they have lost their privileges. Nonetheless, we noted that some inmate attackers at Men's Central were on similar restrictions, yet it imposed discipline more often than Santa Rita.

In contrast to CIM and Santa Rita, Men's Central consistently imposed internal discipline or determined it was appropriate to waive discipline because of the inmate's mental health condition for each of the 15 gassing attacks that we reviewed. The discipline that Men's Central imposed was generally the loss of inmate privileges and placement in segregated housing. For the inmates for whom it waived internal discipline, Men's Central transferred them to segregated housing in another of its correctional facilities for mental health observation. According to Men's Central's policy, it consistently imposes internal discipline to make sure it holds inmates accountable for their actions, to maintain order, and to protect its staff.

Although the Three Correctional Facilities Have Implemented Certain Preventative Measures, Additional Training Could Better Prepare Officers to Respond to Gassing Attacks

To mitigate the harm of gassing attacks, the three correctional facilities typically had available protective equipment, such as facemasks or hand-held shields, to block items thrown by inmates even though this type of equipment cannot protect against all gassing attacks. CIM and Men's Central provide officers access to protective gear, such as shields or helmets, when they need it. Santa Rita requires employees to use a protective door shield that it developed, known as a Bio-Barrier, as pictured in Figure 5 on the following page. It also requires, at a minimum, a face shield and gloves when moving or interacting with inmates who have committed previous gassing attacks. All of the correctional facilities also make available full-body biohazard suits. During our review, we inspected each correctional facility's inventory of protective equipment and found that the gear was available to the officers. Nevertheless, in one of the incidents we reviewed at CIM, the victim stated that he did not wear a face shield because they were unavailable. Gassing attacks often occur without warning, meaning that officers may not be able to put on protective gear before the attack. An officer's use of protective gear can be effective in mitigating the effects of gassing attacks, but only when the officer can access the gear and decide to use it before an attack.

Figure 5
Preventative Tools to Mitigate Gassing Attacks



Source: Photographs and policies provided by the three corrections facilities and photographs taken by audit staff.

Officers may need protective equipment as the infrastructure at CIM and Men's Central can increase the risk of gassing. Most of the holding areas in Men's Central, and some at CIM, are either open-bar cells or dormitory-style housing, as Figure 6 on the following page shows. In this type of housing, inmates can throw substances at officers through the bars of their cells. Both correctional facilities mitigate these infrastructure problems by housing inmates who are likely to commit gassing attacks—those who have made threats or previously committed attacks—in secured housing. Secured housing cells, which contain a single individual, include hard-door cells with windows to see the inmate and a port to provide meals and personal supplies or to handcuff inmates, as Figure 5 shows. However, CIM has 72 secured housing cells in its outpatient housing unit in comparison to its 3,500 inmates. Men's Central can house only up to 54 inmates in cells with preventive measures, and it houses the vast majority of its 4,200 inmates in open-bar cells or dormitories. In contrast to CIM and Men's Central, Santa Rita has 1,103 hard-door cells throughout the facility, and these afford better protection for officers against gassing attacks. Nevertheless, secured housing cannot eliminate gassing attacks. For example, 11 of the 15 gassing attacks that we reviewed at CIM occurred in its outpatient housing unit, which is equipped with hard-door cells and ports.

According to its sergeant in charge of logistics, Men's Central is unable to modify all cells with preventive measures due to the prohibitive cost of modifying its aging facility. In part to address the infrastructure concerns with this correctional facility, the Los Angeles County Board of Supervisors approved in June 2018 a \$2.2 billion plan to replace the Men's Central facility by 2028 with a modern correctional facility.

Although not a formal policy, CIM and Santa Rita place "gasser" tags on the cells housing inmates who have previously committed gassing attacks in order to warn officers of their dangerous behavior. This facility practice may minimize the chances of the inmate successfully committing additional gassing attacks. In our review of 15 cases at CIM, we identified one case in which CIM did not place a "gasser" tag on the cell of an inmate who had committed a gassing attack. As a result, when the inmate committed another gassing attack eight days later, the victim had no warning about the threat that this inmate posed.

Figure 6
Potential Hazards That Enable Gassing Attacks



Source: Photographs provided by the three correctional facilities and interviews with their staff.

Each facility provides training to officers, but that training is about subjects such as the use of force or officer safety and not specifically about gassing attacks. For example, CIM provides annual training to officers on the use of force and the danger of exposure to blood-borne pathogens. However, the correctional facility was unable to demonstrate that any of the training is specific to preventing and mitigating gassing attacks. Two of the six victims we spoke to at CIM indicated that they had not received training to help protect themselves from a gassing attack. Additionally, the training primarily occurs when employees begin working at the facility rather than annually, which would ensure that all staff receive a refresher on best practices.

New employees at Men's Central receive training on gassings attacks, which describes the elements of a gassing incident and how to respond after an incident occurs. LASD's custody training and standards bureau also sends out instructional bulletins monthly to all staff, although it has not issued a bulletin specific to the topic of gassing since 2015. However, three of seven victims of a gassing attack at Men's Central reported that they had not received any training or information about how to protect themselves in the event of a gassing. A fourth respondent stated that the information was available but that it was not easily accessible.

Similarly, two of the six victims at Santa Rita indicated that they had not received training to help protect themselves from a gassing attack. The commanding officer at Santa Rita indicated that additional training dedicated to gassing is unnecessary because existing training, including new employee training, covers all assaults to staff—including gassing attacks. However, he stated further that Santa Rita does not have training for its officers specifically for how to investigate gassing attacks. Such training would be helpful because some of the reports we reviewed concluded that a gassing attack had occurred even though the substances did not make skin contact. State law requires the bodily fluid to touch the skin to be a gassing attack, so officers may not be sufficiently informed on what a gassing attack involves. By providing annual training specific to gassing, the three correctional facilities could help officers be more prepared to prevent and respond to gassing attacks.

CIM and Santa Rita Should Track Gassing Attacks to Identify High-Risk Situations and Deter Repeat Offenders

CIM and Santa Rita are not specifically tracking gassing attacks, and therefore they are missing an opportunity to analyze those attacks and reassess their current procedures to better ensure the health and safety of their officers. State laws and regulations do not

require correctional facilities to track gassing attacks. Nevertheless, doing so would help the correctional facilities address the aftercare, investigative, and disciplinary concerns that we discuss throughout this report. Moreover, the correctional facilities could use knowledge from the trends and common characteristics that can become apparent from tracking gassing attacks to streamline their prevention efforts, including the systematic identification of inmates who commit gassing attacks and inmates who are repeat offenders. We found that 22 of the 45 gassing attacks (49 percent) that we reviewed at the three correctional facilities involved repeat offenders. This count included seven cases at CIM, nine at Men's Central, and six at Santa Rita. Repeat offenders at Santa Rita committed 16 of the 25 gassing attacks (64 percent) in 2017.

A correctional facility's tracking of gassing attacks should result in information that is consistent and readily accessible, which is not currently the case at CIM and Santa Rita. For example, CIM records all incidents involving inmates, including incidents of gassing attacks, in the CDCR's Daily Information Reporting System database (database). However, this database cannot produce reports that are specific to gassing attacks without significant manual analysis. The warden indicates that CIM has not needed to separately track gassing attacks, but rather it tracks them with other battery offenses against officers. Santa Rita must consult three separate databases—two that the Alameda County Sheriff's Office maintains and one countywide criminal database—to obtain information about gassing attacks at its facility, making it difficult for Santa Rita to readily analyze gassing attacks. Santa Rita indicated that it records information about attacks in general on correctional staff in its internal tracking system, but this system does not specifically track gassing attacks. Santa Rita also indicates it is already aware of which inmates are repeat offenders and where gassing attacks are likely to occur. Nonetheless, by systematically tracking gassing attacks, CIM and Santa Rita would have more information available to analyze how best to provide for the health and safety of their officers.

In contrast to CIM and Santa Rita, Men's Central began tracking gassing attacks in 2015 to obtain a better understanding of why an increase in these attacks was occurring. Men's Central tracks data to identify common characteristics of gassing attacks—including the incident location, time, and date; whether the incident involved repeat offenders or victims; and the types of inmates involved, such as high-security individuals, those from the general population, and those suffering from mental illness. It uses this information to review procedures to prevent future attacks.

Recommendations

CIM

To better prevent gassing attacks and promote desirable changes in inmate attitude and behavior, CIM should follow its policy and pursue appropriate internal disciplinary actions—including consideration of the inmate’s mental health and competency when determining whether to impose internal discipline.

To ensure the health and safety of its officers when interacting with inmates, CIM should do the following:

- Maintain a sufficient supply of preventative equipment that is available to its officers and staff in all locations where gassing attacks can occur.
- Develop a policy regarding the placement of “gasser” tags on the cells of inmates who have committed or attempted to commit a gassing attack.
- Provide annual training that is specific to preventing and responding to gassing attacks.

To ensure that it is able to identify high-risk situations and deter repeat offenders, CIM should specifically track all gassing attacks and use the tracking data as a tool to prevent future gassing attacks.

Men’s Central

To ensure the safety of its staff, Men’s Central should provide annual training that is specific to preventing and responding to gassing attacks.

Santa Rita

To better prevent gassing attacks and promote desirable changes in inmate attitude and behavior, Santa Rita should follow its policy and pursue appropriate internal disciplinary actions—including consideration of the inmate’s mental health and competency when determining whether to impose internal discipline.

To ensure the health and safety of its officers when interacting with inmates, Santa Rita should do the following:

- Develop a policy regarding the placement of “gasser” tags on the cells of inmates who have committed or attempted to commit a gassing attack.
- Provide annual training that is specific to preventing and responding to gassing attacks.

To ensure that it is able to identify high-risk situations and deter repeat offenders, Santa Rita should specifically track all gassing attacks and use the tracking data as a tool to prevent future gassing attacks.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to review the policies, procedures, and practices in place to protect the health and safety of correctional staff who are subject to gassing attacks at three correctional facilities: CIM, Men’s Central, and Santa Rita. Table 6 lists the audit objectives and the methods we used to address them.

Table 6
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<p>We reviewed relevant state laws, regulations, and other background materials applicable to gassing attacks at the three correctional facilities we visited.</p>
<p>2 Determine how the prison and jails track, document, and investigate gassing attempts and incidents perpetrated by inmates on employees.</p>	<p>We interviewed personnel and reviewed policies and procedures used for tracking, documenting, and investigating gassing attacks at each of the correctional facilities.</p>
<p>3 To the extent possible, determine the magnitude of the gassing problem at the prison and jails since 2009 by identifying the following:</p> <ul style="list-style-type: none"> a. The number of gassing attempts and gassing incidents that occurred each year, including: <ul style="list-style-type: none"> i. The number that were committed by repeat gassing incident offenders. ii. The number that resulted in a conviction or other punishment. b. The number of staff members who, following a gassing incident, informed their employer that they contracted a disease as a result of the incident. c. Whether there was a correlation between the number of gassing attempts and incidents, and the prison or jail’s infrastructure, layout, or population overcrowding. 	<p>To address this objective, we performed tasks described below at the three correctional facilities:</p> <ul style="list-style-type: none"> • To determine the number of gassing attacks, the number committed by repeat offenders, and the number that resulted in a conviction or other discipline, we reviewed and compiled data and incident report information from each of the three correctional facilities. • Men’s Central did not begin formally identifying gassing attacks until 2015. To ensure that our review was consistent among the three locations, we focused our review on gassing attacks that occurred from 2015 through 2017 for each of the three correctional facilities. • Employees are not required to inform their employer if they contract a disease as a result of an incident. All three correctional facilities confirmed that they do not ask employees if they have contracted a disease. • We compared the infrastructure and population of each correctional facility to identify any correlations or conditions that could increase the risk of gassing attacks. We also reviewed the impact of a state law that transferred certain inmates from state prisons to county jails to relieve overcrowding, and determined that these transfers did not substantially impact the number of gassing attacks at the three correctional facilities.
<p>4 Review and evaluate the prison and jails’ policies and practices for handling the aftercare of employees who have been gassed to determine whether those policies and practices are consistent with applicable laws and regulations.</p>	<p>We obtained and reviewed policies and procedures regarding aftercare available to victims of gassing attacks at each of the three correctional facilities—including their processes and practices for notifying victims of their medical treatment options, psychological counseling services, and workers’ compensation benefits—to determine whether they comply with state and federal laws and regulations.</p>
<p>5 For the most recent three-year period, determine how many employees sought and obtained counseling or medical treatment through their employers following a gassing incident.</p>	<p>For each of the 45 gassing attacks we reviewed as part of Objective 7 on the following page, we determined whether the victims received medical treatment and psychological counseling.</p>

continued on next page . . .

AUDIT OBJECTIVE	METHOD
<p>6 Evaluate how the prison and jails ensure that employees are aware of and comply with policies and procedures related to gassing, including those related to prevention, response, and incident reporting.</p>	<p>We interviewed personnel and reviewed the processes that each of the correctional facilities implemented to notify and train employees regarding how to prevent and respond to gassing attacks.</p>
<p>7 For a selection of gassing incidents that have occurred during the most recent three-year period at the prison and jails, review and evaluate the following:</p> <p>a. Whether the prison or jails followed their respective aftercare policies and procedures following each gassing incident including whether the gassing substance was tested for disease and, if not, why.</p> <p>b. Whether and how soon after the incident affected employees were informed of the presence of diseases in the gassing substance.</p> <p>c. Whether the prison and jails investigated the incident in accordance with requirements in state law.</p>	<p>To address this objective, we judgmentally selected 15 gassing attacks that occurred from 2015 through 2017 at each of the correctional facilities—a total of 45 gassing attacks—and performed the following procedures at the three correctional facilities:</p> <ul style="list-style-type: none"> • For each of the 45 gassing attacks, we evaluated whether the correctional facilities followed their aftercare policies and procedures—including whether it notified victims of their medical treatment options, notified the victims of their right to request inmates be tested for a communicable disease, and notified the victims of the outcome of the testing. • We also evaluated the correctional facilities' investigation of the gassing attacks and whether it complied with state laws—including their processes for collecting evidence following a gassing attack, testing the gassing substance, and referring attacks to the district attorney for prosecution. • To gain assurance that we selected a complete data set of gassing attacks from CIM and Men's Central, we selected 29 incident reports from these facilities and verified that they were included in the data. • We did not collect a data set of all gassing attacks from Santa Rita because it did not track gassing attacks. Instead, we reviewed its hard-copy log of all assaults on staff and reviewed incident reports to identify gassing attacks.
<p>8 Review and evaluate the strategies that prisons and jails use to prevent or mitigate the effects of gassing incidents, including the disciplinary actions used on offenders who have attempted or committed gassings. To the extent possible, determine whether disciplinary actions are effective in deterring repeat offenders.</p>	<p>To assess the correctional facilities' strategies to prevent and mitigate gassing attacks, we reviewed the following:</p> <ul style="list-style-type: none"> • Processes to prevent or mitigate the impact of gassing attacks, including issuing equipment and gear such as facemasks, biohazard suits, or shields, to officers who interact with inmates. • The availability of preventative equipment at select locations within the three correctional facilities. • Processes for internal discipline to maintain control and promote desirable changes in inmate attitude and behavior—including restricting the inmate's privileges and transferring the inmate to a secured housing cell. • We also evaluated whether the correctional facilities consistently used internal discipline and whether these processes deterred repeat offenders.
<p>9 Identify any best practices for preventing, responding to, investigating, or providing aftercare for gassing incidents.</p>	<ul style="list-style-type: none"> • We interviewed personnel at each of the correctional facilities to identify potential best practices—including placing "gasser" tags on the cells of inmates who have previously committed gassing attacks and providing victims with a packet containing all mandated aftercare information following a gassing attack. • We interviewed correctional officer union representatives to obtain their perspective on how correctional facilities should address gassing attacks. • We reviewed a U.S. Department of Justice report on practices for ensuring correctional officer safety and wellness.
<p>10 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> • To determine how the number of gassing attacks at the three correctional facilities compared with other correctional facilities, we compared the rates of gassing attacks at the three correctional facilities with 10 additional CDCR correctional facilities with similar populations and security levels as Men's Central. • For the 45 gassing attacks that we reviewed as part of Objective 7 above, we sent questionnaires to each victim to obtain their perspective on the gassing attack and to ask whether the correctional facilities provided appropriate information to them following the gassing attack. We identified 55 employees who were victims in these 45 gassing attacks and we received responses from victims of 19 attacks—six from CIM, seven from Men's Central, and six from Santa Rita.

We conducted this audit under the authority vested in the California State Auditor by Government Code 8543 et seq. and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

Date: September 18, 2018

Staff: John Baier, CPA, Project Manager
Nathan Briley, JD, MPP
Ralph M. Flynn, JD
Daisy Y. Kim, PhD
Britani M. Keszler, MPA
Michaela Kretzner, MPP
Andrew Loke
Alex Maher
Itzel C. Perez, MPP
Marye Sanchez

Legal Counsel: J. Christopher Dawson, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Blank page inserted for reproduction purposes only.

STATE OF CALIFORNIA —DEPARTMENT OF CORRECTIONS AND REHABILITATION

EDMUND G. BROWN JR., GOVERNOR

OFFICE OF THE SECRETARYP.O. Box 942883
Sacramento, CA 94283-0001

August 28, 2018

Ms. Elaine M. Howle, State Auditor^{*}
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

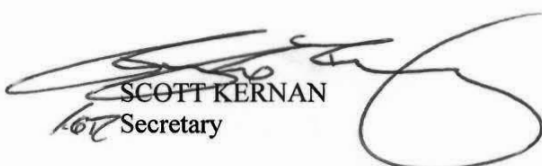
The California Department of Corrections and Rehabilitation (CDCR) submits this letter in response to the California State Auditor's (CSA) audit titled "Correctional Officer Health and Safety: Some State and County Correctional Facilities Could Better Protect Their Officers from the Health Risks of Certain Inmate Attacks."

CDCR takes the health and wellness of all its employees seriously, and recognizes the responsibility to protect staff from health risks associated with gassing incidents. To further ensure the safety of its staff, CDCR continues to create a culture of focused improvement, oversight, and accountability. Consistent with that commitment, all CDCR institutions, including the California Institution for Men (CIM), review each gassing incident carefully and continue to refine their communicable disease prevention programs. Additionally, CIM is committed to continuously evaluating and improving the performance of its gassing prevention and response practices.

CIM has already made progress improving its gassing incident prevention and response practices, and acknowledges there is further progress to be made. Among the improvements already implemented, CIM created a package for employees who are victims of gassing attacks. The package includes all relevant documents and instructions to ensure the employees are aware of their access to additional resources and are notified of their rights to have the inmate that gassed them tested for a communicable disease. Additionally, CIM continues to provide its staff with immediate access to medical care, evaluation, and follow-up by the appropriate healthcare providers. CIM also thoroughly reviews all incidents of staff assault to ensure protocols were followed and reviews were updated to include verification that the gassing package was provided to employees who are victims of gassing attacks. CDCR will consider the report's recommendations and continue to improve its practices to ensure the wellbeing of all institution staff.

CDCR would like to thank CSA for their work on this report and will address the specific recommendations in a corrective action plan within the timelines outlined in the report. If you have further questions, please contact me at (916) 323-6001.

Sincerely,



SCOTT KERNAN
Secretary

* California State Auditor's comment appears on page 47.

Blank page inserted for reproduction purposes only.

COMMENT

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

To provide clarity and perspective, we are commenting on the response from CDCR regarding our review of CIM. The number below corresponds to the number we have placed in the margin of its response.

We look forward to receiving CDCR's 60-day response to this report and identifying its progress and plans for implementing our recommendations.

①

Blank page inserted for reproduction purposes only.



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM McDONNELL, SHERIFF



August 28, 2018

Ms. Elaine M. Howle*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle:

RESPONSE TO MEN'S CENTRAL JAIL GASSING AUDIT

Please allow this letter to serve as a response to your audit report entitled "Correctional Officer Health and Safety: Some State and County Correctional Facilities Could Better Protect Their Officers from the Health Risks of Certain Inmate Attacks," dated August 22, 2018. The Los Angeles County Sheriff's Department (Department) is greatly appreciative of your work and desire to improve the working conditions of our personnel. While many of the protocols you recommend have long been in place, your audit has afforded us the opportunity to review our policies and ensure our procedures are adequately documented. Our responses to your specific recommendations are below:

Recommendation

Men's Central Jail should revise its policies and procedures to require documentation that its supervisors are notifying victims of gassing attacks in a timely manner of the following:

- *Medical services and workers' compensation benefits available to them.*
- *The right to request the inmates be tested for communicable diseases.*
- *Counseling services available to staff.*

Response

Our Department's Custody Division Manual §4-01/020.10, Battery by Gassing, sets forth our policy and procedures for the provision of services to our staff as

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

A Tradition of Service
— Since 1850 —

* California State Auditor's comments begin on page 55.

Ms. Howle

- 2 -

August 28, 2018

- well as proper documentation after a gassing attack. This policy is attached hereto as Exhibit A. Additionally, on August 18, 2018, we revised the Custody Operations Administrative Tracking Form (Supervisor's Gassing Checklist), attached hereto as Exhibit B in order to ensure essential information and notifications are appropriately made. The Supervisor's Gassing Checklist will now be a mandatory form, which will be archived in the personnel files of our staff members who are victims of a gassing attack. The mandatory form will serve to ensure accountability and tracking purposes.

Our current policies require Custody Services Division supervisors to treat gassing incidents as work related injuries if the bodily fluids or other substances make contact with the skin or membranes of an employee and complete a Workers' Compensation Claim form. We encourage our employees to seek a medical evaluation and treatment. As part of the investigation, we advise victims of their right to request the inmate be tested for communicable diseases and the right to complete the Communicable Disease Exposure and Request for HIV Testing forms. The Supervisor's Gassing Checklist is currently required to be completed in its entirety shortly after the gassing attack, ensuring supervisors complete all the required forms and notifications.

The Department of Health Services - Correctional Health Services (CHS), is in the process of revising their gassing policies related to employee exposures to communicable diseases. CHS will notify employees who have been directly exposed to bodily fluids of inmates, who have tested positive for HIV, or been diagnosed with a communicable disease such as AIDs, tuberculosis, or Hepatitis B or C. In addition, to the extent a gassing victim requests the inmate be tested, CHS policy will continue to require the victim be notified of the results of tests administered in response to the request. Employees will also be offered and provided with medical counseling both at the time of their initial report/request for testing, and at the time the test results are provided to them.

Recommendation

To ensure that it properly investigates gassing attacks and refers cases for prosecution, Men's Central Jail should do the following:

- *Implement procedures to ensure that it collects sufficient physical evidence.*

Ms. Howle

- 3 -

August 28, 2018

- *Develop goals for how long investigations should take and take steps to ensure its officers adhere to these guidelines.*

Response

Our Department has had a number of policies related to the collection and retention of evidence related to gassings which have been in place since May 16, 2017. Custody Division Manual §4-01/020.10 Battery by Gassing – identifies the specific evidence to be collected, including, at minimum, soiled uniforms, substance samples, and the container used to propel the bodily fluid. ③

According to our Department’s Manual of Policy and Procedures §5-04/080.30 Transfer of Property/Evidence to Central Property, attached hereto as Exhibit C, all such evidence shall be maintained at decentralized facilities. Custody Investigative Services (CIS), routinely transports evidence to Central Property to be held until the crime lab is able to conduct testing. Custody investigators continuously follow-up with crime lab personnel to ensure evidence items are being tested and processed as quickly as possible. ②

Our Manual of Policy and Procedures §4-01/005.25, Responsibility of the Investigating Detective, attached hereto as Exhibit D, clearly sets forth a goal for our jail detectives of closing all cases within 30 days of assignment. Each case, however, is unique and delays in receiving the results of crime lab testing can sometimes affect the amount of time it takes to properly complete a gassing attack investigation. ④
②

Our Field Operations Directive 11-01, requires detectives to complete a journal which “shall concisely indicate each investigative step taken by the investigator and shall capably provide another investigator or supervisor with enough information to ascertain the status of an investigation. Details of the investigation shall be documented in supplemental reports.” The Field Operations Directive, attached hereto as Exhibit E, also requires detective supervisors to ensure proper investigative diligence and approve the justifications supporting a request by a detective to keep a case open in excess of 60 days. Detectives are also required to submit a supplemental report to their supervisor providing a status update and justification should they need to keep a case open more than 90 days after assignment. Detective supervisors brief the detective unit commander every 30 days on cases open longer than 90 days. ②

Ms. Howle

- 4 -

August 28, 2018

- ② Custody Services Division is currently in the process of revising policy to require a five business day period for data entry into the Los Angeles Regional Crime Information System (LARCIS). This will assist in the accountability and effectiveness of managing high volume case incidents. The revised policy shall incorporate other existing policies currently found under the Custody Division Manual, §4-01/000.00, Crime Reporting Procedures, attached hereto as Exhibit F, which states the statistical data shall include information contained in the Custody Services Division Crime Analysis Supplemental Form (SH-R-49C).

The revised policy will additionally require crime reports to be scanned and forwarded to the Jail Investigations Unit, immediately following data entry. These policy revisions will dictate evidence be properly processed and made available for the CIS evidence custodian to pick up within the same time period of five business days to further ensure gassing incidents are completed in a timely manner.

Recommendation

To ensure the safety of its staff, Men's Central Jail should provide annual training that is specific to preventing and responding to gassing attacks.

⑤ Response

While training specific to gassing incidents have been in place since 2013, the Department had been working on the development of a gassing awareness training video since January 2018. The video was recently completed by the Custody Training and Standards Bureau (CTSB), in collaboration with Psychological Services Bureau, and the Department of Health Services. This educational video provides personnel with useful information regarding preventative measures, response, documentation requirements, and available medical care/psychological aftercare services.

On August 22, 2018, the Department began distributing the training video. All employees can now access the video utilizing the Department's intranet website Custody Division instructional bulletins portal. CTSB continues to formalize this training by developing specific curriculum. CTSB will document the presentation of this training to our staff using the Custody Training system format developed for the annual audit by the Board of State and Community Corrections, Standards of Training for Corrections.


Ms. Howle

- 5 -

August 28, 2018

Should you have questions, please contact Chief Joanne Sharp, Custody Services Division General Population, at (213) 893-5017.

Sincerely,



JIM McDONNELL
SHERIFF

Blank page inserted for reproduction purposes only.

COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

To provide clarity and perspective, we are commenting on the response to the audit from the LASD regarding our review of its Men's Central Jail. The numbers below correspond to the numbers we have placed in the margin of its response.

① During Men's Central review of the draft audit report, it provided evidence to demonstrate that it offered all victims medical care for the 15 cases we reviewed. Therefore, we removed this specific recommendation for Men's Central. However, we were not able to do so until late in the audit process as it did not provide documentation until August 2018. During our audit fieldwork, Men's Central stated that, in some cases, documentation of the medical care did not exist. However, upon receiving our draft audit report, the Los Angeles County Office of County Counsel, which supports the LASD, provided the necessary documentation. Men's Central's practice of using County Counsel to filter our requests likely resulted in this delay and similar delays during the audit process. For example, beginning in March 2018 we made repeated attempts during our audit fieldwork to obtain complete evidence from Men's Central regarding its efforts to provide counseling services for victims of gassing attacks. However, Men's Central refused to provide access to the necessary documentation, first through the Los Angeles County Counsel's Office, then through outside private counsel at an unknown additional cost to the county. Men's Central did not provide counseling records until July 2018, which created a substantial delay in our ability to answer the audit questions.

② The exhibits that Men's Central references throughout its response are available for inspection upon request during business hours at the California State Auditor's office.

③ The response by Men's Central fails to address the concerns we identified with its evidence collection practices. As shown in Table 3 on page 21, Men's Central only collected physical evidence of the crime in nine of the 15 gassing attacks we reviewed, indicating the need for it to implement procedures to ensure that officers follow its policies for collecting sufficient physical evidence of the gassing attacks that inmates committed.

④ Contrary to its statement, Men's Central's current policy does not require completion of investigations within 30 days. Instead, the policy it refers to only states that it will classify an investigation as *inactive* and closed when detectives make no progress after 30 days. Moreover, its investigators took 70 days on average to complete investigations for the 15 gassing attacks we reviewed, as we display in Figure 4 on page 25. As Men's Central's

investigations far exceeded 30 days on average, it should follow our recommendation by adopting goals and ensuring officers adhere to those goals.

- ⑤ For clarification, the training that Men's Central refers to is part of its new employee training and therefore is provided only once to each employee. Moreover, we only became aware of its new training video as part of its response to our audit. Thus, it is unclear if the training video will ensure that officers are better prepared to prevent and respond to a gassing attack. We look forward to learning more about Men's Central's implementation of this recommendation in its 60-day response to this report.

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

Via email: ralphf@auditor.ca.gov

(510) 272-6878

August 28, 2018

Elaine M. Howle, CPA, State Auditor *
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

SUBJECT: RESPONSE TO THE DRAFT STATE AUDIT REPORT 2018- 106

Dear Ms. Howle:

Thank you for the DRAFT State Audit Report 2018-106. Kindly note the Alameda County Sheriff's Office offers the following response:

Please convey our sincere appreciation to your audit team for their hard work and professionalism in preparing the State Audit Report 2018-106. With regards to the recommendations that were made by your audit team, you will note the Alameda County Sheriff's Office partially agrees and disagrees with suggested recommendations.

Again, thank you for the opportunity of reviewing the DRAFT State Audit Report. Please feel free to contact me should you have any questions at (510) 272-6878.

Sincerely,

A handwritten signature in black ink that reads "Gregory J. Ahern".

Gregory J. Ahern
Sheriff-Coroner
GJA:DCH:dh

Alameda County Sheriffs Office's ("ACSO") Response to the California State Audit report entitled Correctional Officer Health and Safety: Some State and County Correctional Facilities Could Better Protect Their Officers From the Health Risks of Certain Inmate Attacks 2018-106

ACSO thanks the California State Auditor for the opportunity to respond and for the hard work performed in preparing this report. ACSO respectfully submits its responses to certain key findings and recommendations below.

Finding:

Santa Rita Jail ("SRJ") does not have adequate procedures to ensure that victims of gassing attacks are notified of aftercare medical and counseling services, and of the right to request that inmates be tested for communicable disease

Recommendation:

SRJ should revise its policies and procedures to require documentation that its supervisors are notifying victims of gassing attacks in a timely manner of available medical and counseling services, workers' compensation benefits, and the right to request inmate testing.

Response:

- ① ACSO partially agrees with this recommendation. ACSO's current General Orders (GO) and Detentions and Corrections Policies and Procedures (P&P), including No. 3.15 and GO Nos. 3.16 and 3.18, which are provided to all ACSO personnel, require that ACSO personnel who come into contact with bodily fluids must immediately report the exposure to their supervisor. The policies also set forth in detail a victims' rights to medical services, workman's compensation, counseling, and the right to request that an inmate or detainee be tested for HIV antibodies or infectious diseases. Such requests must be made in accordance with Cal. Penal Code § 7510 which sets forth a detailed scheme for providing inmates with due process before conducting medical testing. ACSO's Safety Manual setting forth its Illness, Injury & Prevention Program ("IIPP") also includes a detailed attachment (Attachment 3) and training presentation on the risks associated with exposure to bodily fluids and associated personnel reporting requirements. The IIPP must be carefully reviewed and signed by each ACSO employee.

ACSO also notes that state law provides that local correctional facilities may only implement a general process of testing all inmates in custody for communicable diseases upon authorization by the local governing body, and that only known infections can be communicated to victims. (See Penal Code § 7505.) Alameda County has not passed a resolution authorizing such testing and thus ACSO most often has no knowledge of an inmate's medical status that can be provided to a gassing victim. ACSO will work with its medical provider to ensure that where infection is or becomes known, that information is communicated immediately as required.

ACSO thanks CSA for this recommendation and will add a feature to its internal systems to require that supervisors responding to gassing reports confirm in writing that the required notifications have been given to the victim,

Finding:

SRJ does not consistently investigate gassing attacks in a thorough and timely manner.

Recommendations:

SRJ should implement procedures to ensure that it collects sufficient physical evidence and submits the gassing substance for laboratory testing; develop practices to ensure that it submits all cases for prosecution when probable cause exists; and expedite its review of the four cases CSA identified to determine if submission to the district attorney for prosecution is required.

Response:

ACSO partially agrees with these recommendations. ACSO notes that the findings do not appear to take into consideration the fact that approximately half of the individually listed cases at SRJ in 2017 were committed by one inmate, and ACSO's collaboration and responsiveness to district attorney requests with respect to the evidence needed for prosecution in Alameda County. ②

ACSO works cooperatively with the district attorney to thoroughly investigate and gather evidence as required in response to all gassing attacks. While, as noted in the report, Alameda County has limited resources for testing gassing substances, ACSO will make every effort to test gassing substances dependent on the crime lab's capabilities and ability to gather adequate samples going forward. ACSO is also reviewing the four cases noted by the report to determine whether probable cause and the required elements of a crime are present. ②

Finding:

SRJ has not established adequate internal processes to prevent and respond to gassing attacks.

Recommendations:

SRJ should follow its policy and pursue appropriate internal disciplinary actions, taking mental health and competency into account. SRJ should also develop a written policy regarding the placement of "gasser" tags on inmate cells, and specifically track all gassing attacks and use the tracking data as a tool to prevent future attacks. Finally, SRJ should provide annual training that is specific to preventing and responding to gassing attacks.

Response:

ACSO does not agree with these recommendations. It is ACSO's experience that the efficacy and propriety of inmate discipline is a highly complex and evolving issue, and one that requires an individualized consideration of the inmate's medical and mental health as well as criminal history. Inmate due process rights must also be respected. Inmate discipline by regulation cannot be immediate. Inmates are afforded their right to due process thus ensuring the discipline is not punitive and retaliatory in nature. ACSO's first priority is to maintain the safety and security of its correctional facility for all inmates and ACSO personnel. Many inmates engaged in gassing behavior suffer from mental health challenges which require ACSO to consult with its behavioral health partners at the Alameda County Health Care Services Agency when contemplating internal discipline. Many are also indigent or have already lost all privileges other than time credits. ACSO does not agree that keeping such inmates incarcerated longer is likely to result in fewer gassing ③

- ④ attacks or positively impact the safety or security of SRJ. ACSO also does not agree that memorializing its practice of using "gasser" tags in yet another written policy would provide any additional benefit. There is no indication that the practice developed at SRJ is inconsistently applied.

ACSO also already requires extensive training on officer safety and defensive techniques, as well as custodial criminal investigations, and is unaware of any gassing specific defensive tactics or investigation training programs. As noted earlier, ACSO personnel are also trained on responding to and mitigating the effects of exposures to bodily fluids. ACSO does not agree that it should create a gassing specific training curriculum.

⑤

Finally, ACSO includes gassing attacks in its tracking of all inmate related incidents/assaults.

⑥

ACSO does not agree that it has the resources or ability to create a new internal tracking system exclusive to gassing attacks. ACSO also does not agree that it has the expertise or capability to analyze inmate characteristics, assess patterns, or come to conclusions about the factors that lead to inmate gassing attacks. While no separate tracking system for gassing attacks exists, ACSO's current internal systems are capable of extracting data related to gassing attacks, as is reflected by the data provided in this report.

COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE ALAMEDA COUNTY SHERIFF'S OFFICE

To provide clarity and perspective, we are commenting on the response from the Alameda County Sheriff's Office regarding our review of Santa Rita. The numbers below correspond to the numbers we have placed in the margin of its response.

As noted on page 14, we concluded that Santa Rita had policies in place to notify victims of the availability of aftercare services and the right to request that an inmate be tested for communicable diseases. However, as indicated in Table 2 on page 13, we found that Santa Rita did not track whether it notified victims of these rights. As a result, we were unable to determine if Santa Rita complied with its aftercare policies and procedures.

①

Although Santa Rita indicated that it partially agrees with our recommendation, its response confuses the issue by focusing on a single inmate that committed repeated gassing attacks. State law requires correctional facilities to use every available means to investigate and refer all cases to the local district attorney for prosecution, regardless of whether the gassing attack is committed by the same inmate. However, as indicated in Table 3 on page 21, Santa Rita did not consistently meet its responsibility to collect physical and evidence and did not test the evidence to confirm the presence of a bodily fluid. Therefore, we stand by our recommendation that Santa Rita should implement procedures to ensure that it collects sufficient physical evidence and submits the gassing substance for laboratory testing, as state law requires, and regardless of whether the gassing attack is committed by inmates who are repeat offenders.

②

Santa Rita's disagreement with our recommendation to pursue appropriate internal disciplinary actions is contrary to its own policy. Specifically, as indicated on page 32, the purpose of Santa Rita's policy for imposing internal discipline on inmates is to maintain control and promote desirable changes in inmate attitude and behavior. However, as we note in Table 5 on page 31, Santa Rita took disciplinary action for only one of the 15 gassing incidents we reviewed. Consequently, because the Alameda County district attorney obtained convictions for only 15 percent of the gassing attacks, as shown in Table 4 on page 22, Santa Rita's failure to follow its policy to impose internal discipline has resulted in many inmate perpetrators not receiving any consequences for those attacks. Moreover, as noted on page 39, our recommendation for Santa Rita to pursue appropriate internal discipline action for an

③

inmate who commits a gassing attack recognizes that it must take into consideration an inmate's mental health and competency when making this decision.

- ④ We disagree with Santa Rita's position that memorializing its practice of using "gasser" tags in a written policy would not provide any additional benefit. Developing a formal policy on the use of "gasser" tags would help ensure that all correctional staff, including newly trained officers, are aware of the requirement and implement it consistently.
- ⑤ We stand by our recommendation that Santa Rita should provide annual training that is specific to preventing and responding to gassing attacks. As we state on page 37, training specific to gassing attacks could help officers be more prepared to prevent and respond to these incidents. Moreover, as we indicate in Table 5 on page 31, two of the six victims at Santa Rita indicated that they had not received training to help protect themselves from a gassing attack—demonstrating that not all of its staff have received adequate training.
- ⑥ A correctional facility's tracking of gassing attacks should result in information that is consistent and readily accessible, which is not currently the case at Santa Rita. Specifically, as we state on page 38, Santa Rita currently must consult three separate databases to obtain information about gassing attacks at its facility. As a result, staff and management are unable to easily analyze the specific circumstances surrounding gassing attacks and to reassess their current procedures for responding to and preventing future attacks. Moreover, we are puzzled by Santa Rita's statement that it does not have the expertise or capability to analyze gassing attack data because as a correctional facility, it is in the best position to understand and use this information.