

REPORT TO THE
UTAH LEGISLATURE

Number 2006-12

**A Performance Audit
of the
Utah Department of Corrections**

December 2006

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Digest of A Performance Audit of The Utah Department of Corrections

The Utah Department of Corrections' (UDC or department) mission of protecting the public is carried out through two primary functions: first, fulfilling court orders by incarcerating those members of society who have been convicted of a crime, and second, fulfilling Board of Pardons orders by supervising those offenders who have been released on probation or parole.

We were asked to audit the personnel practices of the Department of Corrections in order to address concerns raised by employees at the department. We also reviewed other areas where management oversight needs improvement. Lastly, we recommend that changes be made in the internal review functions at the department.

Chapter I: Introduction

The Department's Personnel Problems Go Beyond the Work Environment. UDC's mission of housing and supervising a growing offender population, by itself, creates a stressful, unpleasant work environment for the department's employees. Unfortunately, the department's personnel problems go beyond the obvious difficulties of the work and extend into a deep-rooted staff belief of management favoritism.

Chapter II: Concerns At UDC Have Been Previously Documented

Concerns at UDC Have Been Previously Documented. Many UDC employees believe there is an underlying culture of unfairness and favoritism within the department. This belief has been noted throughout the recent history of the department in various reports. Evidence of this culture is documented in the Governor's Transition Reports. The latest transition report states:

Some witnesses and others who have made gratuitous contact with members of our Transition Team have pointed out that the upper level management in the department is self-perpetuating, lacks vision and innovation and that indiscretions that would normally receive significant punishment, if not termination, if engaged in by line employees, go unpunished or are otherwise overlooked. In reviewing [former] Corrections transition reports, it appears that this issue was common at the time and appears to be chronic in nature. . . The Transition Team recommends that whoever the new director might be must address these issues and resolve them once and for all.

**Chapter III:
Appearance of
Favoritism and
Concerns with
Management
Decisions Exists**

We do not believe that the executive director or department management have sufficiently resolved the personnel concerns at the department.

Internal Data Suggest Concerns with Personnel Practices. Not only do external, independent entities comment on the problems and culture believed to be found in the department, internal data and information also point to personnel problems and questionable management decisions. In fact, a former executive director indicated in a UDC report that misbehavior was institutionalized in the department. Further, employee surveys by the department have indicated that employees believe favoritism is a significant concern.

Favorable Treatment Seemingly Given to Select Individuals. Favorable treatment has seemingly been given to some select administrators and employees. As well, management’s decisions in some of these cases are concerning. In some cases, it appears that UDC administrators have not held themselves and some select employees to a higher standard. We believe that this bending of rules has fueled employee allegations and leads to questionable management decisions. Chapter III details several cases that appear to demonstrate favorable treatment and/or questionable management decisions for the benefit of specific administrators, supervisors, and select line staff.

For example, we found some administrators and supervisors who were not investigated for wrongdoing while other employees were investigated and disciplined for similar wrongdoing. We also found cases where it appears management is not treating all employees equitably. We believe that the evidence suggests that department administration has not completely fulfilled the Governor’s Transition Team’s recommendation to “address these [inequitable and favorable treatment of management] issues and resolve them once and for all.”

Administrators and Supervisors Should Be Held to a Higher Standard. Specific cases illustrate that some administrators and supervisors at the department are apparently receiving favorable treatment more often than line staff. This practice is directly contradictory to department policy, which states that administration and supervisors should be held to a higher ethical standard. This concern was also addressed by the Governor’s Transition Report; the report states:

[Individuals] view corrections management as “incestuous, self-protective and having created an atmosphere of intimidation and extremely disparate discipline when it comes to issues involving administrators versus line employees.”

**Chapter IV: UDC
Needs Improved
Management
Oversight and
Controls**

Of the cases discussed above, 6 of the 10 dealt with administrators or supervisors.

1. We recommend that UDC management follow the recommendations of the Governor's Transition Team.
2. We recommend that UDC management ensure that employees, inclusive of administrators, are treated equitably in investigations and discipline.
3. We recommend that UDC management apply department standards and policies equitably among all employees throughout the organization, inclusive of administrators.

UDC Is Not Compliant with Training Statute. Six percent (107) of the department's peace officers and correctional officers did not meet training requirements for fiscal year 2005. Additionally, 25 of those officers have not received the required training for at least the last two years. The lack of proper training increases the liability to the state and creates a safety risk for employees and inmates. We are concerned that department management has not implemented proper controls to ensure that officers receive the training required by law.

UDC Lacks Adequate Oversight for Commute Vehicles. The UDC does not follow its own policy or state policy governing the use of commute vehicles. We found instances in which management of the department appears to treat commute vehicles as perks for certain positions rather than for state business. If commute vehicles are used as perks, the department may be in violation of Internal Revenue Service (IRS) Publication 15-B. However, department management no longer requires its officers who are assigned commute vehicles to track individual emergency calls (call-outs) for which they use their commute vehicles. This violation of department policy makes it difficult for us to justify the actual need for commute vehicles.

Department Does Not Follow Other Select Policies. UDC is also not compliant with its own policies over reserve officers and disciplinary actions. Poor tracking of reserve officers may lead to increased state risk exposure. The discipline filing policy inconsistencies involve noncompliance by the Human Resources (HR) office.

1. We recommend that the executive director develop a control in which supervisors and officers can track training hours.
2. We recommend that employees who do not receive 40 hours of training be prohibited from exercising officer duties, as outlined in the *Utah Code*.
3. We recommend that UDC employees who do not fulfill the training required for certification receive the standard public employees' retirement instead of public safety retirement.
4. We recommend that the UDC management implement a tracking mechanism for commute vehicles.
5. We recommend that the executive director review the actual need for commute vehicles after the department has begun tracking actual call-out usage.
6. We recommend that the department discontinue providing commute vehicles for employees who do not have the need.
7. We recommend that the department require each region to follow the approved reserve officer policy in order to limit the state's liability and facilitate tracking of reserve's activities.
8. We recommend that filing of discipline records be brought up to date and maintained in order to restrict incentive awards and promotions in a timely fashion.

**Chapter V:
Increased
Independence of
Internal Review
Functions Needed**

The Internal Audit Bureau Needs More Independence.

Historically, UDC's internal affairs office has had a reputation of being unable to conduct independent investigations of employee related problems. Our review of more recent times indicates that problems continue. We believe that a major restructuring of the office is necessary to ensure high-quality, independent investigation.

Investigations by Internal Affairs Needs To Be Equitable Among Employees.

Internal affairs has not investigated some administrators accused of wrongdoing. We believe that some investigations have been held up by administration. We believe that some investigations have been delayed by department administration while some allegations of administrative personnel have gone without investigation. The internal affairs function at the department needs greater independence to ensure that investigations are equitable among employees.

1. We recommend the audit director report functionally to an audit committee or the executive director and administratively to the executive director, as required by statute.
2. We recommend that management follow up to ensure that audit recommendations are implemented.
3. We recommend that the Legislature direct the department to conduct a feasibility study to decide how to best ensure the independence and quality of the internal affairs function. The department should report their findings back to the Legislature. Points that should be considered are:
 - a) Combining the criminal and personnel functions into one bureau.
 - b) Creating greater independence by restructuring the reporting relationship of internal affairs to either the executive director or another independent person or group.

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Chapter I

Introduction

The Utah Department of Corrections' (UDC or department) mission of protecting the public is carried out through two primary functions: first, fulfilling court orders by incarcerating those members of society who have been convicted of a crime, and second, fulfilling Board of Pardons orders by supervising those offenders who have been released on probation or parole. In order to accomplish its mission, UDC is currently approved for 2,457 positions and has over 2,200 active employees.

UDC Employees face unique work situations.

These employees face a unique work situation that is made more difficult by increasing prison populations, an increasingly difficult clientele, salaries lower than those of county jails, and a frequently changing physical and attitudinal work environment. The increased pressure on staff has, over the years, resulted in the continuing staff beliefs of inequitable standards, favoritism, and concerns with management decision making. These concerns have created an unpleasant working environment for some staff.

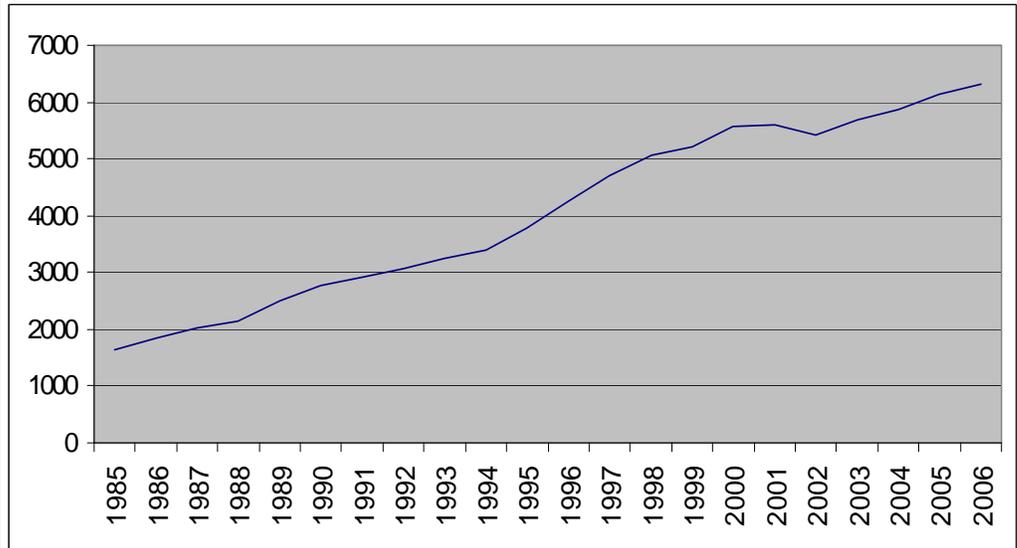
Correctional System Is Growing Rapidly

Rapid growth of the number of inmates and parolees has taxed Utah's correctional system and its employees. A nearly 450 percent increase in the prison population over the last 20 years has created logistical difficulties for the department, including a need for increased bed space, increased numbers of officers, and increased funding.

In the last 20 years the prison population has increased nearly 450 percent.

The department's Division of Institutional Operations (DIO) maintains control of the Draper prison, Gunnison prison, and state inmates in county jails. The continuous growth of the inmate population over the last 20 years forced the construction of the Gunnison facility and the use of county jails for the state's inmates. In fiscal year 2006, DIO's staff of 1,278 supervised approximately 6,400 inmates. Twenty years ago the total inmate population of about 1,900 was supervised by a staff of 380.

Figure 1.1 20-Year Prisoner Count. The number of prisoners has steadily increased for the last 20 years.



Source: UDC

This same growth has taken place in the supervision of Board of Pardons released offenders. Adult Probation and Parole (AP&P) supervises offenders who have been released on probation or parole. They conduct home visits, as well as work with prisoners who are required to check in to community offices. In fiscal year 2006, AP&P's staff of 570 supervised approximately 14,600 offenders.

In answer to this growth, the Legislature has increased UDC's budget in recent years. From fiscal year 2003 to fiscal year 2007, UDC's annual budget increased by \$42 million to \$240 million (including Utah Correctional Industries (UCI) and jail reimbursement). This is an increase of 21 percent over the last five years. The budget increase includes funding for increased staffing, salary increases, inmate growth, and increased bed space.

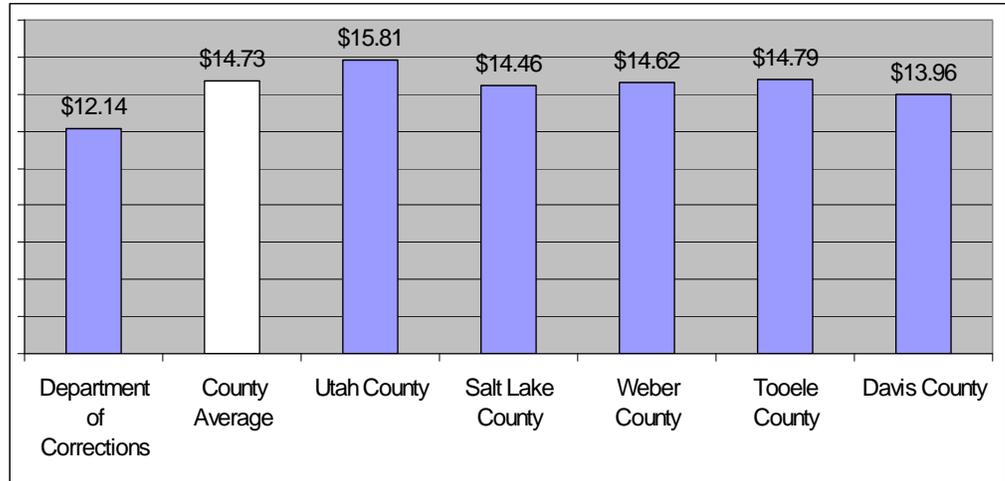
Staff Salaries Are Not Competitive With Local Salaries

While funding has increased in recent years, the rapid growth of the inmate population has resulted in less funding for salary increases. Hiring of UDC officers has been difficult, as starting salaries at the department

The Legislature has increased UDC's budget in recent years.

are lower than those of many county facilities. Figure 1.2 below demonstrates the current salary discrepancy between the department and county jails.

Figure 1.2 State and County Employee Starting Salaries.
 Department starting salaries are lower than some larger county jail's salaries.



Source: UDC

As the figure shows, starting salary for state correctional officers is \$2.59 less per hour than the average county jail starting salary. Recruiting staff to work with a more difficult offender population at roughly 82 percent of the county average continues to be a reason for departmental staffing difficulties.

The Department's Personnel Problems Go Beyond the Work Environment

UDC's mission of housing and supervising a growing offender population, by itself, creates a stressful, unpleasant work environment for the department's employees. Unfortunately, the department's personnel problems go beyond the obvious difficulties of the work and extend into a deep-rooted staff belief of management favoritism.

The staff belief of favoritism is not a new or limited phenomenon. Allegations of favoritism and inequitable treatment of staff have existed

Many UDC employees believe favoritism is a concern at the department.

for a number of years and are widespread in the organization. There is sufficient evidence to support that outside oversight groups have acknowledged the problems associated with allegations of favoritism as real and in need of corrective action. Internally, the department has surveyed staff and has found that staff consider favoritism problems as significant as their salary level, but more needs to be done at the department level to address the allegations. Additionally, along with favoritism concerns, we question some of management's decisions in regards to discipline. Chapters II and III outline these concerns.

Audit Scope and Objectives

Audit scope and objectives included a review of employee allegations.

We were asked to audit the personnel practices of the Department of Corrections in order to address concerns raised by employees at the department. The scope of our audit was to review the following areas:

- Determine if hiring, discipline and other personnel practices indicate any favoritism toward friends, family, or associates.
- Identify whether any illegal or unethical behavior exists on the part of management.
- Determine if individuals selected for management positions are qualified and have sufficient experience and discipline to lead.

Chapter II contains a history of past reports on personnel practices and favoritism at the department, as well as historical examples of cases that appear to be favoritism. Chapter III provides examples of perceived favoritism that have occurred during the current administration.

In addition to addressing the above issues, we also discuss some management and oversight issues that we discovered during the course of the audit. Chapter IV shows a need for greater control and management oversight in the department. Chapter V examines the need for oversight in the internal audit and internal affairs bureaus.

Chapter II

UDC Personnel Practices Are A Continuing Concern

Many Utah Department of Corrections (UDC or department) employees believe there is an underlying culture of unfairness and favoritism within the department. This belief has been noted throughout the recent history of the department in various reports. The belief is so ingrained that a past executive director declared gender-based discrimination by an employee as institutionalized within the department and consequently not worthy of harsh discipline. Further, evidence of this culture is documented in the Governor's Transition Reports. The latest transition report states:

The Governor's Transition Report directed the current executive director to resolve favoritism issues once and for all.

Some witnesses and others who have made gratuitous contact with members of our Transition Team have pointed out that the upper level management in the department is self-perpetuating, lacks vision and innovation and that indiscretions that would normally receive significant punishment, if not termination, if engaged in by line employees, go unpunished or are otherwise overlooked. In reviewing [former] corrections transition reports, it appears that this issue was common at the time and appears to be chronic in nature. . . . The Transition Team recommends that whoever the new director might be must address these issues and resolve them once and for all.

Concerns with favoritism continue to exist.

We do not believe that the executive director or department management have sufficiently resolved these issues. Issues raised by the transition team continue, as evidenced by a relatively large number of continuing and current complaints that far exceed those of any other department. UDC management must begin resolving issues in a way that clearly signals to employees that favoritism will not be allowed. If not addressed, the perceived culture of favoritism may jeopardize the department's mission to "protect the public through institutional care and confinement."

Examples of continuing favoritism will be given in Chapter III.

This chapter outlines evidence of concerns with the department's practices through both outside, independent sources and UDC internal data and information. The next chapter, Chapter III, discusses these

concerns in the terms of specific cases uncovered in the course of the audit. Chapter III cases deal with current cases of apparently favorable and/or inequitable treatment of administrators and some select employees tied to administration, as well as questionable management decisions.

Concerns at UDC Have Been Previously Documented

Independent reports and data illustrate employees' beliefs of unfairness and favoritism at UDC. Grievance data, Career Service Review Board (CSRB) hearings, Governor's Transition Reports, and a past legislative audit all indicate that concerns at the department have existed for many years.

Governor's Transition Team Gave UDC Management a Directive to Resolve Favoritism

The most recent Governor's Transition Report, dated December 2004, provided UDC management with a clear directive to "address these [inequitable and favorable treatment of management] issues and resolve them once and for all." The report further declares that employees contacted them frequently to point out the negative culture that exists at the department. These concerns were primarily about management—specifically that management:

- Is self-perpetuating
- Holds their behavior to a lower standard than line staff

The negative culture of favoritism that existed during the time of the past transition reports can be evidenced by many examples. A sample of these examples includes:

- A UDC internal affairs investigator, and son of a former UDC administrator, was charged with a sex crime. UDC does not have documentation of discipline.
- A supervisor was caught by his/her staff viewing pornography. The supervisor's discipline was held in abeyance; consequently, the supervisor was never required to take leave without pay. The department just recently implemented a zero tolerance policy for

**The Governor's
Transition Report
outlined specific
concerns raised by
employees and
recommended that
UDC management
resolve the issues.**

**Past examples exist
that coincide with
transition report
concerns.**

pornography; however, other state departments have had this policy for some time.

We found that concerns like these are still in existence today. Refer to Chapter III for examples.

Because of the frequency of the complaints, coupled with the frequency of the allegations shown above, the transition team recommended immediate action take place to correct the concerns. The transition team recommended:

Whoever the new director might be must address these issues and resolve them once and for all. The Transition Team feels that [the deputy director] should be filled from [someone] outside the Department. . . . Whoever the Director is, he or she must be strong enough and capable of making changes where necessary to resolve some of the issues that have been raised by various witnesses and have been detailed in this report.

The executive director did not fill the deputy director position from outside the department; nevertheless, this appointment was accepted by the transition team. Additionally, the executive director did appoint an employee to assistant director who was directly related to and involved with many of the favoritism concerns. Even more, as discussed in Chapter III, we believe that the concerns raised in the transition report dealing with favoritism and inequitable treatment of employees have not been fully resolved.

Grievance Data and Reports Indicate Concerns at UDC

Grievance reports and data reemphasize concerns with the department's direction similar to those found in the Governor's Transition Reports. These independent documents once again elevate the concerns that the Governor's Transition Team encountered. Further, these documents show that many departmental problems continue, although improvement in department grievance numbers has been noted.

UDC Grievances Highest in the State. Employee grievances are broad indicators of concerns and dissatisfaction by employees. UDC's grievances, filed under *Utah Code* 67-19a, Grievance and Appeal

The transition team recommended that the deputy director position be filled from outside the department to correct personnel problems.

UDC grievances are significantly higher than any other state agency.

Procedures, are typically significantly higher than the grievances reported by other similarly sized agencies. Figure 2.1 illustrates grievances for each of the state agencies with the highest number of employees.

Figure 2.1 Employee Grievance Comparison. UDC has the highest percent of employees filing grievances, averaged over a three-year period (FY 2004 - FY 2006).

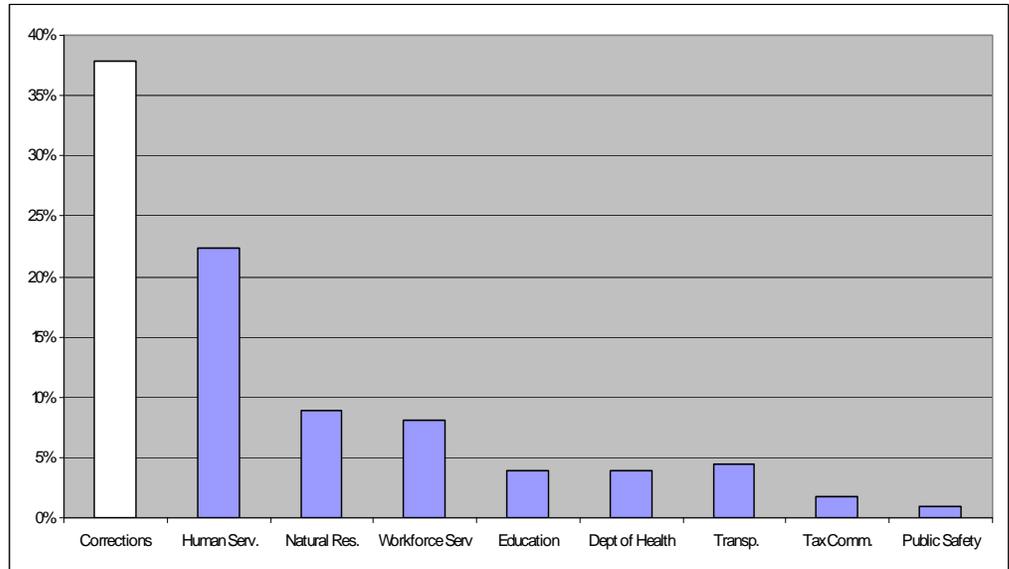
Agency	Percent of Employees Filing Grievances
Corrections	1.90%
Natural Resources	1.13
Education	0.60
Human Services	0.56
Workforce Services	0.47
Health	0.39
Transportation	0.30
Tax Commission	0.25
Public Safety	0.09

Source: CSRB Annual Reports

UDC has the highest percent of employees filing grievances.

The average employee grievance rate at UDC is significantly higher than that of any other state agency. UDC’s three-year average grievance rate is 1.7 times higher than the Division of Natural Resources (DNR), the agency with the closest grievance rate. On the other end of the spectrum is the Department of Public Safety (DPS), the agency most often compared to UDC, with an average rate that is one-twentieth that of UDC. A three-year average was used to smooth any abnormalities that may have occurred in a single year. Figure 2.2 shows the percentage of total state grievances filed by each agency.

Figure 2.2 Employee Grievance Comparison. The three-year average (FY 2004 - FY 2006) percent of total state grievances filed by Utah's largest state agencies.



Even factoring out benefit grievances, UDC has 15 more grievances than the next-highest department.

This figure shows that UDC files a significantly higher percentage of the state's total grievances than other departments. This number is affected, but not defined, by a significant spike in employee dissatisfaction in 2005. Changes in state employee retirement benefits apparently dissatisfied many more UDC employees than employees of other departments. In fact, 25 of the 65 grievances filed at UDC in 2005 concerned benefits; no other state department filed a grievance over benefit changes in 2005. However, even factoring out the grievances over benefits, UDC still had 15 more grievances than the next-highest state department in fiscal year 2005.

DPS, the agency most similar in function to UDC, had significantly lower grievances than UDC.

Of note, the other agency most similar in function to UDC, DPS, had one grievance in fiscal year 2005. This is an important distinction, as correction officials state that grievances are naturally higher in law enforcement.

Grievance numbers from the department significantly dropped in 2006. Where there were 65 grievances filed in fiscal year 2005, there were 19 filed in fiscal year 2006. In fact, for the first time since 1998, UDC did not lead the state in grievances. DNR, with 20 grievances, surpassed UDC; however, 18 of these grievances were unique to a DNR compensation issue. Due to the 2006 decrease, as well as the spike in

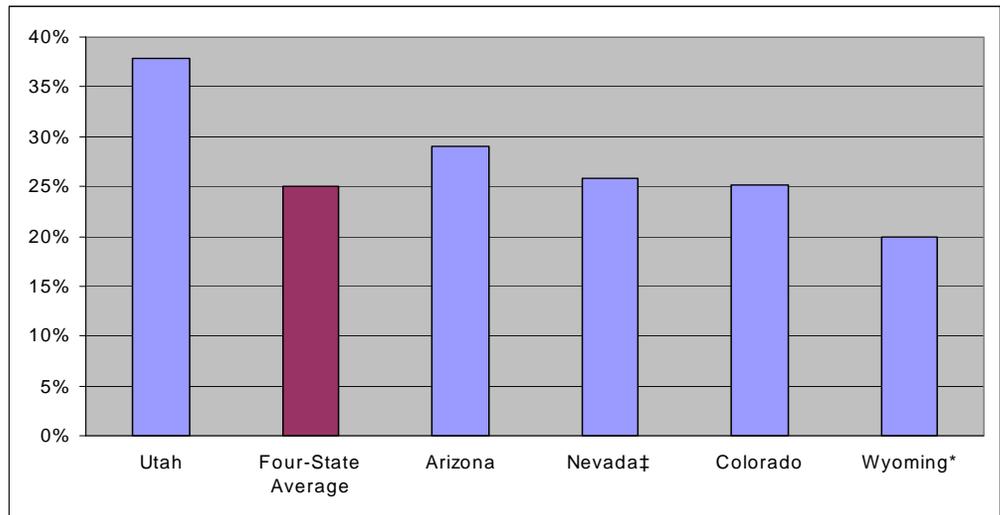
2005, the grievance numbers were averaged to even out these outlying years.

The Department’s Grievance Rates Are Higher Than Corrections Departments in Other States. We were told by UDC management that a primary explanation for UDC’s higher grievance rates is the unique nature of law enforcement in a prison environment. However, the grievance data shows that UDC has higher grievance rates than all other corrections departments in western states. This could indicate that the department’s grievances are indicative of a problem more extensive than the nature of the prison environment.

Comparison among states was difficult due to differences in grievance resolution methods in each state. Therefore, we compared each state’s department of corrections within its own grievance resolution system. We then averaged the data to smooth out any data abnormalities found in a given year. The data in Figure 2.3 shows that UDC, on average, has a higher complaint rate than other correction departments in western states.

Comparing each state correction department within its own system shows that Utah corrections has a higher grievance rate.

Figure 2.3 Grievance Data Indicates That UDC Has More Complaints Than Other States. Utah Corrections grievances, as a percentage of total state grievances, are high in comparison to other state’s percentages. (Average 2004 to 2006)



* Wyoming data is in calendar years. 2006 data includes everything up to September 12, 2006.

‡ Nevada tracks only aggregate data that would be considered steps 2 through 4 in the Utah system; their data is for six years.

‡ Idaho’s data was not available for all years, so an average could not be completed.

The figure shows that, as a percentage of total state grievances, Utah Corrections' grievances account for a higher percentage of total grievances in Utah than the percentage that other state departments of corrections average in their respective states. In fiscal years 2004-2006, UDC averaged 38 percent of total state grievances. Arizona's Department of Corrections, with the next-highest average, comprised only 29 percent.

When compared on a per employee basis, Utah continues to have the highest grievances rates. The average grievance rate per employee for Utah is 1.9 percent followed by Colorado (1.65 percent), Nevada (0.74 percent), Wyoming (0.41 percent), and Arizona (0.24 percent).

Although Nevada Corrections has a lower grievance rate than Utah Corrections, some Nevada officials are concerned by their own grievance rates. With 26 percent of grievances in their state, Nevada considers their numbers alarming enough that they are planning on visiting the problem of their corrections grievances/morale in their next legislative session. We believe Utah correction officials should also be concerned.

Independent Reports Indicate Negative Culture at UDC. Two reports in the last 18 months have made mention of a negative culture at the department. A report commissioned by the department to understand why their grievances were so abnormally high indicated that "bad feelings" appear to be widespread in the organization. The report stated:

Responses are very negative and the bad feelings seem to be pervasive throughout the organization among all ages, departments, etc.

Further, a recent Career Service Review Board (CSRB) hearing relating to a grievance by a department employee also discussed the negative culture that appears to be present at the department. The hearing officer stated in the report:

[Grievant's] conduct appears to have been, to the Hearing Officer's mind, unfortunately a part of a "culture," both past and present in existence at the Department. . . . It is suggested that such culture at a minimum needs to be "reined in" if not ideally totally quashed for the benefit of the taxpaying public.

Nevada, with a lower grievance rate than Utah, is alarmed by their own numbers.

A hearing officer recommends the culture of misconduct be reined in.

A 1990 legislative audit reported instances where rules were violated to benefit a relative or friend.

Such claims are not new to our own work with UDC. A legislative audit in 1990 indicated that practices at the department led to an impression of favoritism. The audit identified “several recruitments for permanent positions where personnel rules were violated or where the recruitment appeared to favor a relative or friend.” The report advises, “By using a more competitive process, the department would be better able to avoid the appearance of favoritism.” The report also advises against disciplinary and management leave practices that would leave the department open to criticism. If not corrected, this culture may eventually jeopardize the department’s ability to effectively accomplish their mission of protecting the public.

Internal Data Suggest Concerns With Personnel Practices

Not only do external, independent entities comment on the problems and culture believed to be found in the department, internal data and information also point to personnel problems and questionable management decisions. In fact, a former executive director indicated in a UDC report that misbehavior was institutionalized in the department. Further, employee surveys by the department have indicated that employees believe favoritism is a concern.

Internal Reports and Surveys Indicate Personnel Concerns

Some of the department’s own reports and data indicate that favoritism is a concern within the department. Specifically, a report written by a past executive director states that bad behavior is institutionalized in the department. Further, employee surveys conducted by the department indicate concerns of favoritism and inequitable treatment.

Former UDC Executive Director Indicated That Inequities and Disrespectful Treatment Are Institutionalized. A recent former executive director responded to an issue of gender-based discrimination by an employee by calling it “institutionalized.” The executive director states:

Departmental reports indicate problems with behavior and morale.

Because bad behavior was institutionalized, a former executive director mitigated a punishment.

Once again, this misbehavior appears to be more institutionalized within the department, rather than a situation occurring only in [employee's] staff meetings. While this does not justify his conduct, it does serve to mitigate it to a degree. If there were no mitigating circumstances, and this was an ongoing situation that only [employee] and his staff were involved with—this misconduct is serious to the degree I would strongly consider much harsher disciplinary action, up to demotion or termination of [employee's] employment.

Instead of demotion or termination because of the so-called mitigating factors, the employee never had to take any days off, an action the current executive director approved.

UDC Employee Surveys Indicate Some Personnel Concerns.

Employees' belief in favoritism is evidenced in two employee surveys conducted in 2003 and in 2006. The 2003 survey, conducted among Division of Institutional Operations (DIO) employees in 2003, found that 76 percent of respondents felt that favoritism exists in the department. Figure 2.4 demonstrates some of the concerns that were raised in the 2003 survey.

In 2003, 76% of employees felt favoritism existed within the department.

Figure 2.4 Favoritism Indicators. An employee survey conducted in 2003 demonstrates employees' concern with unequal treatment.

76% believed favoritism existed.

30% felt the department was concerned about giving everyone a chance to get ahead.

81% felt frustrated by their employment.

Source: UDC 2003 Employee Survey

A follow-up survey conducted in 2006 did not ask the same questions or address the same concerns. Instead, the 2006 survey addressed concerns with employees' level of satisfaction with their personal life, which appeared to improve. Due to employee concerns over favoritism and inequitable treatment, as well as the results of the last survey, it is surprising that the most recent survey did not ask more direct questions about favoritism and department culture.

A follow-up survey neglected questions of favoritism.

34% of employee responses concerned needed management improvements.

However, employees did find a way to voice concerns about management. The 2006 survey allowed for open-ended responses to the question, “If DIO could do one thing to make the quality of work experience improve, what would it be?” Thirty-four percent of written responses indicated that management could make various improvements. Some responses dealt with concerns such as: ending favoritism, terminating administrators, increasing morale, receiving fair promotions and treatment, and ending the “good old boys” system.

These comments are concerning given national data supporting the need for correctional employee satisfaction. The National Institute of Corrections, commenting on employee satisfaction, has said:

One of the major findings resulting from interviews with staff in the nine institutions was that their overall satisfaction with their agency employment was as much due to overall satisfaction with what they perceived to be the quality of management as with their salaries or other “incentives.”

These findings appear to hold true for the department. Answers to the open-ended question showed that employees were as equally concerned with management practices as they were with their compensation (35 percent commented on compensation). The equality in comments over management concerns and compensation is striking because the department has said in the past that morale problems can be explained by low salaries. According to the survey, management practices are an equally significant concern.

Even with this evidence and the directive from the Governor’s Transition Team, it does not appear that UDC administration has corrected the problems (discussed further in the next chapter). In fact, in May 2006 the Legislative Auditor General indicated to the executive director that the preliminary issues discovered in the audit could be corrected, and the audit process expedited, if management would implement the transition team’s recommendations. However, the executive director made no attempt to meet with the Auditor General to mitigate these issues.

Management concerns appear to carry equal weight with compensation concerns.

Chapter III

Appearance of Favoritism and Concerns With Management Decisions Exist

Favorable treatment is seemingly given to select administrators and employees.

It appears that favorable treatment has seemingly been given to some select administrators and employees. As well, management's decisions in some of these cases are concerning. In some cases, it appears that UDC administrators have not held themselves and some select employees to a higher standard. We believe that this bending of the rules and/or relaxed application of the rules has fueled employee allegations, leading to questionable management decisions.

Typically, we have termed an action as favoritism when policy, or standards were not applied consistently or equitably.

Favoritism can be as simple as an individual action or as complex as the generalized attitude of a group or an organization. Numerous UDC employees believe an attitude of favoritism exists. This chapter is our independent review of several cases where favoritism is alleged. We were specifically asked by the Legislature to review and audit these allegations. It is our opinion that administrators have demonstrated various degrees of favoritism and/or poor decision making in these cases. Typically, we have termed an action favoritism when policies, or standards were not applied consistently or equitably. Our review of these cases represents months of work. Other cases have been referred to us, which we have been unable to pursue because of time constraints.

Evidence suggests that department administration has not fulfilled their charge from the Governor's Transition Team.

In regards to favoritism, when does the preponderance of actions actually demonstrate an attitude of favoritism? Since there is no clear criteria for such, we can only render the opinion that we believe an attitude of favoritism exists among certain members of the UDC administration. This attitude is manifest when certain employees are not held to the same standards. This chapter is divided into two sections. The first section outlines cases where favorable treatment appears to be occurring and/or there is a need for better decision by management. The second section details favorable treatment occurring more frequently for administrators and supervisors. Consequently, we believe the evidence suggests that department administration has not completely fulfilled the Governor's Transition Team recommendations to "address these [inequitable and favorable treatment of management] issues and resolve them once and for all."

Favorable Treatment Seemingly Given to Select Individuals

Without clear criteria as to what actually constitutes a favorable act, we reviewed multiple allegations from employees in an attempt to understand their concerns. The number and severity of the allegations was by itself a concern. However, we found that some of the cases we reviewed did appear to indicate favorable treatment for some select administrators, supervisors, and employees. As well, management's action and response to these cases is concerning. The appearance of favorable treatment is concerning because it fosters a negative culture among employees that is not healthy for the department. Further, in some cases favorable treatment resulted in disregard for administrative rules and department policy. The following examples highlight some of the cases we reviewed, which demonstrate favorable treatment.

- A supervisor in the prison who was using an illegal substance was put on what appears to be extensive administrative leave after an investigation; this allowed the supervisor to retire.
- A supervisor in internal affairs was not investigated or formally disciplined for lying to another police officer for personal gain, which is a UDC policy violation.
- UDC internal affairs investigators were not investigated or disciplined for a policy violation.
- A security breach occurred in the prison. The consequences to the officer who reported the breach seemed to be more harsh than those to the wrongdoer.
- UDC management hired an employee with questionable credentials, apparently as a favor to the employee.
- An administrator was seemingly protected during the latest governor transition period by receiving a merit position for the duration of the transition.
- Department policy for investigating alleged wrongdoing was not followed for a department administrator.
- The department did not conduct a full investigation on an administrator.
- The department did not formally investigate allegations brought to light in a consultant's report. This lack of investigation appeared to some as favoritism.
- An employee was promoted to supervisor while being investigated, which is against UDC practice.

Management's response to these cases is concerning.

Six of these cases deal with administrators or supervisors.

The seemingly favorable treatment that occurred in the above instances leads some department employees to believe that all perceived occurrences of favoritism are justified. This creates an unhealthy work environment for employees. UDC management must not allow some select employees favorable or inequitable treatment. With the negative culture at the department, even one occurrence of favorable treatment is detrimental to the organization. These cases are discussed in greater depth throughout the remainder of this chapter.

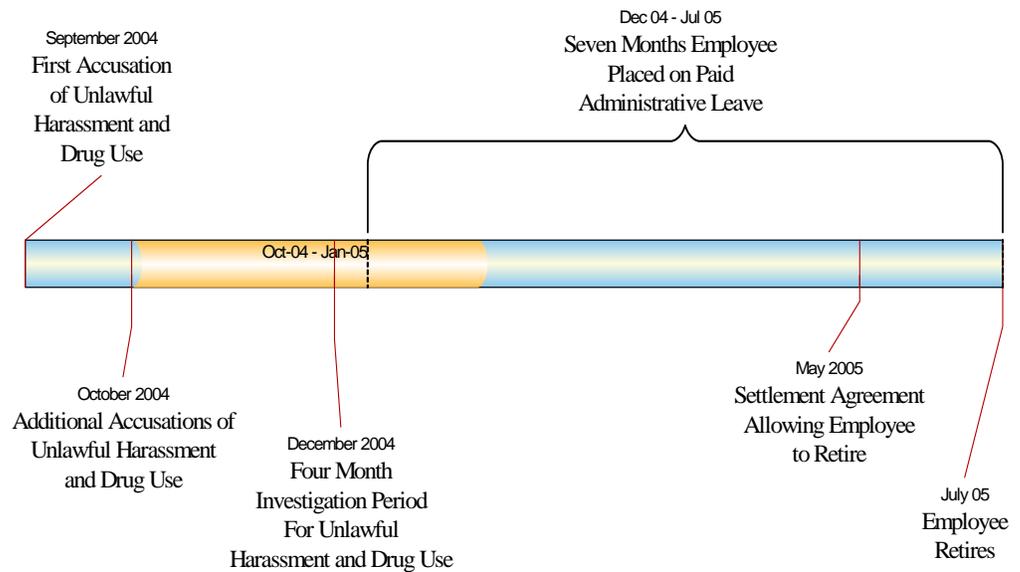
Supervisor Seemingly Favored and Protected

Many employees believed a senior correctional officer in a position of authority was being favored by management. First, employees believed that the supervisor was favored when he/she did not receive discipline for being stopped for driving under the influence (DUI). Second, employees believed that an investigation into unlawful harassment and drug use took abnormally long so the supervisor could earn required years of service to retire. This action, discussed in detail below, appeared to employees as favorable because of the treatment given to the employee.

About a year after the supervisor was investigated for a DUI, this senior officer was accused of unlawful harassment and erratic behavior tied to addiction to an illegal drug. This allegation was investigated by the department and again sustained. However, it appeared to employees that the department administration again favored the supervisor by leaving the employee on paid administrative leave for five months after the internal affairs investigation concluded so that the supervisor could receive a full retirement. Figure 3.1 shows the timeline of events that allowed the supervisor to retire.

Employees felt management favored an employee by placing her on administrative leave until retirement.

Figure 3.1 Timeline of Events. The supervisor was on paid administrative leave for seven months and then retired.



The supervisor was maintained on paid administrative leave until eligible for retirement.

Five months after the investigation ended, while the supervisor was getting paid administrative leave, the department drafted a settlement agreement with the supervisor. The settlement agreement essentially stated that if the supervisor retired, the department would not enact discipline against him/her. The following is a section of that settlement agreement:

[The senior officer], who will be eligible for full retirement on. . . having put in twenty years of continuous employment service with UDC, does hereby agree to retire from UDC effective. . . . UDC and [the senior officer] further mutually agree that [the officer] will, up until the date of [his/her] agreed upon retirement, remain a full-time employee of the [department], and that [the officer] will remain on Administrative Leave with Pay status until [date of retirement].

This employee spent nearly seven months on paid administrative leave, five months of which occurred after the investigation ended. Further, the department did not consult State Risk Management or the Attorney General’s Office on the agreement.

The Department Responded That This Case Is Not Unusual. The department believes that it is important to be staff friendly, and said that

The captain committed a crime while the correctional officer committed a policy violation.

they have done this for another employee and would continue to do it in the future. They provided another example of this situation where a correctional officer became involved with a motorcycle group, which the department classifies as a criminal organization. This employee signed a settlement agreement that allowed five months of administrative leave pay so the supervisor could receive full retirement.

We do not see these cases as comparable. The example provided by the department concerns a correctional officer, while the other is a supervisor, with far more influence and access in the organization. In addition, the supervisor tested positive for methamphetamine, a crime, while the correctional officer was guilty of a policy violation.

We question the practice of allowing employees to be placed on administrative leave for a lengthy period in order to allow them to retire. The department feels that this is the right thing to do because, in addition to being staff friendly, situations of terminations often become drawn out battles of appeals in the Career Service Review Board. They state, “Sometimes we just have to cut our losses and settle to be free of a problem employee.” We feel this does not send the impression to other employees that the department is fair and even-handed in discipline.

Other surveyed state public safety entities believe that an employee further than 30 days from retirement should be disciplined the same as any other employee.

Employees Frequently Commented That the Supervisor Was Favored by Administration. Employees pointed out that other employees were disciplined for committing similar infractions. Management at the department should seek to create a more fair environment. The National Institute of Corrections states:

From commissioners on down the line, managers have the ability to reinforce or undermine the department’s mission. Fairness, strength of purpose, respect, and humanity go a long way toward creating loyalty to the agency among line-level employees. Favoritism, weakness, and “kissing up to top brass” destroy it.

Management should seek to curtail all instances of favoritism so the department’s mission is never undermined. This case appeared as favoritism to employees because of the lengthy administrative leave given

to a specific employee. It is a questionable management decision to allow employees to remain on administrative leave for months at a time waiting for them to be eligible for retirement.

No Investigation or Discipline After Supervisor Violated Policy

A supervisor in internal affairs committed a clear policy violation but was not investigated or disciplined even though the information was known at the department. Further, this employee's violation is exacerbated because of the position the supervisor holds investigating other employees for policy violations. This is an example where department discipline policy was not equitably administered by UDC management, thereby demonstrating favorable treatment for this supervisor.

The policy violation occurred when the employee was pulled over by the Highway Patrol for speeding. Upon being pulled over, the employee in question turned on the emergency lights in his/her vehicle, and told the officer that he/she was responding to an emergency. The highway patrol provided a copy of the dash cam video to the department. The dash cam video records the following conversation between the employee and the officer.

UHP Officer: Have you got an emergency?
Supervisor: I'm going to Gunnison [Central Utah Prison] for an investigation.
UHP Officer: What's the investigation on?
Supervisor: A stabbing.
UHP Officer: I just stopped four other officers who flashed us doing over 90 miles per hour and I'm tired of it, so are you going to a shoot [shooting range] or are you going to an investigation?
Supervisor: I'm doing the shoot too.
UHP Officer: You withheld the information you were going for the shoot. Am I correct?
Supervisor: Yes.
UHP Officer: We should not use our position to influence our situation. . . . I know it was done here with the lights.

The supervisor violated policy but was not disciplined.

The employee should have been held to a higher standard because of his/her position as a supervisor in internal affairs.

Incident reports for the time period in question verified that no stabbing event occurred. Further, this supervisor's assignment with the internal affairs bureau at the time did not include investigating criminal matter, such as a stabbing. The supervisor's conduct was unprofessional and against UDC policy, which states:

Members shall not use their official position, official identification cards, or badges to avoid the consequence of their acts.

The Department Believes a Verbal Warning Was Sufficient Discipline. The department's response to an internal affairs supervisor lying to another officer for personal gain is that it is often handled "without formal discipline, but rather with verbal admonishment or mediation of the officers involved."

Department management claims that this supervisor was verbally warned, and that the supervisor's performance evaluation clearly reprimands this individual. However, the supervisor's performance evaluation, which occurred eight months later, only makes a side reference at the end of the evaluation. The single reference to the supervisor's policy violation states:

[Employee] learned that he would be held to a higher standard than line staff at the department. Minor [sic] incidents or infractions will bring a great deal of review and action will be taken to address any shortcomings.

We are concerned that the department gave the supervisor a successful performance evaluation after his/her clear policy violation.

The supervisor was given a successful rating on the performance evaluation for ensuring that he/she "operate under the [department's] policies and procedures." The supervisor was also given a successful rating for "conduct both on and off the job complying with the [department's] code of conduct."

We found other departmental employees who had been disciplined for violating a policy that was at least partially similar. These employees received discipline, ranging from one to several days off without pay, and were ineligible for promotion for one year following the disciplinary action. We also found that a police officer in another local police department was terminated for a similar misuse of position. As well, other police chiefs and sheriffs responded that they could act in a similar manner. It appears questionable to leave this internal affairs supervisor in

a position of great trust after an incident where his/her trustworthiness was called into question. Investigations and reports submitted by this employee would also be suspect.

Further, the executive director made a note on this supervisor's evaluation, stating, "[His/Her] work has improved the image of the UDC." Again, this is another unlikely comment considering the supervisor's action and the UHP officer's belief that the supervisor's action had in fact hurt the image of the UDC.

Internal Affairs Investigators Not Investigated for Policy Violations

When employees in positions of authority in the organization appear to be treated favorably, other employees become even more skeptical of department management. Some internal affairs investigators (who investigate employees for policy or criminal violations) were never investigated or disciplined for violating department policy. Management seemed to be aware of the policy violations, yet no action was taken against the investigators. Again, the inconsistent application of department policy appears to be favorable treatment.

The Utah Highway Patrol (UHP) pulled over a car with four internal affairs investigators for speeding. According to dash cam video of the incident, the investigators pulled their badges to ID themselves as officers. It is a violation of department policy for employees to use their position as law enforcement officers to get personal gain. In dash cam video of the incident, the highway patrol officer explains why he believes the internal affairs investigators were in the wrong. The officer states to another UDC employee (mentioned in the case above):

I was a little bit disgusted. . .I look up and I have four badges thrown in my face. That is just not real professional. We're all doing the same thing, basically. Professional courtesy is not letting other officers go and not having the officer put the other officer in that situation. . .We should not use our position to influence our situation. That is what I felt was done there. . . .

When those charged with investigating employees for wrongdoing are themselves caught in wrongdoing and not disciplined or investigated, it

Skepticism of management increases when employees in favorable positions are treated differently.

Investigators used their position as law enforcement officers to avoid a speeding ticket, which is against department policy.

When those in favorable positions are not disciplined, it sends a message that management is not equitable and fair with discipline.

sends a message to employees and the public that management is not equitable and fair with discipline.

UDC Management Did Not Inform Internal Affairs Director Of Investigators Wrongdoing. According to the assistant director, the administrator overseeing the directors of the two internal affairs bureaus was notified that a UHP dash cam video existed. However, he/she declined the offer to view the tape, stating, “I didn’t think there was anything in dispute as to the facts of what occurred.” However, as shown above, the tape clearly captures the UHP officer’s belief that the investigators inappropriately used their badges for their personal gain. It is unclear if the employee(s) who viewed the tape could directly notify the assistant director; however, from the written comments made by the assistant director, it appears he/she knew what content was on the tape.

We were also told that information of this badging incident was passed up the chain of command to management, which seems plausible since the investigators’ infractions were known among some in the department. Nevertheless, internal affairs, apparently, was not made aware of the full impact of the investigators actions. The deputy director of internal affairs stated:

It should be noted no one from an outside agency or within Corrections notified LEB administrators that the investigators behavior was either inappropriate, aggressive, an abuse of authority or made any other negative references.

Consequently, the investigators were never disciplined. The apparent breakdown in communication and oversight of this case is very concerning. As previously noted, other employees have been disciplined for somewhat similar policy violations. In fact, UDC management told us of a case where they severely disciplined an employee because the employee displayed his/her badge during a DUI arrest. It appears that either management needs to improve the way they communicate and handle discipline matters, or the information was not communicated to favor and protect the investigators.

Seemingly Inequitable Treatment Against Officer Who Reported a Policy Violation

Unfair or inequitable treatment of an employee is concerning because it signals favorable treatment by management. Employees commented to us that inequitable treatment leads them to believe in a negative department culture. Several employees made allegations of inequitable treatment. The following case is an example of what appears to be inequitable treatment.

A senior officer coerced other officers to allow an unauthorized person into the prison.

A corrections officer reported a policy violation involving a security breach against a more senior officer in the prison. The senior officer coerced other officers to allow an unauthorized citizen into an inmate center of the prison. Department policy is clear that only authorized individuals should enter the prison. Department policy allows:

only authorized persons access to the secure facilities . . . to prevent contraband from entering the facilities. All visitors applied for by the inmates shall be cleared through background checks such as BCI, NLETS, and NCIC.

This policy exists to protect the public, staff, and offenders. Department policy indicates, “The primary mission of the department is public safety, [and] public safety involves protecting . . . inmates/offenders under the supervision and control of the department.”

It appeared to some that the senior officer was favored in the disciplinary process. The senior officer received a modest discipline, but the officer reporting the policy violation was immediately transferred, against protest from the officer’s direct superior. The officer’s superior indicated that other corrections staff were upset because the officer reported the incident; the officer’s superior then said he/she was instructed to reassign the employee. In UDC records, the officer’s superior stated:

It was one of the hardest things that I have done with my job because I don’t think [that officer] did anything wrong.

The senior officer received modest discipline, while the reporting officer was transferred, and reportedly told to “get thicker skin.”

Further, an administrator at UDC reportedly later told the officer who reported the policy violation to get thicker skin. After this experience the officer vowed to never report another employee’s wrongdoings.

The reporting officer vowed never to again report wrongdoing.

Department management should not reinforce any form of a “code of silence” or send any other negative message to employees about reporting wrongdoing by fellow employees. The California Legislature recently took on this issue with the California Department of Corrections. The California Legislature passed a bill into law which stated:

Department of Corrections and the Department of Youth Authority must adopt a code of conduct that would provide uniform guidance to all workers at these departments, including their duty to report wrongdoing at their workplace.

UDC should consider adopting a similar provision. If corrections officers continue to be hesitant to report the wrongdoing of certain officers, the department’s mission of safety would be compromised. A provision concerning reporting of wrongdoing reinforces the importance of departmental openness to both line staff and management.

The Department Does Not Consider a Transfer As Discipline.

Because one of the employees involved in this case has a fear of retaliation, we were not able to reveal the specifics of this case to the department. The department has stated that a transfer should not be considered a disciplinary action. However, the employee believes the transfer is related to his/her previous action to report a violation and thus follow UDC policy. In our opinion, the transfer could easily be misconstrued and the department should not have made the transfer.

UDC Management Apparently Favored Employee in Hiring Process

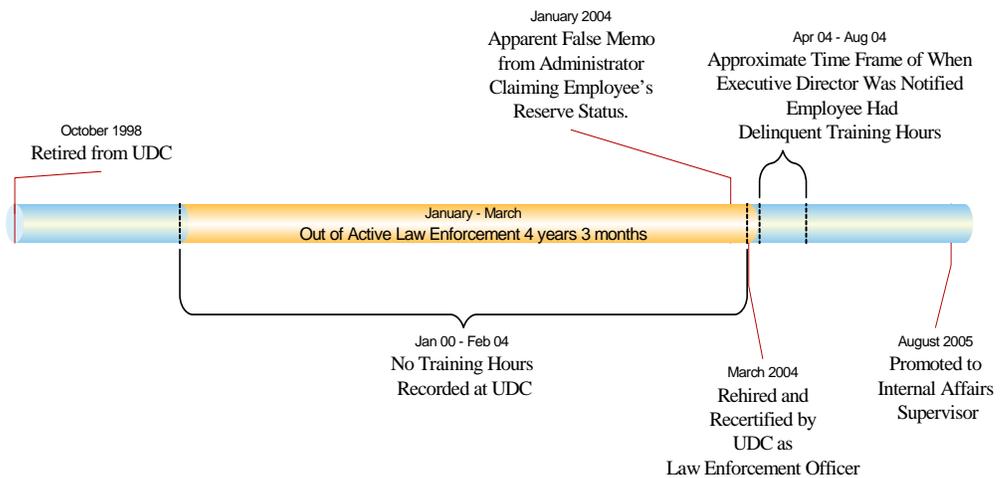
UDC management apparently favored a retired employee in the hiring process, and/or made a questionable decision to not follow UDC policy when certifying the employee to Peace Officer Standards and Training (POST). The retired employee did not have proper law officer credentials to be rehired because he/she had not completed the statutorily required training while away from law enforcement. This was a fact that should have been known to UDC management, and does appear to have been known by them. UDC policy clearly requires all training hours to be certified by UDC. Further, POST policy also requires certification hours to be reported through a law enforcement entity. Training hours cannot be self-reported to POST, though this appears to be what occurred.

It appears UDC management favored a retired employee in the hiring process.

Further, a UDC administrator wrote what appears to be a misleading memo to POST verifying that the employee signed a reserve officer agreement while absence from the department. Even more, the executive director was notified in an e-mail by the department’s training director that the employee had delinquent training hours. Employees cannot be in a police officer position without the statutorily required training hours. However, the executive director has not corrected the concern.

Further, before this employee retired, he/she was involved in questionable investigative practices that resulted in a lawsuit and a settlement of nearly a half-million dollars (by three law enforcement entities). The questionable investigation was handled by the supervisor and the previously mentioned administrator who wrote the misleading memo for the supervisor. Figure 3.2 shows a timeline of the above events.

Figure 3.2 Timeline of UDC Employee. This timeline shows critical events pertinent to the employee’s hiring.



Numerous UDC employees had concerns when the employee was rehired at the department. Employees were extremely concerned when they learned that an administrator (and former investigations partner) at the department seemingly falsified a document in behalf of the employee. The UDC administrator sent a memo to the Utah Peace Officer Standards and Training Academy (POST) stating that the employee in question had signed a reserve officer agreement with Adult Probation and Parole

Memo by UDC administrator appears misleading because we could not validate the facts in the memo.

(AP&P) Region IV, thereby implying that he/she had maintained law enforcement credentials. We believe the memo to be misleading because we could not locate the agreement at the department. Further, AP&P Region IV has no record of this employee performing reserve officer duties in the region. We were told that the employee alone kept the reserve officer agreement and later produced a copy of it. We were unable to independently verify that the employee was indeed a reserve officer at AP&P Region IV. Administration of Region IV had no information on this employee.

We believe the memo to be misleading because we could not independently locate the agreement at the department. Further, AP&P Region IV had no record of this employee performing reserve officer duties in the region. Finally, the employee claims he kept the reserve officer agreement but when we asked him for all information regarding this allegation he never produced the agreement. After all of the work by the auditors and in the face of the allegation of a misleading memo, the employee has produced the agreement.

Department Places All Culpability for Employee’s Certification With POST. The department’s response to this case was that POST is responsible for certifying the individual, and their records were solely relied on when making decisions about this individual. The assistant director states, “[Employee’s] training hours obtained from POST. . . These are the records that were and are relied on for verification of [employee’s] training hours and eligibility for being hired back.”

However, this is not entirely true. According to UDC policy and POST policy, employees must obtain approval of their training hours from a law enforcement entity. UDC policy mandates that all training hours be approved and accepted through the department, then forwarded to POST for filing. UDC policy states:

Members shall be granted hour-for-hour credit for attendance at training conducted outside the department. Members must complete and submit an “Application for Training Credit” form. . . Members shall not conduct or sponsor any training without prior approval from the training director. Members shall submit lesson plans and/or a copy of the curriculum before approval can be granted.

**Law enforcement
entity must approve
training hours.**

Self-reported hours are not acceptable; a law enforcement entity must certify them.

The POST director said that the correct process for receiving training credit is that, first, the officer must receive or report training hours to a law enforcement entity. Second, the training hours must be approved and accepted by the law enforcement entity. Lastly, the law enforcement entity, not the individual, reports the hours to POST. According to POST, UDC was the only law enforcement entity recognizing the employee when he/she was away from law enforcement.

The POST director said that if the hours were accepted directly from the employee (which appears to be the case), then it was a mistake and they should not have been accepted. The POST director said that they have recently implemented new controls to prevent this from occurring in the future. It is the department's responsibility to ensure that this employee is current with training. The department is inadequate in this area, as will be discussed in Chapter IV.

UDC records show that this employee was delinquent in training hours and consequently should not have been certified. An e-mail notified the executive director that the individual was delinquent in training hours from UDC, yet no action has been taken to correct or resolve these concerns. In fact, it has been alleged that management openly refused to address the concerns with the former employee.

We validated that this employee's training was delinquent during his/her absence from law enforcement through UDC training records and original training sign-in rosters. Without proper training during his/her absence from law enforcement, the employee was not certified to hold a certified peace officer position. *Utah Code 53-6-208(2)(a)* states, "The certificate of a peace officer lapses if he has not been actively engaged in performing the duties of a peace officer for four continuous years." POST policy goes along with the law by stating:

A person who has not been employed as a Utah peace officer in the last four years is ineligible for reactivation and must successfully complete a basic academy before he/she will be certified.

To employees this case demonstrated favoritism because an employee closely associated with an administrator was hired without the proper credentials. Further, the hiring and certification of the employee was supported by what appears to be a misleading memo from a current administrator and former partner of the employee. If this action was not

The employee's training hours were delinquent.

This case demonstrates either favoritism or shortcoming by management.

favoritism, as the department maintains, then it shows a degree of shortcoming by department management for either not knowing department and POST policy, or choosing not to follow it.

Administrator Protected During Governor Transition

Employees believe an administrator was given a merit position as protection during the governor's transition.

Employees alleged that a nonmerit administrator was given a merit position, for which he/she had no formal experience, during the latest governor transition. This looks to be favorable treatment because HR rules were violated in this transfer to a merit position. After the transition occurred, the individual was appointed back to a nonmerit administrator.

Not only does this action appear to be favorable treatment, but the salary given the administrator when transferred to the merit position violated state human resource (HR) rules. According to the Department of Human Resource Management (DHRM), who reviewed this case, a violation of human resource administrative rules occurred when management transferred the employee. The rules allow management to move an exempt employee into a vacant merit position, but only if the merit position is a lesser grade than the last competitively held merit position. In this case, the administrator was given two grades higher than his last merit position. The following figure shows the administrative rule and the misapplication of the rule.

Figure 3.3 HR Administrative Rules Not Followed. UDC did not follow administrative rules while transferring an administrator from an exempt position to a merit position during the last governor transition period.

What Rule Stipulates	How Rule Was Applied
<p>The employee can be transferred to a merit position if:</p> <p>The current salary range of a vacant position is equal or lesser than the employee's previous merit position.</p> <p>Or</p> <p>If the maximum step of the position previously held by the employee has moved upward, the new range can be used.</p>	<p>The salary range of the new merit position was not equal, and the administrator was paid <i>more</i> than allowed by administrative rules.</p> <p>A new range for the position was not in effect when the transfer occurred.</p>

Source: DHRM Rules

When we talked to the department about this concern, we were told that the administrator did receive a lower salary because of the transfer. A downgrade in salary did occur, but not to the extent that state policy requires. In addition, the administrator had no formal experience for the new merit position, although the department felt he/she was “one of the most knowledgeable members of the staff about all our operations.” Nevertheless, this position is unique in the department and requires skills not obtained through POST and correctional officer certification.

Further, the incumbent in the position, who was filling it on a interim basis, was transferred with a salary increase to make room for the administrator. Even more, the salary the administrator received in the merit position was about \$27,000 (including longevity steps) more than the incumbent was making in the merit position. Even removing longevity steps, the administrator was still paid about \$20,000 more. Finally, the incumbent was again placed in the position after the administrator was promoted back to an exempt position but was again paid less than what the administrator was making in that position.

The administrator made about \$20,000 more than the position incumbent.

Shortly after the new governor took office, the administrator was moved back to a nonmerit position by the current executive director.

UDC policy was not followed for the investigation of an administrator.

The Department Believed the Initial Transfer Was in Accordance with HR Rules. However, this transfer, as shown above, not only appeared as favoritism, but did in fact violate HR rules. The department must be more careful not to violate state HR rules, especially when it appears to be for the benefit of an administrator.

Employees commented that it appeared to them the administrator was treated favorably. If UDC management desires to follow the Governor's Transition Team's recommendation, which stated, "Address these issues [inequitable and favorable treatment for management] and resolve them once and for all," they should be more careful when transferring administrators at the department.

Administrator Treated Favorably In Investigation Process

An administrator at the department was accused of serious infractions. The allegations were serious enough that if found accurate, a violation of federal and state law would have occurred. Department policy is clear that conduct alleged to be in violation of federal, state, or municipal ordinance must be investigated by the department's internal affairs office. It appears this administrator received favorable treatment because the department did not follow their policy and conduct a full investigation through internal affairs. This inconsistent application of department policy for an administrator is another example of management not applying the same standard to all employees.

UDC policy is clear that certain conduct must be referred to the department's internal affairs bureau (see Appendix A for full list of conduct requiring referral). UDC policy states:

Agency Management shall perform the investigative functions in all suspected and/or reported misconduct *except*. . . conduct in violation of Federal or State law, municipal ordinance, excluding minor traffic violations. . . In cases where one or more of the above [cases involving infraction of federal or state law] is alleged. . . agency management shall promptly notify the Division Director for referral of the matter to the Assistant to the Executive Director/designee.

Administrator bypassed department policy by telling internal affairs not to conduct a full investigation.

The assistant to the executive director was made aware of the case; however, an investigation was never opened by internal affairs. The case was not opened by internal affairs because an administrator at the department had a note written to internal affairs requesting that a full, independent investigation not be conducted. Instead the administrator had his/her staff, who works closely with the employee alleged of wrongdoing, conduct their own investigation. The separate investigation not only violated UDC policy but also lacked the independence and depth of an internal affairs investigation.

Management Believes the Administrator Was Innocent of the Allegation; Consequently, They Believe Issue Is Moot. It was indicated to us that the research completed on this issue cleared the administrator of all wrongdoing. While we have no clear evidence to the contrary, we believe the administrator should not be cleared until department policy is followed and a full investigation is completed.

Other employees were investigated for similar infractions.

Citizens believed that the administrator received favorable treatment and question department management's ability to properly manage and communicate. The belief by citizens of favorable treatment was aggravated because they believe the department did not take their concerns seriously, and they had to threaten a lawsuit to gain recognition. The administrator should have been dealt with in strict accordance to department policy because of his/her position of authority and close association with the senior administrator who thwarted an internal affairs investigation.

Full Investigation Not Completed on Administrator

It was alleged that UDC management favored an administrator most recently after allegations of impropriety surfaced against him/her, but again, management did not conduct a full investigation. The administrator was transferred, but no connection was made between the transfer and the allegation. Also, the administrator was put into a lower-grade merit position without a competitive recruitment. Even though state rules allowed for this transfer, an official at DHRM expressed some concern because of the unique nature of the transfer. Even more, a full investigation was not completed on what, if proven, are possibly serious infractions by the administrator.

The only record of investigation on the administrator is a brief memo.

It appears the administrator was favored in the investigations process because the investigation did not contain standard details of the investigation process, including records of interviews conducted, or conclusions regarding policy violation. The only record was a brief memo written to management discussing some steps taken in the investigation process and a brief statement dealing with the allegations. The memo states:

Because some of the allegations against [administrator] involved conduct not on department time or on department property and are several years old; allegedly occurring before [administrator] was in an appointed position; it would not be appropriate for the department to delve into these matters.

As shown above, the memo says that only some of the allegations would be inappropriate. The memo does not discuss the other allegations that possibly could have been a violation of department policy. A review of the allegations does allude to conduct that, if possible to prove, may have violated department policy. For example, it appears that the administrator may have violated the following department policy:

If the conduct were proven, it would have violated department policy.

Members of the department are officials/employees of government and as such must avoid even the appearance of conflicts of interest to ensure public confidence. Engaging in conduct that involves conflicts of interest undermines public confidence and trust in the department, Utah state government, and the members of each entity.

Management Says That These Type of Allegations Would Not Have Been Investigated on Any Staff Member. However, the employee in question was not a line staff member, but rather was a member of executive management. Further, department management indicated that they determined no policy violation occurred. However, the investigation done by the department made no mention of what specific policy violations could have been violated. It was not until we asked management that they produced information on specific policy violations and details with the case. These details previously did not exist.

The department could have been more diligent in investigating the allegations that may have violated UDC policy. If UDC wants to fulfill their policy of holding administrators to a higher standard, they should

have conducted a full investigation on this individual. Otherwise, as this case illustrates, employees will continue to believe that administrators are treated favorably.

UDC Did Not Follow Up on Allegations Reinforcing Impression of Unequal Treatment

The department received allegations from an employee ranging from disrespectful treatment, to falsifying documents, to questionable treatment of inmates. The department hired an independent consultant to investigate the employee's claims. The consultant concluded that the department had failed to properly and timely resolve the grievances of the employee. The consultant stated, "The grievances were strong enough that . . . UDC should have taken an aggressive stance to resolve this as quickly and as thoroughly as possible." The consultant reviewed the allegations and found them serious enough to recommend that the department take action. The consultant said:

The department will have to determine which of the allegations it feels has been substantiated and which have not. I have listed above those which have sufficient evidence as to be probable or definite.

However, we could find no evidence that the department ever investigated the allegations of falsifying documents or questionable treatment of inmates. When we asked department officials, they were not able to tell what action the department had taken. The lack of action from the department alarmed some employees and led them to question if the department was favoring or protecting certain individuals. It also leads us to question management's judgement regarding the relative importance of accusations.

Department Responded That Employee Personnel Actions Were Resolved. While it appears that the department has indeed investigated the personality conflicts between the employees, we could find no record of investigation into the accusations of inmate abuse and falsifying documents. We asked several administrators and employees in the department and no one could produce any information that indicates they looked into these concerns.

An independent consultant concluded the department failed to investigate in a timely or appropriate manner.

By ignoring these allegations, the department reinforces the impression given to employees that wrongdoing is not always investigated, and certain employees are not held accountable. Further, the message sent to employees is one of unequal treatment and favoritism. The National Institute of Corrections states:

Staff who feel excluded or lied to tend to sense a hidden agenda behind every action.

The department must be more diligent to resolve issues in a timely and effective manner for staff to trust management and feel comfortable with their decisions.

Employee Promoted Against UDC Practice

In 2005, an employee was under investigation for a policy violation. This investigation took place over approximately two months. During the time the investigation was occurring, the employee was promoted to supervisor. This case was reported to us by employees as a violation of policy by the department and an example of management favoring an employee.

We asked three members of department administration if promoting employees while under investigation is against policy, and each of these administrators believed it was. However, further research by us and the administrators showed that it is department practice and not formal policy. Nevertheless, it appears clear that the employee should not have been promoted. Indeed, it appeared to employees as favoritism.

The Department Responded That in the Future They Would Further Document Such an Action. The department claimed that an AP&P secretary called the investigators to ask if the investigation was completed, and the investigators said that they had finished the investigation, with the exception of the actual report being written. The investigators told AP&P that the investigation had concluded that he was not guilty of the accusations against him. The department feels that promoting him was the fair thing to do.

We believe that in order to eliminate the impression of favoritism and bad management decisions, the department should follow the letter of the

**“Staff who feel . . .
lied to tend to sense
a hidden agenda.”**

**An employee under
investigation was
promoted against
department practice.**

law without interference by management in investigations. Instances like these lead employees to believe that management treats people inequitably. Again, management should be more careful to follow department practice so concerns with inequities among employees can be resolved.

Administrators and Supervisors Should Be Held to Higher Standard

It appears that some administrators and supervisors at the department are receiving favorable treatment more often than line staff. This practice is directly contradictory to department policy, which states that administration and supervisors should be held to a higher ethical standard. This concern was also addressed by the Governor's Transition Report. The report states:

[Individuals] view corrections management as “incestuous, self-protective and having created an atmosphere of intimidation and extremely disparate discipline when it comes to issues involving administrators versus line employees.”

Of the cases discussed above, 6 of the 10 dealt with administrators or supervisors. Further, it appears that management is also being favored in the retirement process. A performance audit of the reemployment practices at the department (Legislative Audit #2006-11) reports that management is more likely to get favorable treatment in the retirement process than line staff.

Policy Holding Management to Higher Standard Not Being Followed

UDC policy holds administrators and supervisors to a higher standard, but as previously stated it appears in some cases that the opposite is true.

Instances of favoritism appear to occur more often with employees in positions of authority. It was indicated by line employees that administrators or others in positions of authority were either not disciplined or not disciplined with the same severity. Employees also indicated that past attempts (e.g., Governor's Transition Report) had been made to clean up the inequitable treatment, but instead, the inequality has currently grown to equal, if not greater, proportions.

Those in positions of authority are not disciplined with the same severity.

Policy holds supervisory employees to a higher standard. In practice, the opposite appears to be true.

The executive director indicated to us that management at the department disciplines administrators and supervisors more harshly. In fact, it is department policy to hold supervisory employees to a higher standard. UDC policy states:

Supervisory and administrative staff are held to higher standards than non-managerial members, [and] greater sanctions may be imposed on supervisory and administrative staff.

However, it appears that management is receiving more favorable treatment and is sometimes being held to a lower standard than line employees.

Employees' concerns with management receiving more favorable treatment than line staff was also addressed in the Governor's Transition Report. The transition team received information from individuals who stated that UDC management is "incestuous, self-protective and [has] created an atmosphere of intimidation and extremely disparate discipline." To correct this concern and to become compliant with policy, UDC management must begin to consistently discipline administrators and supervisors more stringently.

UDC Management Favors Professional Level Employees In Reemployment Process

UDC administrators are treated differently than line staff when retiring.

A performance audit of the reemployment practices of the department also highlighted concerns of inequitable treatment of professional staff over line staff. Specifically, the audit brought up concerns with administrators, supervisors, and other professional staff, being favored in the retire then rehire process. This practice shows inequitable treatment of employees by UDC management. Many employees we spoke with were upset with the pattern of reemployment after retirement, which they believe appears to favor management. The following chart illustrates that professional staff at UDC is more likely to get favorable treatment in the retirement process than line staff. The chart also shows that these positions are more likely to get rehired into a favorable position without being required to take a six-month leave of absence.

Figure 3.4 Retirement Data. This figure shows the percent of positions in UDC (including board of pardons) that completed the six-month leave of absence for calendar years 1995-2006. Professional staff generally are not required to take the six-month leave of absence.

Position Retired To	Did Not Meet Statutory Six Month Waiting Period	Percent of Total	Met Statutory Intent	Percent of Total
Professional Staff	25	71%	4	31%
Line Staff	10	29	9	69
Total	35	100%	13	100%

Source: Audit #2006-11

Management at UDC is favored in the retirement process because generally they are not required to take the six-month leave of absence required in Utah law. The following examples are segments taken from Legislative Audit #2006-11. These points illustrate in more detail how select employees received favorable treatment in the retirement process.

The audit found that a board of pardons employee (also a former UDC employee) transferred back to UDC for about month. In that month, while back at UDC, he/she was paid an \$8,000 retirement bonus by UDC and then retired from UDC. This employee was then hired back by the board of pardons in his/her same position.

Another instance of favorable treatment in retirement occurred with a UDC administrator who was given a higher salary after retiring than a line employee, who also retired and returned in a similar position. The audit found that the UDC management reclassified a position for the senior administrator and made it an exempt position. This allowed the administrator to retire and take the new position without going through a competitive recruitment process. This action appeared to employees as favoritism. The appearance of favoritism increased when a line employee who had seven more years of service than the administrator also retired, but was required to go through a competitive recruitment process while rehiring, and was paid about \$9.00 less for the same position at the same time. These cases further illustrate practice by UDC management of inequitable and favorable treatment for some administrators and

employees. For more detail on the above cases, refer to Legislative Audit #2006-11.

Recommendations

1. We recommend that UDC management follow the recommendations of the Governor's Transition Team.
2. We recommend that UDC management ensure that employees, inclusive of administrators, are treated equitably in investigations and discipline.
3. We recommend that UDC management apply department standards and policies equitably among all employees throughout the organization, inclusive of administrators.

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Chapter IV

UDC Needs Improved Management Oversight and Controls

The Department of Corrections (UDC or department) lacks sufficient management oversight for a number of administrative functions. Insufficient management in some areas has affected departmental performance and governance. This chapter deals with other departmental functions that could benefit from improved management oversight, which include: training, commute vehicle use, and compliance with internal policy.

Specifically, several employees have not received statutorily required training. Deficient training by employees increases the state's liability and loss control, which can translate into higher settlements for the state. The department has not followed its own policy justifying the use of commute vehicles. Finally, UDC does not consistently follow internal policies governing reserve officer use and discipline filing. The department should increase management oversight in these areas.

UDC Is Not Compliant With Training Statute

Six percent (107) of the department's peace officers and correctional officers did not meet training requirements for fiscal year 2005. Additionally, 25 of those officers have not received the required training for at least the last two years. The lack of proper training creates two major problems for the state. First, the state has an increased liability and loss control risk. Second, if an officer does not receive the required training, peace officer or correctional officer certification is terminated until the training deficiency is corrected, and the officer should not receive public safety retirement during this time period. Termination of public safety certification should result in reassignment from any position requiring certification to a non-certified position. UDC must then choose between greater strain on their staff or leaving uncertified staff in place and increasing the state's risk.

Six percent (107) of officers did not obtain statutorily required training in FY 2005.

25 officers have not obtained statutorily required training for at least two years.

Management was not aware that officers were not receiving required training.

We are concerned that department management has not implemented proper controls to ensure that officers receive the training required by law. By statute, the executive director is responsible for ensuring all officers receive 40 hours of training per year. However, UDC management was not aware that officers were not receiving their training and has not enforced disciplinary action for any officers who have not received training. Management needs to immediately develop controls to ensure all certified staff receive the required training. Further, in order to reduce liability to the state, employees who do not receive 40 hours of training per year should be prohibited from exercising officer duties. According to Utah Retirement Systems policy, officers who have not received the required training should not receive public safety retirement benefits.

Lack of Training Puts The State at Risk

Training deficiencies increase the department's liability and loss control, which can translate to higher settlements for the state.

In failing to fully train officers, the state increases the risk of potential lawsuits because officers are not legally qualified to hold their positions. State Risk Management states that the lack of control for training increases the liability and loss control for the state. This also creates a safety risk for other officers and inmates. If an undertrained officer were to make a mistake, the state could be held responsible for consequences that occur due to the lack of training, resulting in higher settlements the state would be required to pay out.

The law requires that all correctional and peace officers receive at least 40 hours of in-service training each fiscal year. However, at least 107 of the 1,926 officers employed by the department during the entire 2005 fiscal year did not receive the full required training. Additionally, 25 out of the 107 employees who did not receive their training in fiscal year 2005 did not receive the necessary training in fiscal year 2004. Figure 4.1 shows the statutory requirements for training of correctional and peace officers.

All officers are required to receive 40 hours of training per year.

Undertrained officers should not perform officer duties.

Figure 4.1 State Law Requires All Peace and Correctional Officers to Obtain at Least 40 Hours of Training per Year.

Almost six percent of the officers in the department did not meet this standard, increasing the state's liability and loss-control risk.

Peace Officer (*Utah Code 53-6-202(4)*)

"All peace officers must satisfactorily complete . . . annual certified training of not less than 40 hours as the director, with the advice and consent of the council directs. A peace officer who fails to satisfactorily complete the annual training shall automatically be prohibited from exercising peace officer powers until any deficiency is made up."

Correctional Officer (*Utah Code 53-13-104(4)*)

"The Department of Corrections of the state shall establish and maintain a correctional officer basic course and in-service training programs as approved by the director of the division with the advice and consent of the council. The in-service training shall consist of no fewer than 40 hours per year."

Figure 4.1 shows that state statute requires all peace and correctional officers to obtain at least 40 hours of in-service training per year. We reviewed the list of training hours from the department and compared that list to the officers who were employed during the entire fiscal year 2005 and found that 107 officers did not receive the required 40 hours of training during the year. According to State Risk Management, Peace Officer Standards and Training (POST), and the director of training for the department, correctional officers and peace officers should be held to the same standard. They all agree that any officer who does not receive 40 hours of training should not be allowed to exercise officer duties until the officer obtains the required training. Lack of training creates safety to risk to all people involved, officers and inmates.

One of the missions of the UDC is to invest in training their employees in order to help them do a difficult job well. Further, a well-trained officer reduces the liability to the state. In order to best fulfill their mission and follow statute, the department should ensure that all correctional and peace officers receive at least 40 hours of training per year. We recommend that the executive director develop a control in which supervisors and officers can track training hours.

UDC Management Must Ensure Employees Receive Training

UDC management, specifically the executive director, is responsible to ensure officers receive training. *Utah Code* 53-6-212(2) “requires an agency head to certify that a member has completed required training.” However, department management was not aware that 107 employees are delinquent in their training. Furthermore, it appears that employees have not been disciplined if they fail to obtain their training as required by statute. Figure 4.2 shows some of the evidence of the lack of proper control by the executive director.

Figure 4.2 Management Has Failed to Implement Proper Controls. Several employees have gone several years without proper training and do not appear to have been disciplined. The following includes some examples of lack of management controls.

Employee	Position	Training Deficiency
Employee A	Division Director	Delinquent 4 years
Employee B	Correctional Captain	Delinquent 6 years
Employee C	Correctional Officer	Delinquent 5 years; Has never received 40 hours of training since re-employed by the department
Employee D	Correctional Officer	Delinquent 1 year, same training class entered twice to bring officer above 40 hours

Source: OLAG Analysis of UDC Training Records

Figure 4.2 shows that a few employees have not received adequate training and have not been disciplined by the department. Department management is required to ensure that all officers are properly trained; however, management was not aware that officers were not obtaining required training.

Some supervisors do not verify training hours. Employee B in Figure 4.2, a correctional captain, has not recorded sufficient training for six years. At the beginning of the 2006 fiscal year, this employee set a goal on his/her performance evaluation to obtain 40 hours of training during the year. During the annual performance evaluation at the end of the

The executive director is responsible for ensuring that all officers receive training.

Some officers have not received mandatory training for several years.

One supervisor specifically stated that an undertrained employee had received 40 hours of training.

fiscal year, the employee, the supervisor, and the division director stated that the employee had successfully achieved the goal of receiving 40 hours of training for the year, yet the records show only 24 hours of training for the year. This is an example of how supervisors do not regularly verify training hours. Figure 4.3 shows the training hours for Employee B for the last six years.

Figure 4.3 A Correctional Captain Has Gone Six Years Without Receiving 40 Hours of Training. It does not appear that the employee has ever been disciplined for not receiving proper training.

Fiscal Year Ending	Hours of Training
2001	23.0
2002	35.0
2003	16.0
2004	13.0
2005	20.5
2006	24.0

Source: Utah Department of Corrections Training Records

Employee B failed to receive the required 40 hours of training for six consecutive years. According to State Risk Management, employees who have not received adequate training should not perform officer duties because they present an increased liability to the state. There has been no supervisory discipline for not receiving 40 hours of training, and the six years have been inappropriately credited to the employee’s public safety retirement account.

Most performance evaluations do not have a section that specifically mentions training; however, they do contain a section that states whether the officers are in compliance with POST orders and whether they are in compliance with department policies and procedures. It appears that supervisors do not verify training hours before completing performance evaluations.

Management may not know if their subordinates receive training because of the unavailability of training data. The department does not

An employee has not been disciplined even though he/she has not received training for six years.

Training data is not readily available for supervisory review.

utilize a central database in which management can verify training data. Additionally, employees at all levels within the department do not know who should be responsible for verifying training data. Department employees have told us they think the following entities are responsible for tracking training hours:

- The training academy
- Human resources
- Line supervisors
- Individual officers

We recommend that department management develop controls in which supervisors and officers will know how many training hours they have at any given time. Additionally, officers who are delinquent in training hours should be notified and reassigned until they receive the required training.

Management has not disciplined a correctional officer who has never received required training. Employee C, in Figure 4.2, was rehired in 2000 and has failed to receive 40 hours of training over the last five years. There is no evidence that management has taken any disciplinary action against this employee, even though he presents a liability to the department and the state because he/she is a safety risk to other officers and inmates.

Undertrained Officers Should Not Receive Public Safety Retirement

Officers cannot be actively engaged in officer duties if they are not certified. According to the statute cited in Figure 4.1, officers cannot be certified unless they obtain 40 hours of training per year. Thus, if an officer fails to receive 40 hours of training in a year, that officer's certification should become inactive and, as a result, public safety retirement benefits should not be earned for the inactive time period. If an officer fails to receive training for four consecutive years, his/her certification has lapsed.

Certified officers within the department are eligible to receive public safety retirement. Public safety retirement allows officers to retire with a pension of 50 percent of the average of their three highest-earning years after 20 years of service. The standard public employee retirement plan

A correctional officer has never received required training.

Certification lapses if an officer does not receive required training.

Certified officers receive public safety retirement benefits.

allows employees to retire after 30 years of service with a 60 percent pension. In order to receive public safety retirement benefits, the employee's life or personal safety must be at risk and the employee must be one of the following:

- Law enforcement officer
- Correctional officer
- Special functions officer, if approved by the POST Council

When an officer fails to receive 40 hours of training, the officer can no longer maintain his/her certification and is no longer an officer. *Utah Code 53-6-208* states:

The certificate of a peace officer who has not been actively engaged in performing the duties of a peace officer for one year shall be designated "inactive". . . . the certificate of a peace officer lapses if he has not been actively engaged in performing the duties of a peace officer for four continuous years.

State Risk Management and the director of training for the department believes that the rule was intended to hold peace officers and correctional officers to the same standard.

A Certified Officer Still Receives Public Safety Retirement While Delinquent in Training. Employee A, in Figure 4.2, retired in 2005 and was rehired in a position that required certification. He/she has since been promoted to a division director position in the department and no longer requires certification to perform his/her job requirements. Statute allows officers to continue on the public safety retirement track even if they are in noncertified positions as long as they fulfill the requirements of their certification, such as fulfilling the training requirements.

The last two years of this employee's public safety retirement should not have been accepted because he/she was delinquent in training hours. Further, since this employee was delinquent in training hours, he/she should not have been rehired into a position requiring certification. Since this employee retired, he/she is no longer accumulating years of service for retirement; however, he/she is getting a higher 401(k) contribution. If a public safety officer retires and is later rehired by the state, the state matches 23.46 percent of the employee's salary into a 401(k) account instead of adding to or creating an additional pension. Public employees

Officers who are delinquent in training should not receive public safety retirement benefits.

Retired officers who are rehired by the department in a certified position receive a higher 401(k) contribution.

with the standard retirement benefit would only receive a 14.22 percent match for fiscal year 2006. Employee A has received the public safety retirement 401(k) match since he/she retired, yet he/she has not received the required training for four years. Thus, this employee is no longer a certified officer. Therefore, this employee should receive the regular public employees' retirement instead of that of a public safety officer. Based on Employee A's salary for fiscal year 2006, the state overpaid almost \$7,000 into a 401(k) account. Figure 4.4 shows the difference between Employee A's public safety and nonpublic safety match rates.

Figure 4.4 Employee 'A' Received Almost \$7,000 More Than He/She Should Have Received. This employee is not certified because he/she has not received 40 hours of training for four years.

Salary	Public Safety 401(k) Contribution (26.75% of Salary)	State Employee 401(k) Contribution (14.22% of salary)	Amount Overpaid
\$74,700	\$17,500	\$10,600	\$6,900

Source: Division of Finance Data Warehouse

Figure 4.4 shows that the state overpaid this employee by almost \$7,000 in fiscal year 2006. As an administrator, this employee reports to UDC management. UDC management should have known of the division director's training delinquency and should have taken disciplinary action. This management oversight has cost the state about \$7,000. There is no record in the employee's recent personnel file that would indicate any disciplinary action.

We are concerned that the 107 employees who did not receive statutorily required training received public safety retirement credit for fiscal year 2005. We recommend that UDC set up an internal control to ensure that employees who do not fulfill the training required for certification receive the standard public employees' retirement instead of public safety retirement.

107 officers who should have lost their certification due to training delinquency should not receive public safety retirement benefits for FY 2005.

UDC Lacks Adequate Oversight for Commute Vehicles

UDC management does not track call-out use for commute vehicles.

The UDC does not follow their own policy or state policy governing the use of commute vehicles. Management of the department no longer requires officers who are assigned commute vehicles to track individual emergency calls (call-outs) for which they use their commute vehicles. This violation of department policy makes it difficult for us to justify the actual need for commute vehicles. We recommend that the department immediately resume tracking the use of commute vehicles.

The department may be violating IRS Publication 15-B.

We have also found instances in which management of the department appears to treat commute vehicles as perks for certain positions rather than for state business. If commute vehicles are used as perks, the department may be in violation of Internal Revenue Service (IRS) Publication 15-B. We recommend that the department either eliminate or reallocate several commute vehicles. We also recommend that the department review the actual need for commute vehicles after six months of tracking actual call-out usage.

UDC Policy Is Not Being Followed

The UDC is not following their own policy regarding commute vehicles.

UDC is not following their policy on the use of commute vehicles. Specifically, they are not tracking and monitoring the use of commute vehicles. The department policy states:

If emergency response is the sole purpose of the commute privilege, each driver is required to submit a complete list of all call-outs on the monthly DF-61 form, and to send copies to the Division of Fleet Operations.

The Division of Fleet Operations discontinued using the monthly DF-61 form several years ago. At that point, the UDC management also decided to discontinue the use of the form.

Without tracking commute vehicle usage, the department cannot say for certain the actual number of call-outs during a given time span. This makes it difficult for management of the department to justify the use of commute vehicles. In order for an officer to qualify for a commute vehicle, the officer must meet one of the following criteria:

Most officers with commute vehicles claim they are on call 24 hours.

The executive director must approve requests for commute vehicles.

The department cannot prove if officers are needed to be on call 24 hours.

- Must be on 24-hour “on-call.”
- Must “clearly demonstrate that (he/she) is required to work at home or out of a vehicle a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.”
- The agency must “clearly demonstrate that it is most practical for the employee to go directly to an alternative work-site rather than report to a specific office to pick-up a state vehicle.”
- “Duties performed before or after normal working hours and, because the vehicle supports special equipment, it is not feasible for the member to use a personal vehicle.”

The majority of the officers we surveyed justified the use of a commute vehicle by saying they were on call 24 hours. The executive director of the department is responsible for appropriate commute vehicle approval. Without proper documentation for commute vehicle usage, UDC management cannot justify commute vehicle usage. If a commute vehicle cannot be properly justified, it may be considered to be a fringe benefit and would thus violate IRS Publication 15-B, which requires the employee to pay taxes on fringe benefits. Only two employees at the department pay taxes on their vehicles, and they are not used for emergency call-outs.

We recommend that the department follow state and department policy and reinstate the use of the monthly DF-61 to track the use of commute vehicles. This form should document the number of call-outs to which each officer responds and should be used to justify the appropriate number of commute vehicles for the ensuing year.

Management Oversight of Commute Vehicles Can Improve

Without proper documentation we could not verify that all use of commute vehicles is justified. Each commute vehicle costs the department approximately \$5,700 per year, depending on the type of vehicle assigned. UDC management has approved the use of 192 commute vehicles in fiscal year 2006. This translates into a \$1.1 million expense that is not clearly documented.

The department should reassess the need for some commute vehicles.

The department may also be able to eliminate other commute vehicles by properly tracking commute car usage. As mentioned previously, the department discontinued the use of form DF-61 which tracks commute car usage for call-outs. We recommend that the executive director review the actual need for commute vehicles six months after the department starts tracking actual call-out usage.

Allegations of Favoritism Exist with Commute Vehicles

Some employees believe that select administrators and supervisors have commute vehicles even though their job functions do not require the use of a commute vehicle. Employees commented that these administrators and supervisors receive vehicles because they are favored by UDC management, and the vehicles are provided as a perk of their position.

Several employees do not appear to need commute vehicles.

We identified a sample of these vehicles and question the use of some of these vehicles based on job descriptions of those who are assigned the vehicles. However, since no documentation of need exists, we were unable to positively justify vehicles were needed. Nevertheless, based on our review of job descriptions, it appears that some employees who have a commute vehicle do not have a clear need for such. UDC management should begin tracking and documenting the need of all those with commute vehicles.

Department Does Not Follow Other Select Policies

UDC's noncompliance with its own policies over reserve officers and disciplinary actions are also concerning. Poor tracking of reserve officers may lead to increased state risk exposure. Also, failure to adequately track disciplinary actions can lead to the staff equity problems discussed throughout this report. The reserve officer policy violation results from Adult Probation and Parole (AP&P) regions' inconsistent compliance with the tracking and reimbursement requirements. The discipline filing policy inconsistencies involve noncompliance by the Human Resources (HR) office with tracking of disciplinary actions.

**Reserve Officer Policy
Is Inconsistently Followed**

Most of the AP&P regions follow their own practices governing reserve officer use.

Although there is a clear policy regarding the use of reserve, or uncompensated officers in AP&P offices, each of the seven regional offices follows its own practices for maintaining reserve officers. The volunteer reserve officer program policy sets forth the way in which reserve officers are to be tracked and supervised. Based on our discussions with the seven regions of AP&P, it appears that despite this policy, they all handle their reserves differently, if they are used at all.

Only Region III reimburses reserve officers according to policy.

In addition to how reserve officers are tracked, the regions differ regarding reimbursement of volunteer officers. The policy states, “It is the policy of the Department that volunteer reserve officers receive a monthly equipment reimbursement. . . . The amount of the monthly reimbursement shall be twenty dollars for all volunteer reserve officers.” It appears that Region III is the only region that reimburses officers according to this schedule. The following figure shows the differences in policy compliance among the regions, as well as the number of reserves currently utilized.

Figure 4.5 Region Reserve Practices. Only two of the seven AP&P regions track their reserve officers’ hours worked.

Region	Number Active Reserves	Reserves Reimbursed	Hours Tracked
I	3	No	No
II	5	Inconsistent	Yes
IID	1	No	No
III	8	Yes	Yes
IV	1	No	Yes
V	1	No	No
VI	0	NA	NA

Source: UDC AP&P Regions

If hours worked or trained are not tracked, it is impossible to determine an officer's certification status.

Not tracking reserve officer hours could increase risk and liability to the state.

Disciplinary actions are not being appropriately documented in HR files.

Inconsistency in policy compliance within the department causes tracking of reserve officers and their hours to be unclear. Reserve officers are required to be POST certified or certifiable, and they “shall annually complete a minimum 40 hours of POST approved training as taught by UDC staff or other approved agencies in order to maintain their POST certification.” If the hours worked and trained are not tracked, it is impossible to determine whether they are POST certifiable.

The lack of tracking for reserve officers could increase risk and liability to the state. State Risk Management believe that reserve officers would be covered under the state Volunteer Workers Act (*Utah Code 67-20*). However, Risk Management points out that, because of the nature of the work, extra care should be taken to limit any liability. The regions must be careful to follow department policy and track training and hours worked meticulously. At a minimum, Risk Management points out that the regions should track names, social security numbers, training hours, and on-the-clock time.

Policies for Filing Disciplinary Actions Not Followed

When a corrections employee is disciplined for either a violation of policy or an unlawful act, a final order is written to be placed in the employee's personnel file; a discipline file is also created specifically for the incident requiring discipline. The separate discipline file, although a department practice, does not appear to be department policy. We found that many files do not contain proper documentation of disciplinary action. The following figure demonstrates the results of a sample of disciplinary files examined over the course of the audit.

Figure 4.6 Discipline File Search Results. The majority of the cases we researched had no record of disciplinary action in the appropriate file

Description of Finding	Percent
No Record of Disciplinary Action in Either File	62%
No Record in Personnel File	15
No Record in Disciplinary File	15
All Information Present	8

Source: UDC Files

Corrections policy is violated when disciplinary actions are not documented in personnel files.

If disciplinary actions are not documented, it is difficult to appropriately restrict incentive awards.

Department policy states that the personnel filing is to be kept. The staff disciplinary policy states, “The Department shall maintain copies of any documents or records affecting an employee’s conduct, status or salary in the employee’s personnel file including all disciplinary actions.” Department policy regarding staff personnel records states:

Entries in personnel files serve to . . . document disciplinary actions and other incidents to aid the Department in avoiding liability for actions of members. . . It is therefore, the policy and practice of the Department to retain file documents for as long as they continue to serve one or more of the purposes described above.

Violation of the filing policy facilitates further violation of other department policies. Another department policy lays out restrictions on incentive awards. It restricts employees who are under investigation or who have been disciplined in the past six months from receiving awards. In addition, many final orders restrict employees from being promoted for six months to a year from the time of their discipline. This cannot be appropriately implemented if the record of discipline is not in their file.

Recommendations

1. We recommend that the executive director develop a control in which supervisors and officers can track training hours.
2. We recommend that employees who do not receive 40 hours of training be prohibited from exercising officer duties, as outlined in the *Utah Code*.
3. We recommend that UDC employees who do not fulfill the training required for certification receive the standard public employees’ retirement instead of public safety retirement.
4. We recommend that the UDC management implement a tracking mechanism for commute vehicles.
5. We recommend that the executive director review the actual need for commute vehicles after the department has begun tracking actual call-out usage.

6. We recommend that the department discontinue providing commute vehicles for employees who do not have the need.
7. We recommend that the department require each region to follow the approved reserve officer policy in order to limit the state's liability and facilitate tracking of reserve's activities.
8. We recommend that filing of discipline records be brought up to date and maintained in order to restrict incentive awards and promotions in a timely fashion.

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Chapter V Increased Independence of Internal Review Functions Needed

The Department of Corrections (UDC or department) needs to elevate the level of independence of both the internal affairs and internal audit functions. Both functions struggle with inefficiencies because they report too low in the organizational structure. The Internal Audit Bureau reports to a division director, which is not consistent with statute. In addition, the finding and effect of both functions are compromised because of the lack of independence.

UDC should bolster departmental oversight functions by requiring that the internal oversight functions report directly to the executive director. A feasibility study should also be completed to determine how to best increase the independence and quality of the internal affairs function.

The Internal Audit Bureau Needs More Independence

The Internal Audit Bureau does not currently have sufficient organizational status and independence to provide effective oversight. The audit bureau currently and historically reports to a low level in the organization, while state law requires them to report to the agency head or an independent audit committee. Further, the department implements a relatively low percent of the auditors' recommendations, which has recently cost the state nearly a half-million dollars. We recommend the audit director report functionally to an audit committee or the executive director and administratively to the executive director, as required by statute.

The Audit Bureau Is Not Compliant With State Law or Auditing Standards

The Internal Audit Act, codified in Title 63, Chapter 91 of the *Utah Code*, sets forth specific requirements for internal audit bureaus in the state. The department's audit bureau is not compliant with all of the

The audit bureau cannot be considered independent.

The audit bureau has told management that it is out of compliance.

code's provisions. In fact, for the last several years, the department's own annual compliance review has concluded that the audit bureau is out of compliance with the law. The latest compliance review stated:

Audit is out of compliance with statute 63-91-302 in (the following) areas: An Internal Audit Director does not run the bureau; the chain of command is not connected directly to the executive director.

The department just recently bolstered the audit manager position to an audit director position and, on paper, moved the audit director to report to the deputy director. However, in actual practice, a division director is still functionally and administratively over the audit director. Consequently, the audit director does not have sufficient organizational status and is not fully independent of all the functions it audits. Figure 5.1 shows particular provisions of state law and auditing standards as they relate to the department's internal audit function.

Figure 5.1 Criteria for Internal Audit Bureau. UDC has not organized their internal audit bureau according to state law and auditing standards.

Utah Code 63-91-302(1)(i)

For each agency that establishes an internal audit program, the agency head shall . . . [place] no limitations on the scope of the internal audit department's work; and [declare] that auditors are to have no authority or responsibility for the activities they audit.

Utah Code 63-91-302(3)(g)

The agency internal audit director reports to the agency head and to the audit committee, if one has been established, and has freedom of access to the agency head to ensure that the director is responsive to the agency head's specific requests, directions, and needs.

Utah Code 63-91-401(3)(a)

Audits are conducted in accordance with professional auditing standards.

Figure 5.1 shows the statutes that the audit bureau is violating. Specifically, the audit director should report to either the agency head or an audit committee and the department head should not restrict the ability of the internal auditors to report their findings. We are concerned that

The audit director reports to a division director, which is contrary to the law.

The audit director should report to the executive director or an audit committee.

Management may have too much control over what the audit bureau reports.

the department management has too much control over what can and cannot be reported by the department's internal auditors.

As previously shown, *Utah Code* 63-91-401(3)(a) requires that audits be conducted in accordance with professional auditing standards. Figure 5.2 shows the professional auditing standards that the state should be following.

Figure 5.2 The Audit Bureau Is Not in Compliance with Professional Auditing Standards. In order to be considered independent, the audit bureau should report to the agency head or an audit committee.

Management has not allowed the audit bureau to be independent.

Institute of Internal Audit Standards

IIA standards require that the audit director report to a level within the organization that allows the internal audit activity to fulfill its responsibilities. The IIA believes that true independence is achieved when the audit director reports functionally to the audit committee and administratively to the executive director.

Comptroller General of the United States

The placement of the internal audit organizations is essential so that auditors are sufficiently removed from political pressures such that they can conduct their audits objectively and report their findings, opinions, and conclusions objectively without fear or political repercussions.

UDC is required by statute to follow professional auditing standards; however, they are not in compliance with standards set forth by the Institute of Internal Auditors and the Comptroller General of the United States.

Audit Bureau Does Not Have Organizational Independence. The law requires the internal audit director to report directly to the agency head or to an audit committee. However, as previously shown, the audit director reports to a division director.

The Legislative Auditor General informed the UDC that it was not in compliance with auditing standards nine months ago (March 2006). The department recently changed the organizational chart to have the audit director report to the deputy director; however, we found that this was a change on paper only. The division director over administrative services still signs the audit director's time sheet, still requires the audit director to

Management knew the department was out of compliance with state law.

attend his staff meetings, and still appears to be responsible for the audit director's performance appraisal. This is concerning not only because the audit director does not have sufficient organizational status, but the audit bureau could not independently audit a function under administrative services.

Lack of organizational status prohibits the audit bureau from conducting independent internal reviews.

The audit bureau should be sufficiently separated from lower management so that they can report their findings objectively and without fear of repercussion. The lack of independence in the organizational structure has made it difficult for the internal audit staff to objectively evaluate the actual performance of the department. Additionally, the lack of an independent reporting structure can lead to the perception that the audit bureau is not completely independent and can be persuaded by management influences.

Management has required the audit bureau to make changes to audit reports.

In addition, the audit bureau does not appear to be entirely free to conduct their work. Management has required the audit bureau to make changes to their audit reports. This practice is concerning and undermines the audit bureau's ability to conduct audits without interference. Part of this problem stems from a lack of appropriate organizational independence.

UDC Should Implement More Audit Recommendations

The department has a low implementation rate of audit recommendations. This low implementation rate alludes to an unwillingness by the department to implement necessary changes. Further, not implementing audit recommendations can negatively impact the department and be costly to the state.

The audit bureau reports that in a two-year period (fiscal years 2004 and 2005) only 65 percent of audit recommendations were either implemented or in the process of being implemented. Figure 5.3 shows the level of compliance for each division, as reported in the fiscal year 2005 Internal Audit Compliance Review.

UDC has only implemented 37% of audit recommendations over the last two years.

Figure 5.3 UDC Does Not Always Implement Audit Recommendations. UDC has implemented 37 percent of audit recommendations during FY 2004 - FY 2005.

Level of Compliance	AP&P	DAS	DIO	Exec	UCI	Total
Implemented	23%	42%	54%	23%	87%	37%
In Process	42	7	3	77	0	28
Not Implemented	34	51	28	0	13	30
No Response	1	0	13	0	0	4

Source: UDC Audit Bureau

The department has failed to implement at least 30 percent of the audit recommendations from fiscal year 2004 to fiscal year 2005.

Other state agencies have higher recommendation implementation rates.

Other State Agencies Have Higher Implementation Rates. It appears that internal audit divisions have more management support based on higher recommendation implementation rates. Figure 5.4 compares the implementation rates of three state agencies with that of UDC.

Figure 5.4 Other State Agencies Have Higher Implementation Rates Than UDC. Internal audit directors from other state agencies claim that management plays a more active role in ensuring recommendations are implemented.

State Agency	UDC	Courts	DNR	DAS	UDOT
Implemented	37%	97%	66%	77%	92%
In Process	28	1	10	15	8
Not Implemented	30	2	24	8	0
No Response	4	0	0	0	0

Source: OLAG Analysis

Figure 5.4 shows that internal audit divisions in other state agencies implement a higher percentage of recommendations than UDC does. An internal audit director in another state agency asserted that all recommendations are followed up by the deputy executive director in that agency to ensure that recommendations are implemented. This audit

manager claims that management fully supports the internal audit function and encourages division directors to use internal audits to benefit their divisions.

An internal audit director also claims that management supports the department's internal audit function and values its work as an integral part of a successful department. Therefore, it appears that this agency's internal audit function has a much greater influence on the agency than does the internal audit function in the UDC. The exercise of self-review appears to be constricted at the UDC. Management should do more to ensure that the audit activity is an integral part of improving the organization.

Failing to implement one recommendation cost the state almost \$500,000.

Not Implementing Audit Recommendations Has Been Costly to The State. The department was recently sued, and the state settled for nearly a half-million dollars, due to an audit recommendation not being implemented. In January 1997, the audit bureau recommended the following, which management chose not to implement:

The Department should review the . . . twenty factors (regarding the determination of whether a worker is an employee or an independent contractor) with the Department of Human Resources and the Attorney General's Office to determine whether any problems exist.

In September 2003, it was determined that the employees in question may indeed have been employees of the department. As such, the state settled with the employees in question for almost \$500,000 in owed benefits, pay, leave, attorney's fees, and other compensatory damages incurred. This lawsuit could have been avoided if the department would have implemented the audit bureau's recommendation.

In addition to restructuring the audit activity, the department should also restructure the internal affairs bureau.

Investigations by Internal Affairs Need To Be Equitable Among Employees

Historically, UDC's internal affairs office has had a reputation of being unable to conduct independent investigations of employee related

Management has an undue influence over the internal affairs unit.

Employees can perceive inequitable treatment due to management's influence over internal affairs.

problems. Our review of more recent times indicates that problems continue. We believe that some investigations have been delayed by department administration while some allegations of administrative personnel have gone without investigation. We believe that a major restructuring of the office is necessary to ensure high-quality, independent investigation.

Lack of Independence Can Allow For Inequity and Favoritism

Internal affairs at the department should have sufficient authority to investigate all employees in the department when there appear to be legitimate allegations. However, as illustrated in Chapter III, this does not always occur. Legitimate allegations have been made against administrators at the department who were not fully and independently investigated by internal affairs.

As discussed in Chapter III, two instances occurred in which administrators received favorable treatment by not having a full investigation completed on them. In one instance, an administrator thwarted an investigation on one of his/her senior employees by telling internal affairs not to conduct an investigation. In another, it appears internal affairs only completed a partial investigation on an administrator, seemingly by request of management. The report on this administrator had no documentation of events or allegations in the investigative file, to the extent that an independent reviewer could not understand the allegations against the administrator. These practices illustrate inequitable treatment of employees in the department and have allowed for certain employees to be favored.

Problems with UDC's investigative practices are not new. The internal affairs function has, in the past, been a concern at the department. One Governor's Transition Report declared that investigations conducted by internal affairs were at times worrisome and were even used to satisfy vendettas by investigators. The report recommended correcting the problems by requiring the internal affairs function to report to the executive director of the Department of Public Safety (DPS).

Further, the executive director has voiced concerns about the adequacy of the internal affairs investigations. He commented to us that he has, at

times, overruled the findings of the internal investigations unit because he did not believe they were accurate.

Internal Affairs in Other States and Departments Report to the Director

The department should be restructured in order to bolster the independence of internal affairs, enabling them to investigate all employees in the department. The two internal affairs bureaus at the department should be centralized under one chief who, in turn, should report directly to the executive director. This structure is used by the Utah Department of Public Safety (DPS), as well as other state departments of corrections. Figure 5.5 shows these reporting relationships.

Figure 5.5 Internal Affairs Reports to the Executive Director. The Utah Department of Public Safety (DPS) and other state correction departments’ internal affairs offices report to the department director.

Agency	Official Who Oversees Internal Affairs
Utah Department of Corrections	Assistant to the Department Director
Utah Department of Public Safety	Department Director
Idaho Department of Corrections	Department Director
Wyoming Department of Corrections	Department Director

Source: OLAG Analysis

Centralized authority under one internal affairs chief who reports to the executive director appears to be an accepted model. We found that Colorado’s and Arizona’s internal affairs report to an inspector general, which is a position that Utah does not have.

As an illustration of the reporting model, the Wyoming Department of Corrections (WDOC) policy states:

The IU [internal affairs] is under the direct supervision of the Director, and as such, all investigations assigned to the IU [internal

Other states give their internal affairs units more independence.

affairs] shall have unrestricted access to all WDOC facilities, staff, offenders, visitors, records, documents, and equipment.

We recommend that a feasibility study be conducted to decide how to best ensure the independence and quality of the internal affairs function.

Recommendations

1. We recommend the audit director report functionally to an audit committee or the executive director and administratively to the executive director, as required by statute.
2. We recommend that management follow up to ensure that audit recommendations are implemented.
3. We recommend that the Legislature direct the department to conduct a feasibility study to decide how to best ensure the independence and quality of the internal affairs function. The department should report their findings back to the Legislature. Points that should be considered are:
 - a) Combining the criminal and personnel functions into one bureau.
 - b) Creating greater independence by restructuring the reporting relationship of internal affairs to either the executive director or another independent person or group.

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Appendix

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Appendix

“The Big 9.” Accusations that must be investigated by internal investigations. (Department Policy AE 03/03.06)

Accusations	
1.	Unlawful harassment
2.	Discrimination
3.	Conduct in violation of Federal or State law, or municipal ordinance, excluding minor traffic violations
4.	Firearms violations
5.	Inappropriate use of alcohol and substance abuse
6.	Use of excessive force
7.	Domestic violence or violence in the workplace
8.	Prohibited relationships with offenders
9.	Other violations which, on a case-by-case basis, the investigator’s supervisor may assign.

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Agency Response



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

Department of Corrections

SCOTT V. CARVER
Executive Director

CHRISTINE MITCHELL
Deputy Director

December 7, 2006

John Schaff
Legislative Auditor General

Dear Mr. Schaff:

Corrections appreciates the opportunity to reply to the Legislative Performance Audit of the Utah Department of Corrections. The following pages provide our response.

We look forward to working with you and your staff in the future.

Sincerely,

A handwritten signature in black ink that reads "Scott V. Carver".

Scott Carver
Executive Director

Agency Response To A Performance Audit of the Utah Department of Corrections

December 7, 2006

The Department of Corrections appreciates the opportunity to respond to the "Performance Audit of the Utah Department of Corrections." The Department agrees with the recommendations of the audit regarding future administrative goals and direction and will continue our work to implement these recommendations. (See the implementation plan in the last section of this document.) We would like to take this opportunity to respond to the conclusions contained in the report and hope that our response will clarify the concerns raised by the audit. This response is not intended to be offensive to anyone; the Department is simply presenting the facts from our point of view.

The Carver Administration has made staff its number one priority. Improving working conditions, pay, staff disciplinary processes, and communication has been our primary focus. Last year, the Legislature granted the Department a special two-step salary increase which went to staff Captain level and below. Recent staff surveys show that staff morale is improved and the number of grievances filled by staff against the Department has decreased by more than 50%. Later in this response, we will present more evidence of our efforts and initial success in these areas.

Corrections' mission is to protect the public and provide offenders with the skills needed to become law abiding citizens. We measure our success by the smooth running of our operations. We have had no escapes from our facilities, no riots, and no homicides, in spite of more than 2 years of serious overcrowding. Criminal activity by offenders supervised in the community has not increased again in spite of a growing a number of felons.

We do agree that a subset of Corrections' staff harbor a belief in management favoritism and agree that this belief, even in a small subset, can detract from the effective and efficient operation of the Department. The Transition Report previously mentioned the on-going issue of staff concerns and tasked the current Executive Director with addressing them. We will list some of the most important steps that Director Carver has taken in the last 2 years to identify the problems and to resolve the issues. (This list is found on page 4 of the document.) Based on this extensive list, we believe that Corrections has acted on the Governor's Transition Team recommendations.

The audit also states that the "appearance of favoritism exists" p. 15. A claim of favoritism requires at the minimum a comparison contrasting the treatment of two different employee groups, those favored by management in contrast to other employees. Such a comparison must demonstrate differences in the treatment of these groups. Most of the narratives in the audit present a single case without reference to comparable situations with other personnel.

One of the major goals of our administration has been to create a "staff friendly" atmosphere

where staff are given the benefit of the doubt. The purpose of staff discipline is not to punish but to correct staff misbehavior and improve the effective operation of the Department. The report assumes favoritism occurred if a staff member received less than the harshest possible treatment without providing the necessary comparisons to similar cases. A different interpretation is that this less harsh treatment results from administration's proactive efforts to increase staff morale. To support this interpretation, we will offer comparison cases, where possible, showing other staff that have been given similar consideration. Our interpretation in every specific, factual case cited is not that staff received special protection or favoritism but that the Department dealt with difficult situations, as it does every day, in a manner designed to be fair to all employees.

The audit report cites 10 cases of possible favoritism. The Department has 2400 employees and the investigation included all personnel actions taking place over a 2 ½ year period. Ten cases were identified, most minor violations of policy, and some that did not violate any policy. We do not excuse any mistakes or policy violations on the part of anyone working for the Department and will attempt to address the issues raised.

The list of issues cited to demonstrate favoritism is:

1. A staff member who tested positive for drugs and who had worked for the Department for almost 20 years was allowed to retire, rather than be fired, within a few months of qualifying for a pension.
2. An internal investigator lied to an officer during a traffic stop claiming he was hurrying to investigate an incident at the prison to avoid a ticket; he received a verbal reprimand and was admonished to avoid further such behavior in his performance evaluation.
3. A group of investigators were not investigated or disciplined for showing their badges to a Highway Patrol Officer during a traffic stop. They were carrying weapons and are required to identify themselves to any officer who stops them.
4. An employee reported a security violation by a superior. The superior consequently was disciplined and then the employee reporting the violation was transferred to another assignment.
5. A former employee was rehired in a recruitment which required that the candidates be POST law enforcement **certifiable**, not POST **certified**. He met this requirement and was hired in accordance with HR rules.
6. An exempt employee was allowed to exercise his right as a career service employee to return to a merit position, losing substantial income and position.
7. The possible misbehavior of an administrator was investigated through an administrative review rather than being referred to an independent investigator.
8. An administrator was not formally investigated for unsubstantiated allegations many years in the past which were received from a questionable source.
9. The Department did not re-investigate allegations of inmate abuse previously investigated because they had been found to be groundless.
10. An agent who was accused by an offender of physical abuse was promoted before the final paper report clearing his name of this allegation was completed, but not before management was informed by our investigators of his innocence.

In several of these cases, we will demonstrate that other staff have received similar treatment and that the situations mentioned reflect our common practice rather than unique exceptions made for a favored few.

Response to Chapter 2

Implementation of the Transition Team Recommendations

The audit suggests that management has not done enough to resolve the issues concerning staff morale raised by the Transition Report. These conclusions were reached, in part, because management was not asked what they had done to address these recommendations. The Department has taken numerous steps and has had remarkable initial success in improving employee relations. The following list details the actions already taken by the new administration to address the personnel issues raised by the Transition Team:

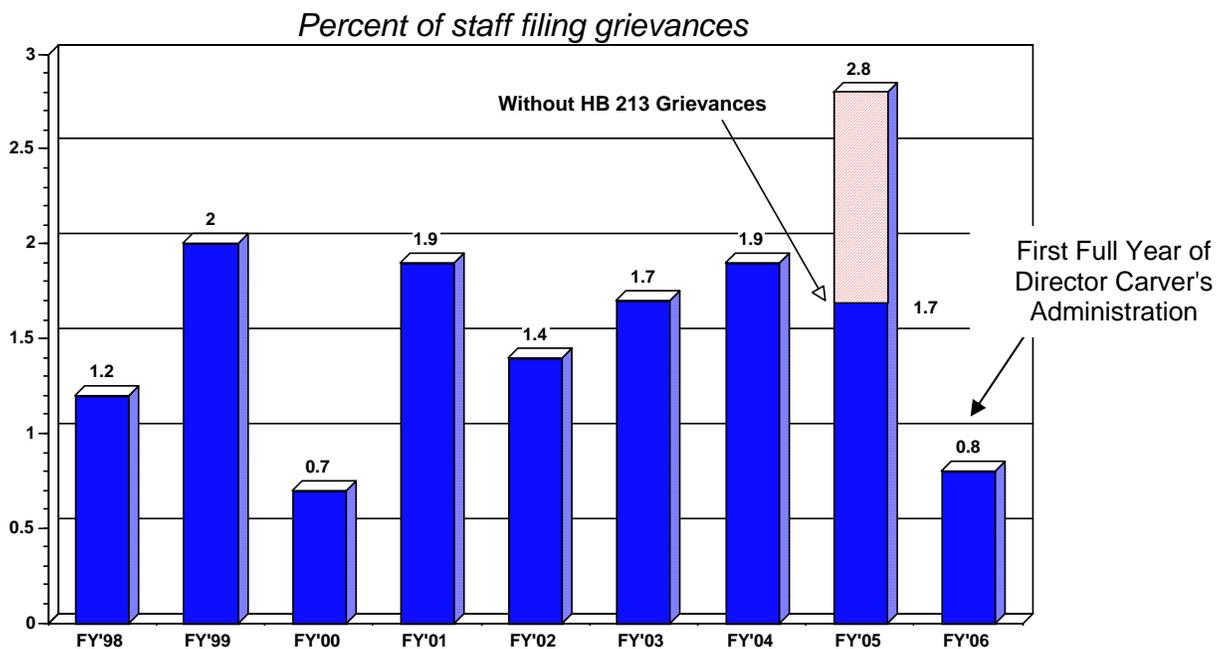
1. In January, 2005, Director Carver met with the transition team to review the report and its recommendations as a basis for organizing his management team and setting his priorities.
2. Director Carver met with FOP leadership (as instructed by the transition team) in January, 2005, to listen to their concerns and to attempt to resolve the issues they raised.
3. In January, 2005, Director Carver met again with the transition team to review the proposed organization before it was finalized and received their approval of all appointees. This included changes in the Division leadership of Adult Probation and Parole and Administrative Services, and in leadership changes in the Bureau of Audit, Offender Programming, and Investigations.
4. The Department leadership completed a comprehensive reworking of the discipline process designed to move discipline down in the organization, reduce time frames, reduce penalties (especially for first offenses), and create a more staff-friendly system. The new policy formally took effect on January 15, 2006. The goals of the new discipline policy were:
 - *Reduce Timelines for Investigations and Resulting Disciplinary Action*
 - *Handle Investigations/Disciplinary Actions at the Lowest Level Possible*
 - *Look at Ways to Keep Staff Members Better Informed as an Investigation Progresses*
 - *Look at Lesser Sanctions on First Offenses*
 - *Look at Administrative Actions that are Innovative and Fit the Offense*
 - *Protect the Department and the Employee*
5. In January, 2005, Director Carver announced an open-door policy where all staff are invited to meet with Executive staff to discuss their concerns, without fear of retaliation.
6. During FY'05, Director Carver commissioned a Certified Public Manager project to study the high rate of grievances and make recommendations to reduce them. A project to revamp the grievance process and address the underlying causes of grievances is underway and remarkable success has already occurred in reducing grievances.
7. The Department has sponsored an 18-month training program by National Institute of Corrections to train managers for the future beginning in the Spring of 2005.
8. The Department has provided management training to all levels of supervisors in the

- department.
9. Executive staff has regularly visited all Department offices and facilities throughout the state to meet with staff and review both legislative action and the Department's direction.
 10. The Executive Office has made staff salaries the highest priority of the Department's budget. We were successful during the last budget cycle in obtaining 2 additional steps for certified staff, captain level or below. Management staff were not given raises.
 11. The Executive Office has provided minutes of all executive staff meetings to staff by email and encouraged staff to respond to issues raised in the minutes. (Many responses have been received.)
 12. Department staff have worked with Utah Valley State College faculty to conduct a survey of Division of Institutional Operations staff and compare the results with the same survey of Utah Valley State College staff. The data indicate that Corrections' staff are generally as satisfied with their employment as staff of UVSC. This comparison, while not directly addressing favoritism, is inconsistent with the audit's conclusion of wide-spread staff dissatisfaction.

The Transition Report included other recommendations which have previously been implemented by the Department.

Evidence of Increased Staff Satisfaction

The best evidence of the success of our efforts to address the issues in the Transition Report is the grievance data for FY'06 and FY'07 through November which show a sharp down-turn in the rate of staff grievances. A significant reduction has occurred in staff grievances under the current administration showing the success of our initial efforts to improve the staff culture and address staff issues. The chart included here shows the sharp reduction in grievances.



In the audit, grievance data are averaged over 3 years, July 1, 2003 through June 30, 2006.

Director Carver's official appointment occurred in January 2005, halfway through FY'05. A high rate of grievances in FY'04 and FY'05 should not be assigned to his administration.

Note also, that the FY'05 grievance data also include a high level of grievances resulting from HB 213 which had nothing to do with the department administration. Staff believed that they needed to go through the grievance process first before taking the state to court. Twenty-five grievances were filed in FY'05 over HB 213 and the staff members were clear in their grievances that they knew that Corrections could not resolve their problem and that they were grieving state policy, not Department inequities. Thus, on the chart we have indicated the level of grievances both with and without HB 213 issues for the reader's convenience.

We believe that we have made remarkable progress in reducing grievances which is shown by the more than 50% reduction in FY'06 (even taking out the HB213 grievances). The first full year of Director Carver's administration was FY'06. Before FY'06, grievances were averaging about 2% a year. They have been reduced to less than 1% in FY'06 and are on track to be the same in FY'07 (only 6 so far). Given the difficulty of changing even a small sub-culture in a large institution, the data show a remarkable turnaround during Director Carver's administration. The audit does not make a clear distinction between this administration and prior administrations. Nor do they take into account the effects of HB 213. They interpret the significant drop in grievances in FY'06 as a statistical outlier. We believe that the most reasonable interpretation is that the drop in grievances under Director Carver is real and significant.

Additional evidence of our on-going commitment to tracking and reducing grievances can be found in the Department scorecard. Only 15 measures are included on the Department-wide scorecard and one of these top 15 is the number of staff grievances. Corrections has already shared this scorecard with the Governor's office and legislative staff members.

A study conducted this year by a faculty member from Utah Valley State College, Ron J. Hammond, Ph.D., Professor of Sociology, also supports the idea that most Utah Corrections' staff are reasonably satisfied with their employment. The study compared prison staff members with UVSC staff members on a number of variables. Dr. Hammond created a "Work Quality Scale" and found that Corrections' staff scored almost as high as staff at UVSC (32 for Corrections vs. 35-36 for UVSC).

Response to Chapter 3

This chapter focuses on incidents which are used to provide evidence of favoritism by the management of Corrections. The incidents cited generally have to do with the staff investigative process or staff discipline which was mitigated or not meted out. The audit suggests that we should have been harsher with the employees in these cases because the mitigated discipline has led to an appearance of favoritism. Our justification is that we try to give the benefit of the doubt to all employees, not just to management or a favored few. **In fact, as noted above, a major theme of Director Carver's administration is to create a more supportive staff environment in which discipline is corrective rather than punitive.**

It is worth comparing this audit to a Legislative audit conducted in 1990 which raised concerns about Corrections' personnel practices at that time. The earlier audit found that Corrections' "judicial" discipline processes were "threatening" and "intimidating" to staff. They also found that employee discipline could be expedited if handled at a lower level in the organization. The 1990 legislative audit specifically recommended that supervisors handle staff misconduct reviews wherever possible rather than referring all incidents to the investigations bureau for a formal investigation. The current audit criticizes Corrections repeatedly for just the opposite process—this audit suggests that Corrections should have conducted formal internal investigations, rather than asking supervisors to conduct administrative reviews, in many of the cases mentioned. Corrections has a clear process for determining when to conduct a formal investigation or to allow the supervisor to conduct an administrative review and this process was followed in the cases described below.

The audit seems to assume that because some staff believe that favoritism exists that makes it true. Perception is not reality and this is a problem of perception. Again, for favoritism to be demonstrated it would be necessary to show that some staff (who are favored) receive better treatment than others in similar circumstances (who are not favored).

Examples provided by audit

Specific incidents are mentioned in the audit which will now be addressed in detail. In many cases, the audit concludes that events were not addressed when, in fact, procedures were followed and consequences occurred.

In the new approach to staff discipline which took effect in January, 2006, every effort is made to give the employee the benefit of the doubt. Disciplinary sanctions were reduced and disciplinary infractions were divided into two groups: Level 1 and Level 2. Level 1 infractions have lesser sanctions and generally are approached, on a first violation, as a performance rather than a disciplinary issue. Formal internal investigations are not conducted; instead, the supervisor is instructed to perform and document an administrative review. Formal internal investigations are reserved for allegations of criminal behavior, unlawful harassment, discrimination, firearms violations, inappropriate use of alcohol or controlled substances, excessive force, domestic violence, workplace violence, prohibited relationships with offenders, or other violations as needed.

These changes have shortened the timelines for discipline so that staff do not remain under a cloud for long periods of time waiting for the internal investigations system to address their cases. Workloads in investigations have been reduced to a more manageable level, reducing potential costs to the state that would result if additional investigators were hired.

In every case mentioned by the audit in Chapter 3 where a formal investigation was not completed, Corrections' policy was followed in determining when to perform an investigation versus an administrative review. The policy will be reviewed to determine if it needs modification.

1. Audit: Supervisor seemingly favored and protected

Response: **Staff member with more than 19 years in the system was allowed to retire rather than be fired—as have other staff in similar circumstances.**

A Captain at the prison was arrested for a DUI and the investigation found a policy violation had occurred. However, the city prosecutor decided to dismiss the criminal charges due to lack of evidence. The inability to defend a disciplinary action based on the dismissal precluded the Department from taking disciplinary action. A year later, this captain was accused of a number of serious violations relating to use of illegal drugs. These allegations were investigated and it was found that the staff member had abused prescription drugs. During the investigation and after the allegations were sustained, the staff member was put on paid leave (we cannot put staff on unpaid leave). A settlement agreement was entered into with the staff member agreeing not to proceed with the discipline if the staff member retired.

- a. The facts in this case are essentially correct but are incorrectly interpreted.
- b. Other staff, including line level staff, have been allowed to retire rather than be fired if they are eligible for or within a few months of qualifying for their retirement.
- c. Corrections believes that this mitigation respects the work of long time employees who are close to retirement and does not harm the efficient operation of the Department.
- d. An attempt to terminate the employee would probably have led to the same outcome because of the time required to complete a termination but the cost to the state and employee would have been much greater.

Corrections offers a comparable case involving a line officer.

A Correctional Officer was investigated and found guilty of associating with offenders by becoming a member of a club with criminal associations. He was allowed to retire rather than be terminated. He was put on paid leave at the beginning of his investigation and kept on leave until his retirement date.

We do not believe that this case demonstrates favoritism. Corrections will continue to review incidents of this sort on a case-by-case basis and make decisions taking into account the best interests of the staff, the organization, and the state.

Process Refinements:

1. Ensure that DHRM is consulted and offers a written recommendation in these cases.
2. Ensure that settlement agreements are reviewed by the Attorney General's office.

2. Audit: No investigation or discipline after supervisor violated policy.

Response: **Informal review conducted and supervisor reprimanded and received written criticism in performance evaluation.**

In this case, a supervisor in internal affairs was stopped for speeding in a state car by the Highway Patrol. The supervisor tried to mislead the Trooper by saying that he was speeding because he was on the way to investigate a stabbing at the Gunnison prison. The concern raised by the audit was that he was not investigated or disciplined for these violations:

- a. He reported the violation to his supervisor immediately and in detail.
- b. Corrections' policy was followed in this case since the facts were not in dispute and the violation did not fall on the list of incidents requiring Bureau of Professional Services investigations given above. Neither the traffic violation or the untruthful response to the Trooper falls on this list.
- c. The audit reports that nothing was done in this case. In fact, the staff member received a verbal warning from his supervisor and he was admonished in his performance evaluation in the section titled "areas needing improvement" to avoid further incidents of this sort.
- d. The audit compared this event to a case in which an employee of the Department who was off duty in his personal automobile attempted to pull over a citizen who committed a possible traffic violation. Our staff member's pursuit of the driver in the other car frightened her so much that she drove into the driveway of the Chief of Police and summoned him from his home for help. The Chief reported that our staff member was "out of control" and inappropriate. A complaint was filed by the citizen with the Sheriff's office. Our staff member was investigated and disciplined for this violation.
- e. The second case is not comparable and is considered to be much more serious because the second case involved endangering a private citizen and behaving in a violent and erratic manner.

Process Refinements:

1. This is a Level I violation and so could be informally reviewed by the supervisor.
2. It should have been referred to the Department Disciplinary Committee which would have made a recommendation for the appropriate sanction. This was not done and will be in the future.
3. Written documentation regarding the actions taken should have been included in the discipline file.

3. Audit: Internal Affairs investigators not investigated for policy violations

Response: **No policy violation occurred so no investigation was necessary.**

Four investigators were also stopped for speeding and showed their badges to the officer when he approached the vehicle. The audit offers a comparison case in which a staff member showed his badge during a DUI stop and was later disciplined.

- a. The armed investigators were on their way to the Gunnison prison for a weapons' qualification and as a result had weapons in the vehicle. The investigators were obligated to inform the officer who stopped them that they were armed. They did this by showing their badges. This is not "badge flashing". At a minimum, this is a safety issue for both our staff and the officer making the stop.
- b. No ticket was issued.
- c. No complaint was received from the officer making the stop.
- d. No investigation is required for a traffic stop which does not result in a ticket or a complaint.
- e. The Department does not equate showing a badge during a stop for speeding with showing a badge during a stop for a DUI. The severe discipline received in the DUI

case had to do with the DUI. It was aggravated by the use of the badge but that was a secondary, not primary, issue.

Process Refinements:

1. This is a Level I violation and so could be informally reviewed by the supervisor.
2. It should have been referred to the Department Disciplinary Committee which would have made a recommendation for the appropriate sanction. This was not done and will be in the future.
3. Written documentation regarding the actions taken should have been included in the discipline file.
4. A review will be made of our policy on traffic violations in state vehicles.

4. Audit: Seemingly inequitable treatment against an officer who reported a policy violation
Response: **No action of any kind was taken against the officer who reported a policy violation.**

The audit does not disclose the details of this case so a complete response cannot be made. A line level officer reported a security violation against a more senior officer. This senior officer **was** disciplined as were others involved in the incident. However, the line level officer reporting the incident was **not** disciplined. The line level officer reporting the incident was later transferred within the prison which was interpreted by the audit as punishment.

- a. Transfers are not discipline. Transfers are made for many reasons and without the details of the case it is impossible to know what those reasons were. The officers who violated policy were disciplined and the line level officer reporting it was not.

5. Audit: Management apparently favored employee in hiring process
Response: **All requirements were met during the hiring process for this employee.**

The audit appears to confuse eligibility to be hired with the requirement to become certified after hiring.

- a. The recruitment in which the staff member was hired stipulated (quoting from the recruitment bulletin) that candidates “must be **able** to be POST certified as law enforcement officers” (emphasis added). This does not mean that the applicants were required to be POST certified when they were hired, simply that they met the qualifications to **become** certified as a law enforcement officer. (See recruitment bulletin in Appendix A.)
- b. Eight individuals were hired during this particular recruitment. Some of those hired were already certified as law enforcement officers and others were eligible but not yet certified. No question exists about whether the individual hired was eligible. **He was eligible.**
- c. He had been a law enforcement certified member of Corrections in the past and met all the qualifications. Several of the individuals hired in the recruitment were sent to the POST academy to become certified after they were hired.
- d. The question that arose later was whether the particular individual would need to go through the POST academy again, take a qualifying retest, or simply be determined to

have been certified during the entire 4 year period since he had left Corrections.

e. The Department worked closely with POST to make the determination which hinged on whether the individual had received his required annual 40 hours of training during the time he was not employed by Corrections. POST determined that he had met these requirements and did not need to go through the Academy again or take a retest. Corrections repeatedly communicated with POST about this situation and made it clear that if POST had any concern about the staff member's training status, we would send him through the academy again.

Corrections is not trying to place the "culpability" for this decision on POST. We are simply trying to explain the process we went through to determine the certification status of this employee.

One of the most concerning aspects of this section of the audit is that it accuses a Corrections' manager of sending a memo to POST with false information. Corrections has provided documentation to show that this memo was correct. The only point of such a falsification would have been to avoid sending this employee through training which the Department and the employee were entirely willing to do. It had no implications whatsoever for whether the employee qualified to be hired for his position. There was no motivation to falsify records.

Process Refinements:

1. Corrections worked closely with HR through the hiring process to ensure that all rules and policies were followed. We will continue this practice with every recruitment.
2. On the issue of staff certification, we will continue to work closely with POST to ensure that all staff in certified positions have met the requirements of their certification.

6. Audit: Administrator protected during governor transition

Response: **An exempt employee was allowed to exercise his right as a career service employee to return to a merit position, losing substantial income and position.**

Administration consulted with HR before moving on this reassignment to ensure that all rules were followed.

- a. Exempt employees are given the option of returning to a merit position if one is available.
- b. Other staff are given transfers when they request them if positions for which they are qualified can be found that fit their capabilities.
- c. We dispute the contention that the staff member was not qualified for the position. He is one of our most knowledgeable staff members concerning our operations and performed at an exceptional level in his new assignment.
- d. The incumbent who was moved was promoted and has benefited from the events that occurred. She was not asked to "step down" as stated in the audit.

Process Refinements:

1. The previous Executive Director worked closely with HR to ensure that all rules and

policies were followed.

2. In unusual situations such as this, we will request a formal opinion from the Director of DHRM about all appropriate options.

7. Audit: Administrator treated favorably in investigation process

Response: **Allegations against the administrator were thoroughly investigated in line with Corrections' practice.**

An administrator was accused of possible violations of federal and state law by accessing the criminal history record of several private citizens. The audit states that this should have been sent to the internal affairs investigators for a full investigation as apparently required by Corrections' policy. Instead, the administrator's supervisor conducted an administrative review of his behavior.

- a. On April 25, 2006, a private citizen e-mailed an investigator from Corrections' Bureau of Professional Standards (BPS) and made allegations that an administrator had inappropriately accessed her criminal history using his position and Department resources without her knowledge and consent.
- b. BPS referred the matter to the Division for handling because any type of accessing and/or releasing of confidential information has been handled by an administrative review in the past. Although "technically" inappropriate access of BCI records can be a Class B Misdemeanor, criminal charges are almost never pursued.
- c. Corrections' staff spoke to the Field Services Section Supervisor for the Utah Bureau of Criminal Identification (BCI) on December 1, 2006, and he said 95% of cases such as this are handled by State Agencies administratively and no criminal charges are pursued. He is only aware of two cases where BCI pursued criminal charges. This is not generally considered "unlawful conduct" that would require it to be investigated by BPS. Further, if the administrative review found aggravating information or that our administrator had inappropriately accessed BCI records, we would have referred the matter to BPS, at that time, to conduct a complete investigation. For matters such as this, it is not uncommon to start with an administrative review and then refer the case for formal investigation if wrongdoing or aggravating factors are found. From our discussion with BCI, we were consistent with other agencies by investigating this case administratively.

Further, we have reviewed Adult Probation and Parole's disciplinary logs from 2003 to the present and all cases involving inappropriate access/disclosure of confidential information have been handled by an administrative review, including inappropriate access of BCI records. Therefore, the allegations against the administrator were handled the same way as other employees who were similarly charged.

Corrections offers these comparable cases:

1. Case 1 -- Probation and Parole Agent--allegations of misuse of BCI. **Administrative Review** was conducted, it was found the staff member did inappropriately access BCI records and he was issued a Letter of Reprimand. *No criminal charges were filed.

2. Case 2 – Probation and Parole Agent--allegations of unauthorized disclosure of confidential UDC records. **Administrative review** was conducted, it was found she did disclose confidential UDC records and she was issued a Letter of Reprimand.
3. Case 3 – Administrative Secretary--allegations of unauthorized disclosure of UDC records. **Administrative review** was conducted and it was found he did inappropriately disclose UDC records and he was issued a Letter of Warning.

Finally, the Department has a Guide to Disciplinary Actions, which identifies the differing types of employee misconduct by general categories, which are broken down into specific offenses with a range of penalties identified. Accessing/disclosing confidential information is contained in section 6 under **Conflict of Interest** or section 7 under **Abuse of Position** on page 9 of the guide. These would be the relevant policy violations for this type of misconduct. This type of misconduct is not identified under the Unlawful Conduct section on page 8.

For the foregoing reasons, an administrative review was conducted.

- a. On April 26, 2006, the administrator was interviewed by his supervisor. He denied any wrong doing.
- b. However, in order to ensure that the staff member had not inappropriately accessed the criminal histories of the citizens making the complaints, staff in our Law Enforcement Bureau (LEB) contacted the Utah Bureau of Criminal Identification (BCI) to find out if the staff member or anyone in the Department had run a criminal history on the citizens. A staff member of LEB who does the BCI verifications for LEB contacted the Field Services Section Supervisor at BCI. The Field Supervisor conducted an independent search and submitted the BCI records for all "hits" or inquiries on the names on May 9, 2006. The LEB staff member reviewed the records and informed the supervisor that none of the hits were from the Department on either of these names. Therefore, no one using Department resources had accessed either of these individuals' criminal histories.

On May 10, 2006, two more citizens e-mailed a Corrections' investigator, again alleging that our administrator had inappropriately accessed their criminal histories. All of these citizens were involved with our staff member in a youth sport program. We again contacted LEB and requested that an independent search be conducted by BCI to determine if this staff member or anyone within the Department had accessed either of the citizen's criminal histories. On May 17, 2006, BCI notified LEB that there were no inquiries from the Department on either name. Our LEB staff member informed the Division Director of these findings via e-mail on this same date.

To ensure that the investigation was complete, we checked the records to see if anyone within the Department had viewed these individual's criminal history records. However, BCI informed us that no one in the entire Department had ever accessed any of these individuals' criminal histories. Furthermore, there were no hits or inquiries by any law enforcement agency on any of the concerned citizens names in all of 2006. No inquires were made by any law enforcement agency on any of the concerned citizen's names from September 2005 to May 2006. Therefore, it was clear that our staff member had not enlisted the help of friends in any other agency to access this information since no inquires had been made on any of these

individuals' names during that time period.

Process Refinements:

1. Our policies for determining which policy violations should be considered Level I or Level II will be reviewed.
 2. Staff will receive additional training on the policy.
-

8. Audit: Full investigation not completed on administrator

Response: **No investigation was conducted on unsubstantiated allegations occurring many years in the past which were received from a questionable source.**

An administrator had been the target of malicious gossip for many years and these allegations had been brought to the attention of previous Executive Directors and previous Governors. All were unsubstantiated.

A year ago, new allegations were made of inappropriate relationships with offenders which were administratively investigated by talking to other staff members who were alleged to have been involved. Both the accused staff member and others present provided information which made it clear that these allegations were false.

A few months later, more allegations were made against this administrator by a former staff member who was resigned rather than be fired for a relationship with an offender.

- a. The former staff member making the allegations had been found guilty of inappropriate relationships with offenders and was not considered to be a reliable source. She was asked to come in and assist in an investigation but refused.
- b. This type of allegation would not have been investigated on any staff member.

The Executive Office and the employee determined that it would be best for the organization if the staff member was moved to a lower profile position. After consulting with HR, the staff member was moved. We were assured by our HR field office manager that our actions were within HR rules, before we proceeded.

9. Audit: Department did not follow up on allegations reinforcing impression of unequal treatment

Response: **The Department did not re-investigate old allegations of inmate abuse previously investigated because they had been found to be groundless.**

A consultant was hired to help mediate a long-term dispute between two staff members at the Gunnison prison. He was not hired to look into the employee's claims of inmate abuse and fraud which had been investigated several times. The Department received a report from the consultant stating that the Department should have followed up more carefully on allegations received from an employee of a serious nature. Since these allegations had already been thoroughly investigated, we did not do further investigation. We do not investigate staff for the same violations repeatedly.

Some of these allegations were also looked into by Division of Occupational and Professional Licensing (DOPL) and found not to be valid. This also occurred before the consultant's report referenced by the auditors.

10. Audit: Employee promoted against UDC practice

Response: **An agent, who was accused by an offender of physical abuse, was promoted once we were informed that our investigation had established his innocence.**

An offender made an allegation against two agents that they had injured him during an extradition. The case was referred to the Bureau of Professional Standards (BPS) and investigated. While the investigation was still underway, one of the staff members participated in a promotional process to move from a line agent to a supervisor. It is our standard practice to allow staff who are under investigation to participate in a recruitment, with the understanding that they cannot be promoted if they are found guilty of the violation being investigated.

He was selected for a promotion but since he was under investigation, the Regional Administrator contacted our HR field office specialist to find out if the investigation was complete and if he could be promoted. The HR field office specialist asked the investigator about the status of the investigation and was told that it was completed but the report was not written. The investigator told the HR field office specialist that they had concluded that the agent was not guilty. The decision was made to promote the staff member even though the written report was not completed since it was clear that the staff member had been exonerated.

Process Refinements:

1. In any similar case, the investigators will write a memo to be included in the disciplinary file, stating that an investigation was completed and that the staff member was cleared .
 2. The memo will also indicate that the full written report will follow.
-

Summary

The audit concludes from these examples that administrators and supervisors receive favorable treatment. This conclusion is based on a number of specific cases and failed to take into account the entire picture of discipline in the Department. Examples have been provided in many cases where similar consideration was given to line staff.

Retire rehire

In our opinion (explained below), "management" is not the select group who are more likely to be rehired after retirement. The audit concludes that "management is more likely to get favorable treatment in retirement process than line staff". The audit reports that 71% of the retire/rehire staff are management level. The difference between our position and the audit finding is in the definition of "management." The Performance Audit included any position not at the most basic entry levels as a managerial position. Of the staff members included in their

analysis who retired and were rehired in less than 6 months:

- 23 (79%) had no staff supervision responsibilities
- 24 (83%) of the positions are considered hourly workers by the State for Fair Labor Standards Act purposes
- 19 (66%) were paid less than \$40,000 a year in spite of having more than 20 years experience with the state.
- Only 4 (14%) were rehired to management positions.

Corrections' analysis of retire/rehire positions

Position Rehired To	Less than 6 months after Retirement	Percent of Total	More than 6 Months After Retirement	Percent of Total
Management	4	14%	2	20%
Mid-level or Administrative	7	24%	1	10%
Line level	18	62%	7	70%

In the Department of Corrections, the following positions are not considered management:

1. Correctional Specialists--6 staff members (21% of the rehires within 6 months) were rehired as Correctional Specialists.
 - This position is one step above Correctional Officer and has little if any staff supervision responsibility.
 - They are considered hourly workers under the Federal Fair Labor Standards Act, not professional staff.
 - All were hired at less than \$40,000 a year in annual salary.
2. Correctional Security Enforcement Officer—1 staff member (3%) was rehired in this title. This is equivalent to a Correctional Officer and has no supervisor responsibilities.
3. Social Workers and Substance Abuse Workers—2 staff members (7%) were rehired in these titles.
 - These staff do not supervise any other staff members.
 - They deliver direct treatment and case work services to offenders.
 - They are several levels below management.
 - They are considered professional, but not managerial staff.
 - Both were hired at salaries less than \$35,000 a year.
4. Facilities Coordinator—1 staff member (3%) was rehired.
 - This is considered to be a technician position and has no supervision responsibilities.
 - It is the lowest level in its Bureau.
 - The position is considered to be an hourly worker under FSLA.
 - The staff member was rehired at less than \$35,000 a year.
5. Investigator—3 staff members (10%) were rehired as investigators.

- These staff have no supervision or management responsibilities.
 - The position is considered to be an hourly worker under FSLA.
 - Corrections does view these staff (as it does all its staff) as professionals, but not management.
6. Auditor—1 staff member (3%) was rehired as an auditor
- This position has no supervision or management responsibilities.

Of the entire list provided by the audit, only 6 of the 29 positions had any supervisory or management role.

Retire/rehire options have been exercised across the whole range of positions within Corrections, not just in high-level management positions. The Utah Retirement System has permitted this option for staff in both Corrections and Public Safety. It has benefited the state by encouraging well-trained and experienced staff to stay with the agency, rather than retire and leave our employment. Since 1995, more than 2800 individuals have been hired by the Department of Corrections. Of those only 35 were rehired within 6 months of retiring.

Response to Chapter 4

Training

We appreciate the audit bringing the issue of our training records and training compliance to light. Corrections agrees that it should improve its monitoring of training records and hours for certified staff. The issues raised by the audit have been addressed and we are in the process of correcting training hour shortages for FY'05 and '06. Staff who are deficient in training hours were given until December 10, 2006, to fill their hours for FY'06 and until January 10, 2007, to fill their hours for FY'05. Anyone who fails to complete their training in the future will be disciplined and removed from their certified position until their training is completed. A detailed plan for improving our training compliance is attached. Corrections is also working on improving its process for keeping training records.

Commute Vehicles

The Fleet Services policy on commute states that “A commute vehicle is defined as a **non-law enforcement vehicle** being driven from work to home more than 5 days a month.” (emphasis added). For tracking purposes, Corrections reports its law enforcement vehicles which have “take-home” authorization to Fleet Services. However, these are not commute vehicles under the law enforcement exception of Fleet Services policies. Most of the vehicles reported by Fleet Services as “commute” vehicles fall into the law enforcement exception.

Corrections will conduct a review of its non-law enforcement commute vehicles and institute a better tracking system for vehicle use for those who have non-law enforcement commute privileges and ensure that our practices conform to state and Corrections’ policies.

The audit states that commute privileges have been given as a perk. Actually this

authorization is based on assignment: staff in a job category are generally treated equally. Most commute privileges are assigned to investigators, agents and parole and probation supervisors. More than 80% of the law enforcement "take-home" cars are assigned to staff in these titles. These staff are not managers and no staff member has received commute privileges as a perk.

A plan to implement the auditors' recommendations is attached.

Reserve Officer Policy

Corrections concurs that it needs better compliance with its policies on reserve officers. A detailed plan for achieving this compliance is attached.

Disciplinary Records

The audit implies that Corrections does not have disciplinary records in more than 60% of the cases. The Department does have records of every case and these records are consulted before determining whether staff are eligible to promote or receive incentive awards. The problem identified here is a result of a backlog in filing final orders of discipline in the personnel file and will be corrected within 6 months. We will work with DHRM to improve this process.

Response to Chapter 5

Internal Audit Bureau

The Department agrees with the finding that the law requires Internal Audit to report directly to the Executive Director and has made that change in the organization.

The legislative audit brings up an example of a Department of Corrections audit done almost 10 years ago which pointed out a problem that might have avoided a law suit which Corrections settled. It should be noted that at that time Corrections' Audit Director did report to the Deputy Director, not to a Division Director. The Executive Director at that time was well aware of the audit. Failure to implement the recommendations was not a result of the Audit Bureau's position in the organization. *Only the Executive Director from that era could explain why the recommendations were not fully implemented.*

The audit also claims that we are not doing enough to implement Corrections internal audit recommendations. Starting more than 2 years ago, a new process was established for audit reviews. Each time an internal audit is completed, the audit bureau is invited to attend our Executive Staff meeting to review the findings and recommendations. Every audit that is completed is presented to Executive Staff. The following is the list of the number of times Executive Staff has reviewed an audit in the last year.

- 02/09/2006 - Three-year audit plan and Utah Legislative Audit Review
- 04/11/2006 - Emergency Contingency Audit
- 04/27/2006 - Legislative Intent Report
- 04/27/2006 - Prison Privatization Audit (Phase I)
- 06/20/2006 - Thinking for a Change Audit
- 06/20/2006 - AP&P Mental Health Audit

- 06/29/2006 - Washington County Jail Audit
- 07/27/2006 - Policy and Procedure Audit
- 09/21/2006 - Management Letter Compliance #1

Prior to the findings of this audit, Corrections was working on a new policy to track each recommendation of each audit and outline the plan for implementing them.

Internal Affairs and Staff Discipline

The audit suggests that the internal affairs functions of the Department need greater independence. It recommends that all investigations should be centralized under one chief who reports directly to the Executive Director. This change was made more than a year ago.

As part of implementing the Transition Team's recommendations, Corrections' disciplinary policy and investigative policy were rewritten through an extensive process in 2005 and the new policy was officially adopted in January of 2006. Corrections consulted with staff from DHRM, the Attorney General's office, and the Career Service Review Board in an attempt to create a more staff friendly process.

In our new approach, every effort is made to give the employee the benefit of the doubt. Disciplinary sanctions were reduced and disciplinary infractions were divided into two groups: Level 1 and Level 2. Level 1 infractions have lesser sanctions and generally will be approached, on a first violation, as a performance rather than a disciplinary issue. Formal internal investigations are not conducted; instead, the supervisor is instructed to perform and document an administrative review. Formal internal investigations are reserved for allegations of criminal behavior, unlawful harassment, discrimination, firearms violations, inappropriate use of alcohol or controlled substances, excessive force, domestic violence, workplace violence, prohibited relationships with offenders, or other violations as needed.

These changes have shortened the timelines for discipline so that staff do not remain under a cloud for long periods of time waiting for an overburdened internal investigations system to address their cases. Workloads in investigations have been reduced to a more manageable level, reducing potential costs to the state that would result if additional investigators were hired.

In every case mentioned by the audit in Chapter 3 where a formal investigation was not completed, Corrections' policy was followed in determining when to refer a case for an internal investigation. The policy will be reviewed to determine if it needs modification or if staff need additional training on its implementation.

Of note is that the Department, as part of the revised staff disciplinary process, will begin publishing the results of **all** disciplinary actions in January of 2007. This will be part of the employee-only accessed portion of the Department's website. This is contingent upon entering disciplinary actions into a central database, which will be completed at year-end. Actions will be reported in a general way providing aggravating and mitigating circumstances.

A crucial point is that staff morale will not be improved if every allegation of wrong doing is formally investigated.

To summarize, Corrections appreciates the opportunity to respond to the audit. As we have done from the very beginning of this administration, we will continue to make the issue of staff morale and well-being our highest priority. Our administration realizes that the Department can only be successful if staff are motivated, trained, and supportive. We will continue to hold ourselves and our management to the highest possible standards and work to communicate these efforts to our staff, the Governor's office, and the Legislature.

Transition Team Recommendations

Chapter 3 Recommendation 1

Corrections will commission an independent and anonymous survey of all of its staff members to address specifically the question of favoritism. The survey will be designed to determine if staff:

- believe favoritism exists
- believe other staff believe favoritism exists
- have been a victim of favoritism
- have benefited from favoritism
- can provide an example of favoritism
- can provide suggestions for improving personnel practices

Uniformity in Investigations, Discipline, Standards and Policies

Chapter 3 Recommendations 2 and 3

Corrections' policies and standards require that all staff are treated fairly in investigations and discipline and that policies are applied equally across the board. Corrections' policies state the supervisors will be held to a higher standard of behavior in disciplinary actions and overall performance of their duties. To ensure that these policies are adhered to:

1. Starting immediately, the Deputy Director will receive a report from the Department discipline committee each week on disciplinary actions brought against anyone in a supervisory position.
2. Level 2 policy violations by members of the internal affairs or law enforcement bureau staff will be referred to the Attorney General's Office for investigation.
3. All managerial and supervisory staff members will be re-trained on the investigative and disciplinary process by March 1, 2007.
4. Additional clarification will be provided to managerial, supervisory, and HR staff members on which policy violations may be viewed as potentially criminal by the discipline committee.
5. Sanitized versions of investigative results and discipline will be provided to staff monthly beginning in January 2007.

Training

Chapter 4 Recommendations 1 and 2

We appreciate the audit bringing the issue of our training records and training compliance to light. Corrections agrees that it should improve its monitoring of training records and hours for certified staff. The issues raised by the audit have been addressed and we are in the process of correcting training hour shortages for FY'05 and '06. Staff who are deficient in training hours were given until December 10, 2006, to fill their hours for FY'06 and until January 10, 2007, to fill their hours for FY'05. Anyone who fails to complete their training in the future will be disciplined and removed from their certified position until their training is completed.

The Department of Corrections is committed to provide training to all correctional staff members to discharge their duties in an ethical and professional manner. The course of our training has evolved over the years to be recognized as one of the more thorough and comprehensive training models within the Correctional community throughout the United States. The Utah Department of Corrections encourages the Training Bureau to gain and improve upon teaching techniques, thereby impacting the cadets receiving critical instruction pertaining to the discharge of their responsibilities. Additionally, the staff continually review course content for applicability and importance in a changing correctional environment. Alterations are made accordingly.

Training Bureau Responsibility

The Training Bureau is mandated to ensure that training is made available to Department of Corrections' staff to meet the requirements in state statute and in Departmental policy to maintain proper certification. The statute requires all corrections and law enforcement officers to receive 40 hours of training each year. The Training Bureau, recognizing the diverse training needs of those Certified Officers in the Divisions of Institutional Operations, Adult Probation and Parole, and Clinical Services, has developed a training schedule to accommodate those officers throughout the year. The officers are also informed that the Department grants other credit for training and education that is job related or which can enhance the officer's performance. Credit is granted hour-for-hour for actual classroom, distant, or on-the-job training.

As an officer completes the training, a roll is signed (if training is taken while attended a Training Bureau directed class), or an Application for Training Credit is submitted with the signature of the officer's supervisor authorizing the training credit. These training documents are then forwarded to the Training Bureau for entry into the training database for departmental supervisors and individuals to reference for training status.

In June of each year, supervisors are instructed to check the status of each of their subordinates to ensure annual training requirements have been met for that training year (also the fiscal year). At the end of July of the next training year, the Training Bureau is to submit a report listing the total training hours received by each officer of the Department. The list is to be submitted to the Executive Director, Deputy Directors and division directors. Training

hours should be made up within 30 days of the June 30 deadline. Officers who are deficient in training hours at that point may be sanctioned.

Training Deficiency and Notification

Reviewing the policy vs. practice, we have noted the following:

- Notification to the respective supervisors and directors is not adequate.
- Encouragement for officers to search their individual training record needs to be enhanced.
- Performance plans should include training hour requirements, and supervisors should review plans with their subordinates for adherence.
- Better instruction to Department staff concerning their responsibility to submit applications for training/education/seminars/work-related classes for training credit will be implemented.
- The Department will monitor those officers not in compliance for determination of appropriate action regarding a transfer to a non-certified position or disciplinary sanctions.
- The Department will establish a closer working relationship with POST to assure consistency in compliance with Departmental policy and state statute.

Action Being Taken by the Training Bureau

The In-service Training Policy, Afr11, encompasses the philosophy of sound training and its impact on the mission of the Department, which is public safety and providing an opportunity for offenders to alter behaviors leading to their incarceration. We believe the core of this training is provided in a professional manner. The monitoring of training will receive greater attention. The following actions are now, or will be, implemented shortly:

- On November 20, 2006, an email was sent to all Corrections' employees with attachment of "Application for Training Credit" and "Make Up of Training Hours" forms.
- On November 20, 2006, an email with an attached letter was sent to all Certified Staff delinquent in training hours for **FY'06** notifying them of their status. The statute is cited in the letter along with notification that the employee has 10 days to complete the training from the receipt of the letter.
- If training is not completed within the designated time, POST will be notified that the decertification process should begin.
- Between November 29, 2006 and December 4, 2006, an email with attached letter was sent to all Certified Staff delinquent in training hours for **FY'05** notifying them of their status. The staff members were notified they have 10 days to complete the training from the date they received the email.
- Beginning immediately, the Training Bureau will provide regular reports to Division Directors of current training hour status for each employee throughout the training year.
- Department staff will receive regular emails from the Training Bureau explaining how to access their personal training record and of their responsibility to obtain the training to maintain yearly certification.
- As POST automates their training database, all agencies with Certified Staff will receive notice of those employees short of the 40-hour training requirement.
- POST was asked for an opinion on November 3, 2006 about the impact on certification of

- going two years without adequate training hours. No opinion has been received thus far.
- POST has agreed to work with us in accomplishing our objectives in assuring officers are receiving proper training within established time frames.
 - Department policies and procedures will be updated to reflect all of the changes made.
 - Training notification will be placed on the agenda of the Executive Staff Meeting to remind Division Directors to encourage subordinate staff to review the training status of employees.

Public Safety Retirement Eligibility

Chapter 4 Recommendation 3

The audit questions whether staff who are delinquent in training hours should be considered ineligible to receive public safety retirement benefits. This is a legal question and will be referred to Utah Retirement Systems for an opinion.

Commute Vehicles

Chapter 4 Recommendations 4, 5, and 6

Corrections will work with Fleet Services to develop a method to track the use of commute vehicles and begin the tracking process by January 1, 2007. An extensive review of these records will be conducted by July 2007 and appropriate action will be taken.

Reserve Officer Policy

Chapter 4 Recommendation 7

The Division of Adult Probation and Parole (AP&P) uses qualified volunteer officers to assist staff in reducing workload and to maximize the effectiveness of scarce resources. Reserve officers assist AP&P in offender supervision and coordination with the public and allied agencies, thereby increasing community protection. The Legislative audit found that UDC policy CBr09 Volunteer Reserve Officer program (revised 10-1-06) should be followed more consistently in AP&P. The following implementation plan is designed to correct these inconsistent practices and will be implemented according to the time line below.

UDC accepts the recommendation to require each region within Adult Probation and Parole (AP&P) to follow the approved reserve officer policy in order to limit the state's liability and facilitate tracking of reserve officer activities. AP&P will develop an implementation plan, which will require each Regional Administrator to review policy CBr09 Volunteer Reserve Officer program (revised 10-1-06) and make adjustments to their respective reserve officer program accordingly. Each region will standardize its practices to include reserve officer reimbursement, tracking of work and training hours, and maintaining reserve officer files. This recommendation will be implemented within 60 days.

December 21st - AP&P Division Director will meet with all Regional Administrators to discuss the audit findings and provide direction to oversee this project.

January 8th - Regional Administrators will conduct a compliance review of existing reserve officer management practices to determine what practices are inconsistent with policy. Special attention will be given to officer reimbursement, tracking work and training hours and maintaining reserve files.

January 15th - Regional Administrators will require their staff to review policy CBr09 Volunteer Reserve Officer Program (revised 10-1-06).

January 29th - Regional Administrators will review the qualifications, training and commitment of the Reserve Officer Coordinators who supervise the Reserve Officer Program.

February 6th - AP&P Division Training Coordinator will develop and deliver a tailored training session for all Reserve Officer Coordinators to ensure consistency in policy management and general practices. The respective Reserve Officer Coordinator will then provide this training to all current and future reserve officers.

April 3rd - The Division will conduct a follow-up compliance audit of each region's Reserve Officer Program. The review will include an inspection of the region's practices such as reserve officer reimbursement, tracking work and training hours and maintaining reserve officer files.

Discipline Record Filing

Chapter 4 Recommendation 8

We will ensure that the backlog in filing disciplinary records is addressed. All required information on discipline occurring (final orders) will be filed in the personnel records within 6 months.

Audit Bureau

Chapter 5 Recommendation 1 and 2

We have changed the Department's organization chart as of the beginning of December 2006. From that date forward the Audit Director reports directly to the Executive Director. A process has already been created for tracking audit recommendations and a report on compliance with the recommendations will be made to Executive Staff twice a year.

Internal Affairs

Chapter 5 Recommendation 3

We will study the feasibility of combining criminal and administrative investigation functions. Note that this type of organization existed in Corrections in the past. Previous Directors found

that combining these functions harmed staff morale and made staff who were investigated feel that they were being treated like criminals. Dividing the two functions has allowed the Department to create a less threatening environment for staff under administrative, rather than criminal investigation, and reflects a more progressive personnel management philosophy.

We have changed the Department's organization chart as of the beginning of December 2006. The Assistant to the Director over both the Bureau of Professional Standards and the Law Enforcement Investigative Bureau reports directly to the Executive Director.

Appendix A

OPPORTUNITY

THIS IS A POST CERTIFIED POSITION

UTAH DEPARTMENT OF CORRECTIONS
HUMAN RESOURCES
14717 SOUTH MINUTEMAN DRIVE
DRAPER, UTAH 84020-9549
(801) 545-5931
EQUAL OPPORTUNITY EMPLOYER

RE-ISSUED ANNOUNCEMENT

POSITION: CORRL ADULT PROBATION/PAROLE OFFICER
RECRUITMENT: 04DOC017
SALARY RANGE: Step 41 - 60 (\$13.79 - \$23.09)
LOCATION: Adult Probation & Parole, Region III, Salt Lake
OPENING DATE: September 25, 2003 CLOSING DATE: October 10, 2003
OPEN TO: All Qualified Applicants – must be able to become POST certified as law enforcement officer

The best qualified applicant will have at least two years of experience in a POST certified position and/or a Bachelor's degree in Criminal Justice or Law Enforcement related fields (copy of transcript must be submitted!). Hiring agency may identify additional related skills and requirements as preferences in making hiring and promotion decisions.

APPLICATION PROCESS:

Department of Corrections Employees: Send or fax the internal application form by 5:00 p.m. on the closing date to: Bureau of HRM, 14717 S. Minuteman Dr., Draper, UT 84020; fax: 801-545-5933.

All other qualified applicants: If you do not have a current resume and Utah Skill Match Cover Sheet in the Utah Skill Match database, please submit both to the Department of Human Resource Management, State Office Building, Suite 2120, P.O. Box 141631, Salt Lake City, UT, 84114-1531 or e-mail both as attachments to utahskill@utah.gov. Copies of the Utah Skill Match Cover Sheet can be downloaded at dhrm.utah.gov. In addition, please provide a courtesy copy of your resume to Inga, at Corrections, Bureau of Human Resources, 14717 S. Minuteman Drive, Draper, UT 84020 or fax to (801)545-5933. For questions, contact Inga at 801-545-5931; e-mail (ibowen@utah.gov).

PURPOSE/DISTINGUISHING CHARACTERISTICS:

Enforces the order and conditions of probation/parole for offenders and attends arraignments, hearings and sentencing at Court or Board of Pardons, requiring preparation of witness/ evidence and consulting/advising attorneys, Judges, Board members. Makes arrests, testifies at hearings, transports offenders, prepares complaints and investigation reports and cooperates with and assists local law enforcement agencies when requested. Prepares investigation reports, affidavits, probation/parole violation reports, progress reports, and Pre and Post Sentence Investigation Reports (PSI's) for the Courts. Conducts initial offender interviews, issues travel permits, verifies employment, treatment or living arrangements, and consults with offenders or victims and their families. Refers offenders to treatment programs, education and employment agencies, monitors progress and provides reports to the Courts. Supervises offenders according to Department policy and provides intelligence information to local law enforcement units. Performs offender intake duties by obtaining information through interviews with offenders, victims and family members, employers, therapists; takes urine and breath samples, prepares reports for staffing committees and referrals.

JOB REQUIREMENTS/SKILLS: Knowledge of the Criminal Justice System, interviewing techniques; the probation and parole rehabilitation process; court/hearing, rules, records, procedures and protocol; arrest and detention procedures; agency and/or organizational program(s). **Skills and Ability** to maintain confidentiality; provide individual, group and/or family counseling; operate and maintain weaponry; communicate information and ideas clearly, and concisely, in writing; evaluate information against a set of standards; use logic to analyze underlying principles, reasons, or facts associated with information or data to draw conclusions; deal with people in a manner which shows sensitivity, tact, and professionalism, conduct investigations.

State Employees: Per Department Policy ADR11/02.03 C. 1-2. An employee who applies for and accepts a position with a salary range that has a lower maximum pay step shall have his/her pay lessened by one or more steps.