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**First Supplement to Memorandum 94-18****Administrative Adjudication: Proposed Restructuring of Statute  
(comments of Youth and Adult Correctional Agency)**

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The Commission decided at the February meeting to exempt some agencies such as the Public Utilities Commission and the Youth and Adult Correctional Agency from application of the hearing provisions of the proposed uniform Administrative Procedure Act. The conclusion was that hearings conducted by these agencies are so dissimilar in so many respects from the basic hearing procedure contemplated by the Administrative Procedure Act that it made more sense to allow these agencies to develop their own unique hearing procedures.

Memorandum 94-18 suggests a restructuring of the proposed Administrative Procedure Act that would allow any agency not currently subject to the hearing provisions of the of the Administrative Procedure Act to provide its own "Agency Procedure". The agency procedure would have to satisfy key template requirements of due process and public policy.

One issue not addressed in the memorandum, but that the Commission must consider if it decides to develop the template approach, is whether agencies the Commission previously decided to exempt from the uniform Administrative Procedure Act should likewise be exempt from the template requirements. Presumptively, the template requirements are a few key matters that all agency hearings ought to satisfy. The agencies would continue to be exempt from all other requirements of the formal hearing procedure.

Attached as an Exhibit is a letter from the Youth and Adult Correctional Agency (YACA) indicating that some of the template requirements are not suitable for its hearings and requesting total exemption from the proposed restructured statute. YACA lists four problem areas, and reserves the right to indicate other problem areas in the future. The problem areas listed are:

(1) The requirement that hearings be open to the public.

(2) The requirement that an Administrative Law Judge preside. [Note: The template approach would **not** impose this requirement on any agency currently exempt from the APA, such as YACA.]

(3) The requirement that language interpreters be certified by the State Personnel Board. [Note: The template approach merely preserves **existing law** on language assistance for those agencies currently subject to it.]

(4) The prohibition on ex parte communications with the presiding officer.

YACA does not elaborate on these matters, other than to indicate that these would be “substantial problems for YACA”. The staff believes the public hearing concern relates to security issues for hearings conducted in a prison setting. We do not know the background of the ex parte communications concern.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

1st Supp. Memo 94-18

EXHIBIT

Study N-100

STATE OF CALIFORNIA—YOUTH AND ADULT CORRECTIONAL AGENCY

PETE WILSON, Governor

**DEPARTMENT OF CORRECTIONS****Legal Affairs Division****P. O. Box 942883****Sacramento, CA 94283-0001****(916) 445-0495**

May 9, 1994

LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

VIA TELEFAX

**RE: REQUESTED EXEMPTION FOR THE YOUTH & ADULT  
CORRECTIONAL AGENCY**

**SUBJ: LAW REVISION COMMISSION ADMINISTRATIVE  
ADJUDICATION PROPOSALS MEMORANDUM 94-18  
Legal Log Nos. 94-401, 93-670**

Dear Commissioners:

Thank you for the opportunity to comment on Memorandum 94-18, concerning the proposed restructuring of the statute establishing administrative adjudication.

Currently, Government Code Section 11501 does not list the Department of Corrections among those agencies which are required to follow the Administrative Procedures Act in regards to administrative adjudications, e.g. determinations concerning inmate rights.

Our previous comments to the "Tentative Recommendations," dated August 30, 1993, explained why the hearing procedures proposed were not suited to the many of the types of hearings conducted by the Youth and Adult Correctional Agency (YACA). Please see enclosure. While Memorandum 94-18 does provide some flexibility in the option of "informal hearings," [proposed Section 632.010 et seq.], thousands of the hearings that YACA conducts each year could not conform to the requirements proposed for "informal hearings."

Most recently, at your February 1994 meeting, we understood that the Commission voted in favor of YACA's oral request to be exempted from the proposed statute in toto. However, our

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review of your Memorandum 94-18 indicates that no agency would not be exempted unless expressly in another statute. Proposed Section 612.110. YACA requests that the exemption granted in February 1994 be reinstated via an amendment adding a new section:

612.110(d).

All adjudications concerning the rights of inmates, wards, civil addicts, parolees and others under the custody of the Department of Corrections, the Board of Prison Terms, the Youth Authority, the Youthful Offender Parole board or the Narcotic Addict Evaluation Authority.


My cursory review of Memorandum 94-18 reveals four substantial problems for YACA. In addition to listing those briefly, I request a further opportunity to comment on this proposal, as I believe many more problems could be uncovered by my staff.

1. The requirement that hearings be open to the public. [Section 648.140]
2. The requirement that the officer presiding over all hearings be an Administrative Law Judge. [Section 643.110]
3. The requirement that all language interpreters be certified by the State Personnel Board. [Sections 648.240 and 648.275]
4. The prohibition against ex parte communications with the officer presiding over the hearing. [Section 648.520]

In conclusion, YACA requests that its hearings be exempted from the proposed restructuring of the statute establishing administrative adjudication.

Please contact Marc D. Remis, James A. Browning, Jr. or myself at 916-445-0495 should you have any questions or wish to discuss this matter further.

Sincerely,

  
JEROLD A. PROFF  
Deputy Director  
Department of Corrections  
Youth and Adult Correctional Agency