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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

June 2019

Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation

*Semi-Annual Report
July–December 2018*

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June 5, 2019

Dear Governor and Legislative Leaders,

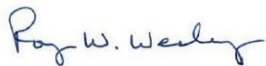
Enclosed is the Office of the Inspector General's report titled *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. This is the Office of the Inspector General's 28th *Semi-Annual Report*, as mandated by California Penal Code section 6133(b)(1). This report addresses the California Department of Corrections and Rehabilitation's (the department's) internal investigations and employee discipline cases that we monitored and closed between July 1, 2018, and December 31, 2018.

In this report, we conclude that hiring authorities performed well in determining the sufficiency of investigations, making investigative findings, and identifying appropriate discipline. However, hiring authorities need to improve the timeliness of their referrals to the Office of Internal Affairs; 24 percent of their referrals were untimely.

We also found that the Office of Internal Affairs timely processed referrals from hiring authorities and, in the vast majority of administrative cases, completed the investigation prior to the deadline to take disciplinary action. However, we found that the Office of Internal Affairs did not always complete criminal investigations prior to the deadline to file misdemeanor charges. For example, in five criminal cases involving allegations of the introduction of mobile phones into an institution, unlawful communications with inmates, or sexual misconduct, the Office of Internal Affairs did not complete the investigation prior to the deadline to file misdemeanor charges. Additionally, we found that in cases involving both criminal and administrative misconduct, the Office of Internal Affairs routinely delayed in opening the administrative cases, thereby delaying hiring authorities' ability to take administrative action, unnecessarily costing the department approximately \$45,600, while it mostly paid employees on administrative leave.

Moreover, our review revealed that department attorneys provided timely substantive feedback to special agents and attended key witness interviews. However, we identified that department attorneys did not timely prepare disciplinary actions in accordance with policy. We found that the department delayed serving the disciplinary action in 49 percent of cases involving peace officers. Notably, we found that in 47 of the 48 cases in which the department delayed in the service of a disciplinary action, a department attorney was assigned. We found that certain department attorneys significantly contributed to the high percentage of delays. In dismissal cases, the department's delayed service of disciplinary actions delayed hiring authorities' ability to terminate the employment of the subject peace officers, resulting in unnecessary cost to the department and, ultimately, the taxpayers of approximately \$108,400. Cumulatively, the delays we noted unnecessarily cost the department and, ultimately, the taxpayers approximately \$154,000.

Sincerely,

Roy W. Wesley
Inspector General

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The Inspector General shall be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the Department of Corrections and Rehabilitation, pursuant to Section 6133 under policies to be developed by the Inspector General.

(California Penal Code section 6126(a))

The *Office of the Inspector General* shall be responsible for contemporaneous public oversight of the Department of Corrections and Rehabilitation investigations conducted by the Department of Corrections and Rehabilitation's Office of Internal Affairs. ... The *Office of the Inspector General* shall also be responsible for advising the public regarding the adequacy of each investigation, and whether discipline of the subject of the investigation is warranted.

(California Penal Code section 6133(a))

The *Office of the Inspector General* shall also issue regular reports, no less than semiannually, summarizing its oversight of Office of Internal Affairs investigations pursuant to subdivision (a).

(California Penal Code section 6133(b)(1))

— *State of California*
Excerpted from Penal Code sections

Definitions of Select Terms Used in This Report	
Case Management System	The California Department of Corrections and Rehabilitation’s computer program used to enter and maintain internal investigations and disciplinary case information.
Corrective Action	A documented non-adverse action such as verbal counseling, training, written counseling, or a letter of instruction that a hiring authority takes to assist the employee in improving work performance, behavior, or conduct. Corrective action cannot be appealed to the State Personnel Board.
Disciplinary Action	A documented action that is punitive in nature and intended to correct misconduct or poor performance or which terminates employment and may be appealed to the State Personnel Board. It is also the “charging” document served on an employee who is being disciplined, advising the employee of the causes for discipline and the penalty to be imposed. Also referred to as an “adverse action” or a “notice of adverse action.”
DOM	Acronym of the department’s operations manual. The full title is <i>California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual</i> (Sacramento: State of California, 2019). Commonly known as the DOM, it is available on the internet at https://www.cdcr.ca.gov/Regulations .
Employee Disciplinary Matrix	The department’s list and chart, which is not all inclusive, of causes for employee discipline with applicable penalty levels. The list and chart set forth the range of disciplinary penalties from official reprimand to dismissal (DOM, Sections 33030.16 and 33030.19).
Employee Relations Officer	A person, who is not an attorney, employed by a California Department of Corrections and Rehabilitation institution, facility, or parole region responsible for coordinating disciplinary actions for the hiring authority and for representing the department at the State Personnel Board in cases not designated by the Employment Advocacy and Prosecution Team.
Employment Advocacy and Prosecution Team	A team of California Department of Corrections and Rehabilitation attorneys assigned to provide legal advice during internal investigations and to litigate employee discipline cases.
Executive Review	A supervisory or management level review conducted by a hiring authority, department attorney, and OIG attorney to resolve a significant disagreement regarding investigative findings, proposed discipline, or lack thereof, or a proposed settlement.
Hiring Authority	An executive, such as a warden, superintendent, or regional parole administrator, authorized by the Secretary of the California Department of Corrections and Rehabilitation to hire, discipline, and dismiss staff members under his or her authority.
Investigative and Disciplinary Findings Conference	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case. If a department attorney or an OIG attorney is assigned to the case, the hiring authority is required to consult with the respective attorney or attorneys.

Continued on next page.

Definitions of Select Terms Used in This Report (continued)	
Letter of Intent	A document served on an employee informing him or her that the investigation into the employee's misconduct was completed within one year and that he or she can expect disciplinary action to follow within a specified period after the letter of intent.
Lifespan	In the context of this report, the amount of time from the date the department discovered potential staff misconduct to the disposition date, excluding the appeal process. If the hiring authority found insufficient evidence to sustain any allegations or determined a penalty would not be imposed, the disposition date is the date the hiring authority conducted the findings and penalty conference. If the hiring authority sustained any allegation and decided to impose disciplinary action, the disposition date is the date the department served the disciplinary action. If the employee resigned after the hiring authority made a determination to impose discipline, but the department did not serve a disciplinary action, the disposition date is the effective date of the resignation.
Office of Internal Affairs	The entity within the California Department of Corrections and Rehabilitation responsible for investigating allegations of employee misconduct.
Office of Internal Affairs Central Intake Unit	A unit of the Office of Internal Affairs consisting of special agents assigned to review referrals from hiring authorities regarding alleged employee misconduct.
Office of Internal Affairs Central Intake Panel	A collection of stakeholders led by the Office of Internal Affairs, which reviews hiring authority referrals regarding allegations of employee misconduct and is responsible for ensuring that the referrals are appropriately evaluated. Although a department attorney and an OIG attorney provide input at Office of Internal Affairs Central Intake Panel meetings, a manager from the Office of Internal Affairs Central Intake Unit is the individual who makes decisions at the meetings regarding the disposition of hiring authority referrals.
Operations Manual	The department's prescriptive operations manual. See "DOM" entry, this table, facing page.
Special Agent	In the context of this report, a special agent is an investigator employed by the California Department of Corrections and Rehabilitation assigned to investigate alleged employee misconduct.
State Personnel Board	A quasi-judicial board established by the California State Constitution that oversees merit-based job-related recruitment, selection, and disciplinary processes of state employees and employs administrative law judges to conduct hearings. The State Personnel Board also investigates and adjudicates alleged violations of civil service laws.
Stakeholder	In the context of this report, a department stakeholder, generally, is the hiring authority, the Office of Internal Affairs, or the department attorney.
Vertical Advocate	A department attorney assigned to the Employment Advocacy and Prosecution Team.

Source: Office of the Inspector General.



Map of California's Correctional and Rehabilitation Institutions



Map provided courtesy of the California Department of Corrections and Rehabilitation.

Executive Summary

The Office of the Inspector General (OIG) is responsible for overseeing the California Department of Corrections and Rehabilitation's (the department's) internal investigation and employee disciplinary process and reporting semi-annually on that monitoring. To that end, OIG attorneys, experienced in various fields of the law, including civil rights litigation, criminal prosecution, administrative law, civil law, and criminal defense, monitor the department's management of its most serious internal investigations and related employee discipline cases.

As part of its monitoring duties, the OIG monitors the performances of three departmental entities, referred to as stakeholders. These three stakeholders—hiring authorities, the Office of Internal Affairs, and department attorneys—handle different aspects of internal investigations and the employee disciplinary process. The department's hiring authorities are authorized to hire, discipline, and dismiss employees under their authority. Within the department, generally, a hiring authority is the undersecretary or general counsel, or any chief deputy secretary, executive officer, chief information officer, assistant secretary, director, deputy director, associate director, warden, superintendent, health care manager, regional health care administrator, or regional parole administrator, as cited in the department's operations manual.¹

The Office of Internal Affairs is another stakeholder in the process and comprises, primarily, investigators, called special agents. These individuals are responsible for investigating allegations of employee misconduct and suspected employee criminal activity.

The third stakeholder is the Employment Advocacy and Prosecution Team, which is a group of attorneys from the department's Office of Legal Affairs, which provides legal representation to the department during the investigative and disciplinary processes. The department refers to these attorneys as "vertical advocates."

The performance of each of these three departmental entities is inextricably connected. In this reporting period, we report on the individual performance of each stakeholder as well as the collective effect that each entity's individual performance had on investigations and discipline. Although the department mostly met the legal time frames, the entities' separate and collective delays in handling investigations and discipline was inadequate; it resulted in additional,

¹ The departmental publication's official title is *California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual* (Sacramento: State of California, 2019). It is commonly known as the DOM. Here, citing section 33030.4.

unnecessary cost to the department and taxpayers of approximately \$154,000, and compromised the overall quality of some cases.

Overall, with respect to the investigative phase of cases, the OIG determined that the department performed sufficiently on a substantive basis in 75 percent of cases; with respect to the disciplinary phase of cases, we determined that the department performed sufficiently on a substantive basis in 79 percent of cases.

Hiring Authorities

For the July 2018 through December 2018 reporting period, we determined that hiring authorities performed well in the following areas:

- Preparing for the investigative and disciplinary findings conferences.
- Determining the sufficiency of the investigation, investigative findings, and appropriate discipline.

However, we found that although hiring authorities timely referred the majority of instances of suspected employee misconduct to the Office of Internal Affairs, they could improve their timeliness rate, as hiring authorities did not meet the requirement to submit the cases to the Office of Internal Affairs within 45 days of discovering the alleged misconduct nearly 24 percent of the time. Other areas we identified in which hiring authorities' performance displayed room for improvement include the timeliness of decisions regarding the sufficiency of investigations and the disciplinary findings, and the serving of disciplinary actions on peace officers within 30 days of the decision to take disciplinary action as policy requires. The cumulative effect of these delays puts added pressure on the department's ability to make timely disciplinary determinations and take appropriate action when necessary.

The Office of Internal Affairs

For the July through December 2018 reporting period, we found that the Office of Internal Affairs performed well in some respects, including in the following areas:

- Addressing hiring authority referrals of suspected employee misconduct within 30 days.
- Completing thorough investigations.

Nonetheless, we identified several areas in which the Office of Internal Affairs can improve relative to its processing and handling of hiring authority referrals and investigations.

The Office of Internal Affairs can improve its handling of cases involving suspected employee misconduct that is both criminal and administrative in nature. In these cases, the Office of Internal Affairs should simultaneously approve a criminal and administrative investigation, promptly consult with district attorneys' offices regarding concurrent investigations, and conduct concurrent investigations when appropriate or return the case to the hiring authority to take appropriate action without an investigation.

Typically, when the department suspects both criminal and administrative misconduct, the Office of Internal Affairs first approves a criminal investigation only and waits until completion of the criminal investigation to consult with district attorneys' offices to determine whether a concurrent administrative investigation will compromise potential prosecution or the district attorney will have any objection to the department pursuing an administrative case. Usually, the Office of Internal Affairs delays opening an administrative investigation or returning the case to the hiring authority until after the special agent completes the criminal investigation, consults with the district attorney, or determines there is insufficient evidence to support a referral to the district attorney. Approaching cases in this manner has, in some instances, unnecessarily delayed administrative investigations and thereby delayed hiring authorities' ability to take administrative action or otherwise postponed employees' separation from the department, unnecessarily costing the department approximately \$45,600.

Department Attorneys

Department attorneys performed well in several areas, including the following:

- Attending key witness interviews.
- Providing timely substantive feedback to special agents.

However, department attorneys could improve their timely preparation of disciplinary actions served on employees. We found that an overwhelming majority of cases with delayed disciplinary actions had a department attorney assigned to the case to coordinate the adverse action process and draft disciplinary actions. In dismissal cases, the department's delayed service of disciplinary actions resulted in unnecessary cost to the department and, ultimately, the taxpayers of approximately \$108,400.

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Introduction

Background

California Penal Code section 6133 mandates the Office of the Inspector General (OIG) to monitor and report on the California Department of Corrections and Rehabilitation's (the department's) internal investigations and employee disciplinary process. Whenever a hiring authority reasonably believes employee misconduct or criminal activity by an employee may have occurred, the hiring authority must timely submit a request to the department's Central Intake Unit within the Office of Internal Affairs requesting an investigation or requesting approval to address the allegations without an investigation.²

A central intake panel, consisting of stakeholders from the Office of Internal Affairs, the Employment Advocacy and Prosecution Team, and the OIG, meets weekly to review employee misconduct referrals from hiring authorities. The Office of Internal Affairs leads these meetings, and department attorneys provide legal guidance to the Office of Internal Affairs. The OIG participates to monitor the process, to provide recommendations regarding Office of Internal Affairs' determinations regarding hiring authority referrals, and to determine which cases our office will monitor. Although the department attorney provides legal advice and the OIG attorney makes recommendations, the Office of Internal Affairs is responsible for deciding the action to take on hiring authority referrals, as listed below:

- To conduct an administrative investigation.
- To conduct a criminal investigation.³
- To conduct an interview only of the employee (or employees) suspected of misconduct.
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without any further input by the Office of Internal Affairs.
- To reject the case without further action on the allegation or allegations.

² The Office of Internal Affairs may also open a case on its own, without a hiring authority's referral.

³ While a criminal investigation is conducted to investigate whether there is a criminal law violation (leading to potential incarceration, criminal fines, or probation), an administrative investigation is generally conducted to determine whether there is a violation of policies, procedures, or California Government Code section 19572 allegations (leading to employee disciplinary action, such as dismissal from state employment, demotion, suspension from work, salary reduction, or a letter of reprimand).

The OIG monitors the Office of Internal Affairs' investigations or interviews of employees suspected of misconduct that meet our monitoring criteria, as set forth on the following page, and determines the adequacy of the investigative work conducted by the Office of Internal Affairs. If the department subsequently imposes discipline, we also monitor any litigation resulting from the hiring authority's referrals to the Office of Internal Affairs. Our monitoring includes assessing the performance of the department's advocates during the disciplinary process, including department attorneys and employee relations officers. Throughout our monitoring of these cases, we also assess the performance of the department's hiring authorities in addressing and managing the employee disciplinary process.

Scope and Methodology

The OIG monitors and assesses the department's more serious internal investigations of alleged employee misconduct, such as cases of alleged dishonesty, code of silence, unreasonable use of force, and criminal activity. The vast majority of cases we monitor involve employees who are peace officers as they are held to a higher standard of conduct than that of employees who are not peace officers. The table below lists criteria we use to determine which cases we will accept for monitoring.

Madrid-Related Criteria*	OIG Monitoring Threshold
Use of Force	Use of force resulting in, or which could have resulted in, serious injury or death, or discharge of a deadly weapon.
Dishonesty	Perjury; material misrepresentation in an official law enforcement report; failure to report a use of force resulting in, or that could have resulted in, serious injury or death; or material misrepresentation during an internal affairs investigation.
Obstruction	Intimidating, dissuading, or threatening witnesses; retaliation against an inmate or against another person for reporting misconduct; or the destruction or fabrication of evidence.
Sexual Misconduct	Sexual misconduct prohibited by California Penal Code section 289.6.
High Profile	Cases involving alleged misconduct by high-ranking department officials; misconduct by any employee causing significant risk to institutional safety and security, or for which there is heightened public interest, or resulting in significant injury or death to an inmate, ward, or parolee (excluding medical negligence).
Abuse of Position or Authority	Unorthodox punishment or discipline of an inmate, ward, or parolee; or purposely or negligently creating an opportunity or motive for an inmate, ward, or parolee to harm another inmate, staff, or self, i.e., suicide.
Criminal Conduct	Trafficking of items prohibited by the California Penal Code or criminal activity that would prohibit a peace officer, if convicted, from carrying a firearm (all felonies and certain misdemeanors such as those involving domestic violence, brandishing a firearm, and assault with a firearm).

**Madrid v. (Gomez) Cate*, 889 F. Supp. 1146 (N.D. Cal. 1995).

We also monitor and assess hiring authorities' disciplinary decisions. If a hiring authority sustains any allegation, we continue monitoring the quality of the department's legal representation and any subsequent employee appeal. In this report, we summarize our monitoring activities for both administrative and criminal investigations, as well as provide an assessment of the disciplinary process.

We assess the department's management of internal investigations and the employee discipline process based on the prescriptions found

in its department operations manual.⁴ For each case, we assess the performances of the hiring authority, the Office of Internal Affairs, and the department attorney, where applicable. We report each administrative case in two separate phases: the investigative phase, and the disciplinary phase. The investigative phase consists of an investigation, if any, including those instances in which the Office of Internal Affairs decided to only conduct an interview of an employee suspected of misconduct, and the hiring authority's decision regarding whether the employee committed misconduct. The disciplinary phase consists of the hiring authority's determination regarding any penalty, the imposition of the penalty, and any appeal thereof.

Our report provides both a procedural and a substantive assessment for each phase of a case. Our procedural assessment of cases is based on the department's compliance with its policies regarding internal investigations and the disciplinary process. As part of our procedural assessment of the investigative phase, we assess whether the Office of Internal Affairs' special agents timely and sufficiently completed investigations in compliance with policy. The OIG understands that minor procedural errors do not necessarily render an assessment insufficient. However, we may negatively assess major or multiple departures from the process because such departures could cause breakdowns that lead to substantive insufficiencies.

Our substantive assessment of cases is based primarily on the OIG's expert opinion regarding the quality of the department's handling of a case from the investigation, if any, to the completion of any appeal process if a hiring authority takes disciplinary action. This assessment also considers whether there is identifiable harm or detriment to the case, although we may consider an assessment substantively insufficient even without the presence of any identifiable harm.

Case details are contained in the appendices. Appendix A consists of cases in which both the investigative and disciplinary phases reached a conclusion. Therefore, this appendix includes cases for which the Office of Internal Affairs conducted an investigation of the employee suspected of misconduct; the hiring authority made decisions regarding the investigation and allegations; and, if the hiring authority imposed discipline on an employee, the conclusion of all appeals regarding the disciplinary action. This appendix also includes cases in which the Office of Internal Affairs did not conduct an investigation but returned the case to the hiring authority to take action on the allegation or allegations because the Office of Internal Affairs deemed the facts sufficiently established. In those cases, we also report on whether the

⁴ Cited in footnote 1, this report, the DOM.

hiring authority imposed discipline and the resolution of any employee appeal thereof. Lastly, Appendix A also includes cases in which the Office of Internal Affairs conducted an investigation but the hiring authority did not sustain any misconduct allegations.

Appendix B reports only the disciplinary phase of cases; the OIG previously reported the investigative phase of those cases, but the litigation or appeal process from the disciplinary action had not yet been completed. Until the January through June 2017 reporting period, we reported the investigative phase separately once any investigation was completed and the hiring authority made a decision regarding the allegations. We did not report the disciplinary phase until any appeal process was completed. The appeal process has now been completed in most of the cases in which we reported only the investigative phase. Therefore, we can now report the final outcome of those cases. For this and the past three reporting periods, beginning with the January through June 2017 reporting period, we do not report a case until both the investigative and disciplinary phases are complete. Accordingly, since we have not been reporting cases piecemeal as of the January through June 2017 reporting period, very few cases remain that have only a disciplinary phase.

Appendices A and B also set forth the disciplinary penalties imposed. For each case, the OIG reports both the highest initial and the highest final penalties for any misconduct of any employee involved in the case. The initial penalty is the penalty the hiring authority selected and is always the highest penalty the hiring authority decided for any sustained allegation. The final penalty may be different because new information may have caused a hiring authority to change the penalty or enter into a settlement (an agreement between the department and employee), and also includes a change to the penalty resulting from a State Personnel Board decision after a hearing. The final penalty reported is also the highest penalty ultimately imposed for the misconduct of any employee involved in the case.

If the department conducted a criminal investigation, we report the case in Appendix C. The OIG reports these cases once the Office of Internal Affairs completes its criminal investigation and either refers the case to a prosecuting agency, such as county district attorneys' offices, the State of California Office of the Attorney General, or the Offices of the United States Attorneys at the U.S. Department of Justice, or determines there is insufficient evidence for a criminal referral. We monitored and closed 43 cases from July 1, 2018, through December 31, 2018, involving alleged employee criminal activity.

If the department conducted a criminal or administrative deadly force investigation, we report the case in Appendix D.

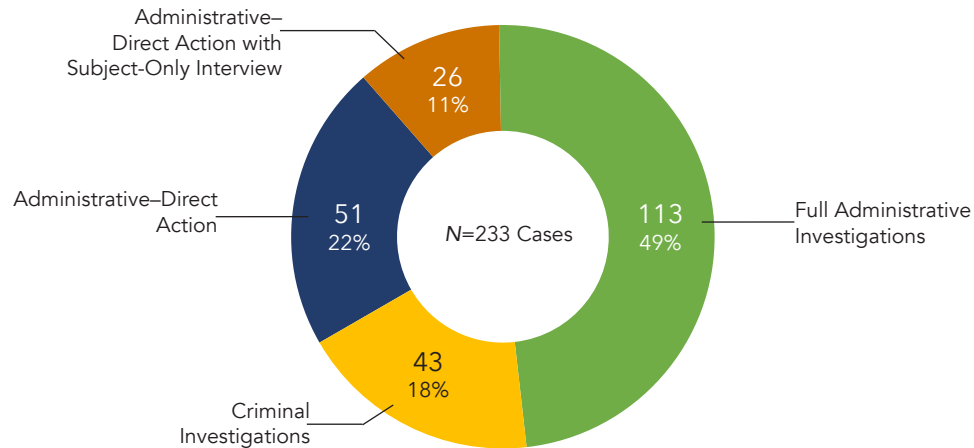
This report contains only those cases that concluded during this reporting period. In order to protect the integrity of the process, the OIG only reports cases after all proceedings are final.

This report provides an assessment of 233 cases the OIG monitored and closed from July 1, 2018, through December 31, 2018. Administrative misconduct was alleged in 190 cases; these include cases in which the Office of Internal Affairs did one of the following:

- Conducted a full administrative investigation;
- Interviewed only the employee or employees suspected of misconduct; or
- Deemed it sufficient for the hiring authority to take action against an employee regarding the allegations without an investigation.

The figure below reflects the percentages of case types the OIG monitored, closed, and is reporting for the July through December 2018 period. The percentages for administrative and criminal investigations include use-of-deadly-force investigations.

Figure 1. Types of Cases the OIG Monitored and Closed

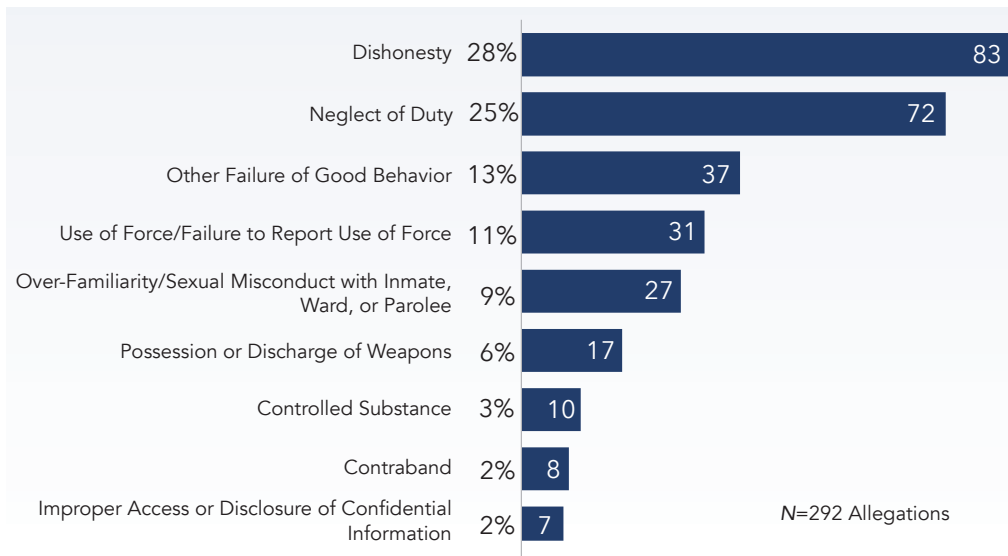


Source: Office of the Inspector General Tracking and Reporting System.

Between July and December 2018, the OIG monitored and closed 190 administrative cases, which include full administrative investigations, direct actions with subject-only interviews, and direct actions. Appendices A, B, and D contain the details of the administrative cases we monitored and closed during this reporting period. The figure on the following page reflects the types of allegations in the administrative cases we monitored and closed during this reporting

period. The total is greater than the number of cases we monitored and closed because a case may include multiple allegations.⁵

Figure 2. Allegation Distribution in Administrative Cases the OIG Monitored and Closed



Source: Office of the Inspector General Tracking and Reporting System.

In addition, 201 of the cases we are currently reporting on involved peace officers only, 25 cases involved only employees who were not peace officers, and seven involved both peace officers and employees who were not peace officers. We monitor the cases with the most serious allegations of misconduct and also focus on employees who are peace officers because these individuals are held to a higher standard of behavior and ethics, and their actions were the core focus of the *Madrid* case,⁶ which led to the statutes pursuant to which the OIG monitors the department's internal investigations and employee disciplinary process.

On the next two pages, we present a flowchart of the general steps that take place during the department's internal investigation and employee disciplinary process. As can be garnered from a quick glance at the charts, a great number of steps are involved in developing these cases. Yet, it is important to note, these charts only contain general information regarding employee misconduct cases, as many permitted variations from the basic steps outlined can and often do occur. Also significantly, the processes of other law enforcement agencies' management of employee discipline cases may differ greatly from those of the department.

⁵ For example, in one case, the department may allege an officer engaged in sexual misconduct with an inmate, introduced contraband into the institution, and lied during an interview with the Office of Internal Affairs. In this type of instance, even though it is only one case, it involved three allegation types.

⁶ *Madrid v. (Gomez) Cate*, 889 F. Supp. 1146 (N.D. Cal. 1995).

Figure 3. General Steps in the Department’s Investigative and Disciplinary Phases

The Investigative Phase

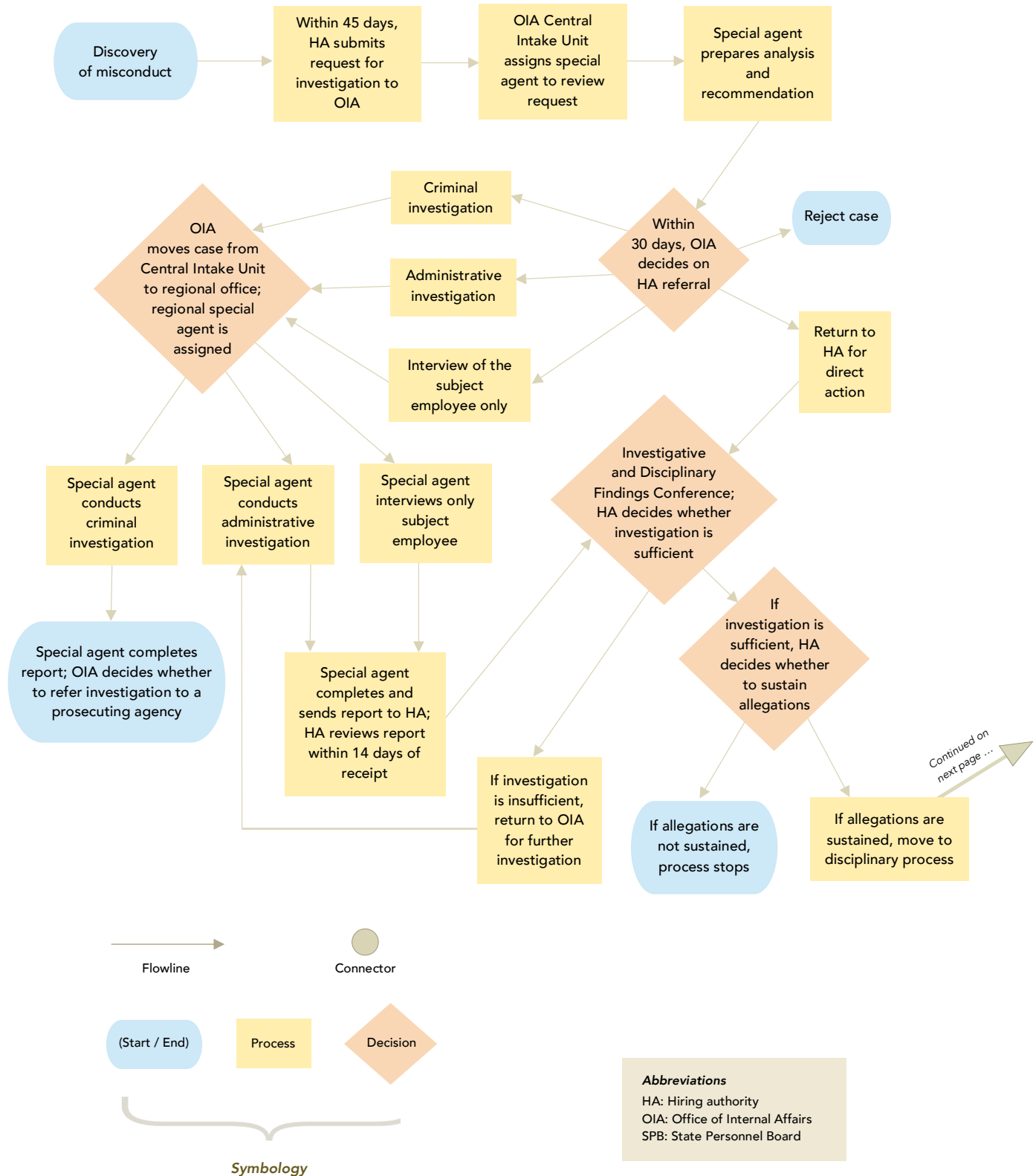
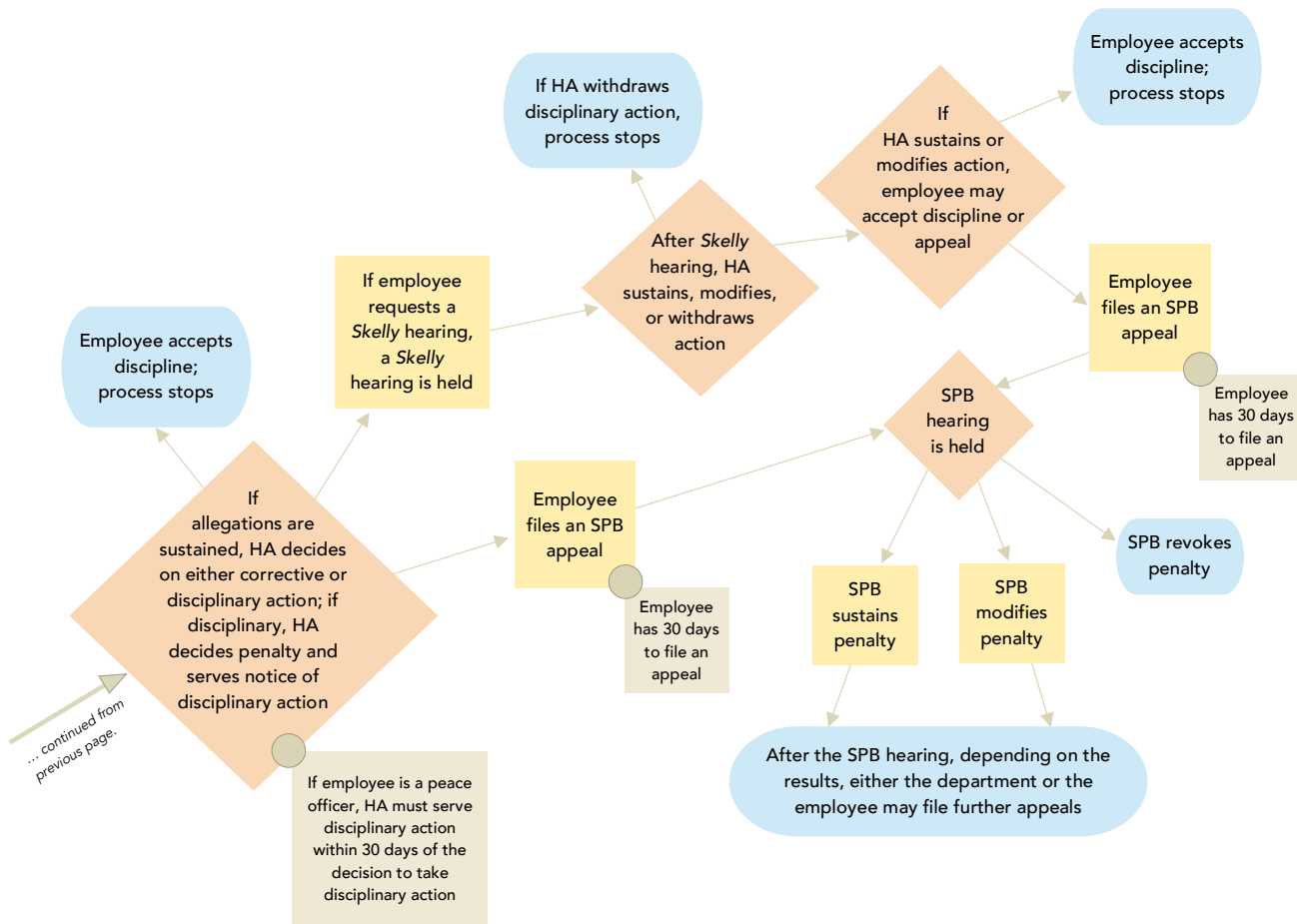


Figure 3. General Steps in the Department’s Investigative and Disciplinary Phases (continued)

The Disciplinary Phase



Notes
 If the employee is a peace officer, the investigation must generally be completed and the employee must be given notice of discipline within one year of the discovery of the alleged misconduct.

If the employee is not a peace officer, the investigation must be completed and the employee must be given notice of discipline within three years of the misconduct.

After service of the disciplinary action, the department may withdraw the action or enter into a settlement agreement with the employee to:

1. Modify the disciplinary action, including allegations and/or penalty, or
2. Revoke the disciplinary action.

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Monitoring Internal Investigations

Overall, the Department's Procedural and Substantive Ratings During the Investigative Phase Improved from the Prior Reporting Period

The investigative phase begins when the hiring authority submits a case to the Office of Internal Affairs, or when the Office of Internal Affairs opens a case on its own, and ends when the hiring authority determines whether the investigation is sufficient and whether to sustain any of the allegations. The hiring authority must refer all matters to the Office of Internal Affairs within 45 days of learning of potential misconduct.⁷

The investigative phase involves hiring authorities, the Office of Internal Affairs' special agents, and department attorneys, when assigned, and each entity contributes to the sufficiency assessment of this phase.⁸ Staff in the Office of Internal Affairs and department attorneys are primarily assigned to one of three regional offices: northern region (Sacramento), central region (Bakersfield), and southern region (Rancho Cucamonga). Additionally, special agents and department attorneys are assigned to headquarters operations.

In cases we monitored and closed from July to December 2018, the department's management of the procedural aspects of the investigative phase improved slightly, rising from a 47 percent sufficiency rating in the January through June 2018 reporting period to a 50 percent sufficiency rating for the July through December 2018 reporting period. We base this procedural assessment on the department's compliance with policy and procedures, including the timeliness of various aspects of the investigative phase, such as referrals to the Office of Internal Affairs, completion of the investigation, and the investigative findings conferences.

The substantive sufficiency rating improved from the past reporting period, from 66 percent to 75 percent sufficiency. We base our substantive assessment on our measured and expert opinion, which includes our assessment of the Office of Internal Affairs' initial determination regarding a hiring authority referral, the department's performance in conducting interviews, the thoroughness of its investigations, and hiring authorities' determinations. On the next two pages, the four figures reflect the procedural and substantive sufficiency assessment ratings on statewide and regional bases for the investigative phase during the past five reporting periods.

⁷ DOM, Section 33030.5.2, and the Office of Internal Affairs memorandum dated June 20, 2014.

⁸ The department does not assign an attorney to every investigation or disciplinary case.

Figure 4. Investigative Phase Sufficiency, Statewide

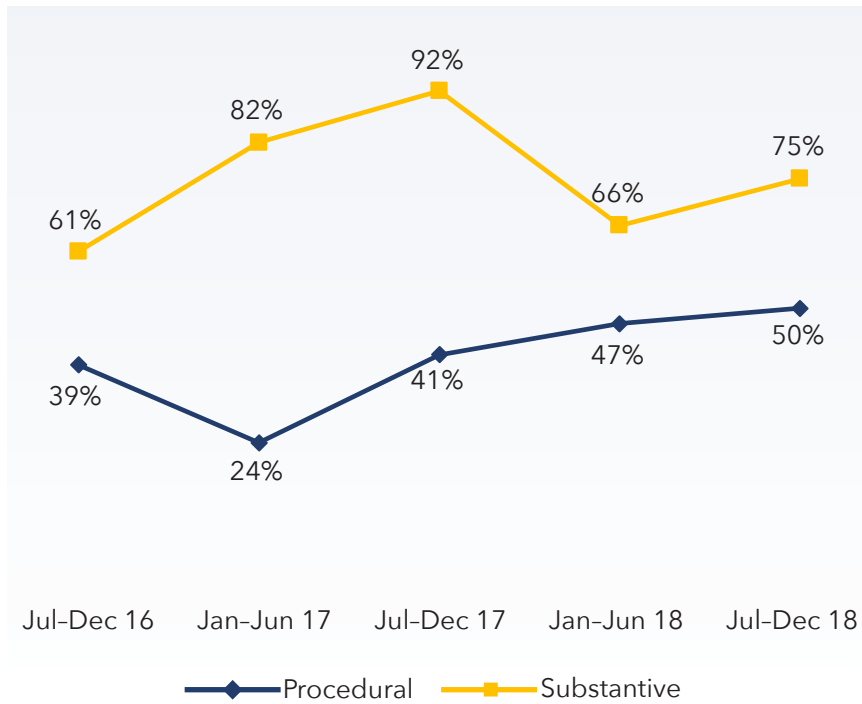


Figure 5. Investigative Phase Sufficiency, North Region

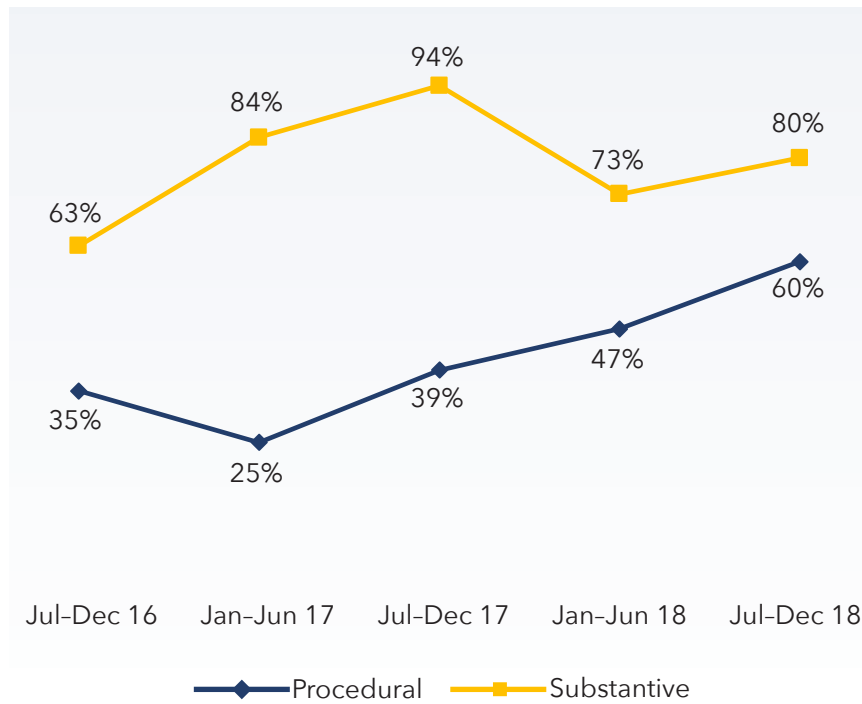


Figure 6. Investigative Phase Sufficiency, Central Region

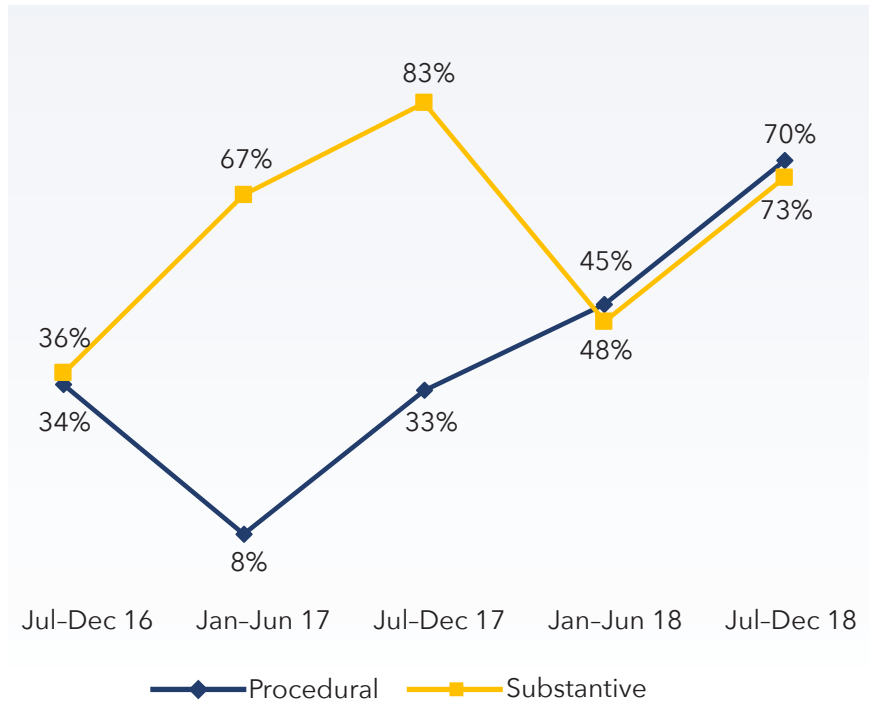
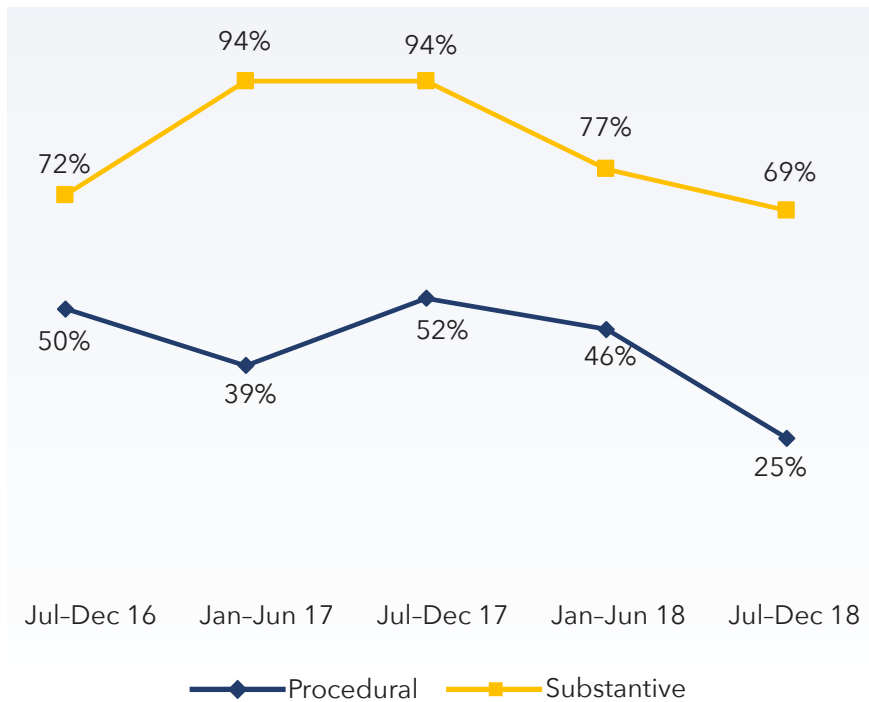


Figure 7. Investigative Phase Sufficiency, South Region



Source for Figures 4–7: Office of the Inspector General Tracking and Reporting System.

With respect to the investigative phase of cases, we found room for the department to improve. We offer two case examples from the southern region, whose performance declined and which performed at just 25 percent procedural sufficiency.

- One example of a case in which the OIG assessed the department as insufficient involved a criminal investigation in which a materials and stores supervisor allegedly conspired with and received bribes from an inmate to smuggle narcotics, mobile phones, and tobacco into an institution in exchange for sexual favors. In this case, which involved potential misdemeanors and felonies, we found the Office of Internal Affairs' performance procedurally and substantively insufficient because the special agent did not complete the investigation prior to the deadline to file misdemeanor charges. The special agent did not obtain a search warrant, did not sufficiently verify information regarding who shipped a package of contraband to the institution, and did not identify who intercepted a package of contraband shipped to the institution.

The special agent also did not complete the investigation until almost eight months after the deadline to file misdemeanor charges, limiting the prosecuting agency's discretion and independent judgment to file misdemeanor charges. Knowing the department placed the materials and stores supervisor on paid administrative leave, the special agent delayed consulting with the district attorney's office, and the Office of Internal Affairs deferred opening a companion administrative investigation. The special agent did not consult with the district attorney to discuss a companion administrative investigation until nearly five months after the Office of Internal Affairs opened the criminal investigation.

When the special agent finally consulted with the district attorney's office, the special agent learned the district attorney's office did not object to the department conducting an administrative investigation. Even then, the Office of Internal Affairs did not open a companion administrative investigation until a month after the special agent's consultation with the district attorney's office, and nearly six months after opening the criminal investigation. Ultimately, the Office of Internal Affairs determined the criminal investigation failed to establish sufficient evidence for a probable cause referral to the district attorney's office for prosecution. Meanwhile, the materials and stores supervisor remained on paid administrative leave for more than 17 months—he received pay and benefits throughout the criminal investigation and the department's processing of the administrative case.

- In another example, an officer allegedly engaged in sexual acts with an inmate, conspired with the inmate, introduced mobile phones into the institution, communicated with the inmate on a social networking site, and brought alcohol into the institution for the inmate. We found the department did not perform adequately on either a procedural or a substantive basis, and we assessed the hiring authority and special agent negatively. The hiring authority did not refer the matter to the Office of Internal Affairs until 69 days after the department learned of the potential misconduct. The Office of Internal Affairs' special agent then delayed handling the investigation—the special agent did not conduct any substantive work for nine months. The special agent did not complete the investigation until almost one year after the Office of Internal Affairs opened the case and forwarded it to the regional office, and the special agent submitted the matter to the district attorney's office 38 days after the deadline for filing one of the misdemeanor charges. The district attorney filed felony charges. However, the Office of Internal Affairs' failure to complete the investigation prior to the deadline to file misdemeanor charges limited the prosecuting agency's discretion to file misdemeanor charges. As of the date of this report, the felony case is ongoing.

The department did perform well during the investigative phase in some areas. For example, the Office of Internal Affairs timely processed 96 percent of hiring authority referrals. Also, in our assessment, special agents completed adequate and thorough investigations in 97 percent of the cases in which the department conducted investigations and that we monitored and closed during the July through December 2018 reporting period. Department attorneys attended key witness interviews in 96 percent of the cases and provided timely substantive feedback to special agents in 90 percent of the cases. The hiring authority was adequately prepared to address the sufficiency of an investigation and make investigative findings in 99 percent of cases in which he or she made findings regarding investigations. Also, in 97 percent of cases, the hiring authority correctly identified the employees who should have been subjects of investigations, as well as the appropriate allegations, and in 96 percent of cases, made appropriate findings regarding the allegations.

However, department attorneys should improve their legal analysis and quality of legal advice. The following cases highlight the need for improvement:

- In one case, an officer allegedly failed to carry his personal alarm device and sprayed two inmates with pepper spray through broken windows. Despite the officer's admission during his interview with the Office of Internal Affairs that he did not carry

his alarm, the department attorney initially opined that there was insufficient evidence to sustain an allegation that the officer failed to carry his assigned equipment.

- In a second case, a case records analyst allegedly engaged in sexual misconduct with an inmate and lied to two officers and a lieutenant regarding her relationship with the inmate. The Office of Internal Affairs conducted a criminal investigation and found sufficient evidence for a probable cause referral to the district attorney. The district attorney filed criminal charges against the case records analyst for sexual activity with an inmate. Despite the overwhelming evidence gathered during the criminal investigation, and the hiring authority's desire to take immediate, appropriate administrative action, the department attorney recommended the Office of Internal Affairs interview the case records analyst, who had already provided several statements. The department attorney also incorrectly applied an exception to the deadline to take disciplinary action based on tolling during the pendency of a criminal prosecution when this exception only applies to peace officers.
- In a third case, a sergeant allegedly grabbed an inmate's arms and pulled him forcefully out of a chair, failed to report his use of force, failed to preserve a video recording of his first interview with the inmate, and failed to report the inmate's allegation that he was sexually assaulted in a previous incident. A second sergeant allegedly saw the first sergeant use force and failed to report it. Prior to the investigative findings and penalty conference, the department attorney submitted a memorandum to the hiring authority addressing three of the four allegations pertaining to the first sergeant. At the investigative findings and penalty conference, the department attorney addressed the same three allegations, and initiated penalty discussion without addressing the remaining allegation that the sergeant failed to report the inmate's allegation that he was sexually assaulted. When the OIG recommended the hiring authority address the allegation, the department attorney recommended the hiring authority not sustain the allegation despite the sergeant's admission during his interview with the Office of Internal Affairs.

Hiring Authorities Need to Improve the Timeliness of Their Referrals of Misconduct Cases to the Office of Internal Affairs

For the July through December 2018 reporting period, hiring authorities timely referred suspected employee misconduct to the Office of Internal Affairs only 76 percent of the time. This percentage includes administrative cases and criminal investigation cases. However, this percentage does not include those cases in which the OIG is only reporting the outcome of the disciplinary phase, as we previously reported on the timeliness of hiring authority referrals in these cases in prior reports.

We assess the timeliness of hiring authority referrals based on procedures set forth in a memorandum the Office of Internal Affairs issued June 20, 2014, which provided that hiring authorities should refer matters of suspected misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.⁹ During this reporting period, the delays by hiring authorities in referring suspected employee misconduct ranged from 46 days after discovering the alleged misconduct, only one day later than expected, to one year and four months after discovering the alleged employee misconduct.

Several cases in which the hiring authority unnecessarily delayed submitting a referral to the Office of Internal Affairs highlight the importance of timely referrals and the possible ramifications of a delay. In some cases, delayed referrals postponed the employee's separation from the department. The following cases illustrate this occurrence:

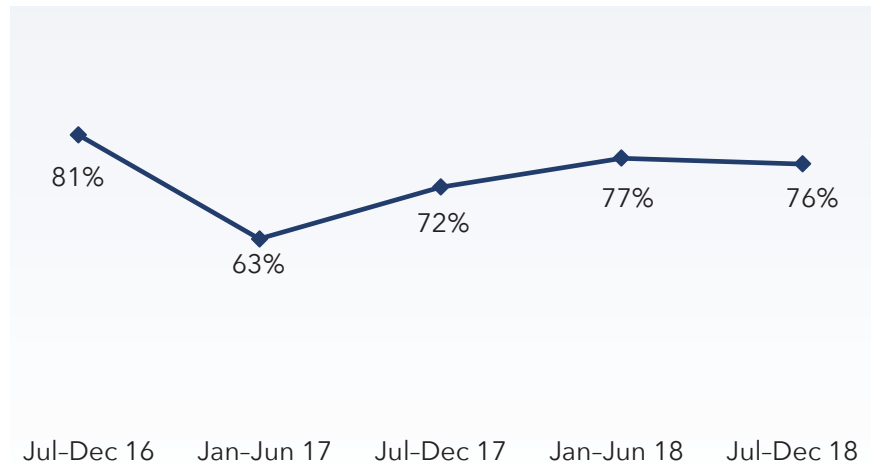
- In one case, a plumber allegedly engaged in sexual acts with an inmate and communicated with her by mobile phone. The plumber's alleged misconduct started in November 2017 and continued for nearly four months. Although the department learned of the alleged misconduct in January 2018, the hiring authority did not refer the matter to the Office of Internal Affairs until April 2018, 70 days later. The plumber resigned the day the hiring authority referred the matter to the Office of Internal Affairs.
- In a second case, an officer allegedly had personal communications with inmates and an inmate's visitor, conspired with an inmate's visitor to introduce mobile phones into the institution, received a bribe, and introduced a mobile phone into the institution. The department learned of the alleged misconduct in January 2017, but the hiring authority did not refer the matter to the Office of

⁹ Office of Internal Affairs memorandum dated June 20, 2014.

Internal Affairs until July 2017, six months later. Meanwhile, the officer continued to work and interact with inmates. The officer resigned 11 days after the department served him a notice of dismissal.

Unfortunately, some hiring authorities are still remiss in timely submitting matters to the Office of Internal Affairs, and as the foregoing demonstrate, such lack of diligence can result in postponing the separation of employees engaged in serious misconduct. The figure below reflects the percentage of hiring authority referral timeliness statewide over the past five reporting periods.

Figure 8. Percentages of Monitored Cases the Hiring Authority Referred to the Office of Internal Affairs Within 45 Days



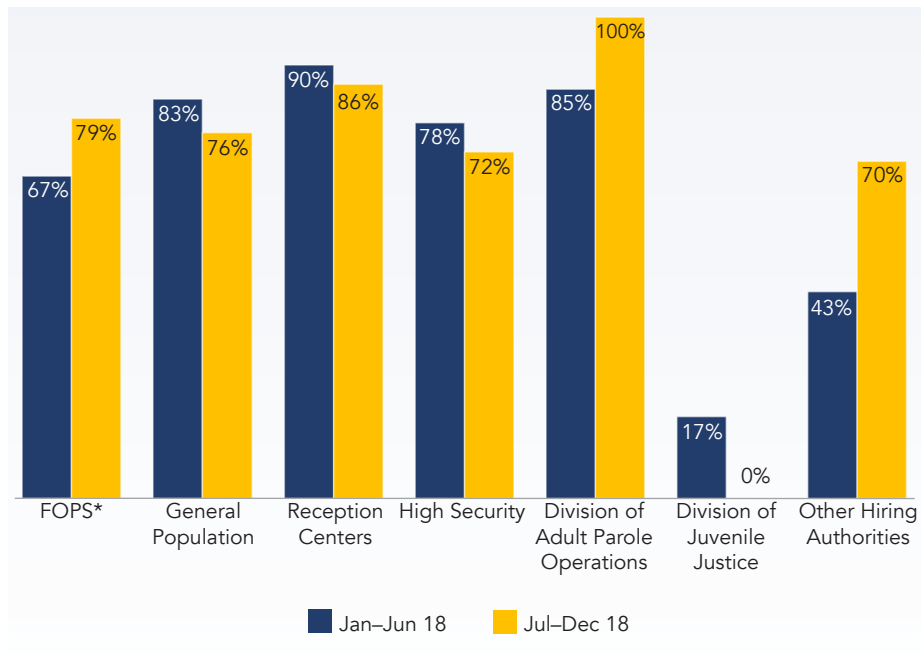
Source: Office of the Inspector General Tracking and Reporting System.

We present specific information on the following page regarding hiring authority employee misconduct referrals by prison missions and divisions as established by the department for the reporting period of July through December 2018 as well as the prior reporting period of January through June 2018. The OIG reports the timeliness of hiring authority referrals by mission and division because 1) each hiring authority is responsible for timely referrals, and 2) the department groups institutions by mission, with a separate associate director assigned to oversee each mission or division type.

The principal missions are Female Offender Programs and Services/ Special Housing, General Population, Reception Centers, and High Security. The Office of Internal Affairs also receives referrals from hiring authorities from the Division of Adult Parole Operations, the Division of Juvenile Justice, and other departmental divisions and offices.

The Division of Adult Parole Operations' positive performance in timely referring suspected employee misconduct to the Office of Internal Affairs improved significantly, rising from 85 percent to 100 percent (nine referrals). The Division of Juvenile Justice's timely referrals continued to decline significantly, falling from 17 percent in the January to June 2018 reporting period to 0 percent in this reporting period. In this reporting period, it untimely submitted all seven referrals. The figure below shows the comparison between the two periods, organized by mission and division.

Figure 9. Timely Hiring Authority Referrals by Prison Mission and Other Divisions



*Female Offender Programs and Services/Special Housing

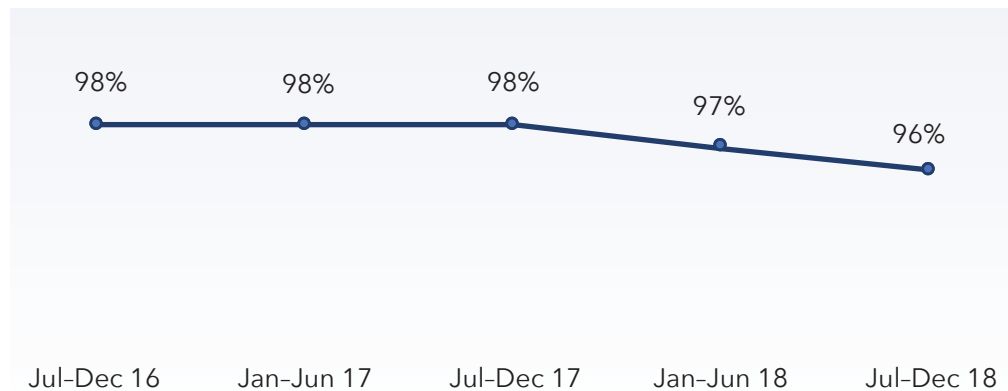
Source: Office of the Inspector General Tracking and Reporting System.

The Office of Internal Affairs Timely Processed the Vast Majority of Hiring Authority Referrals

Departmental policy requires the Office of Internal Affairs to make a determination regarding each hiring authority referral within 30 days of receipt. To that end, a central intake panel led by the Office of Internal Affairs meets weekly to review referrals and requests for investigation submitted from hiring authorities throughout the department. OIG attorneys review all of the referrals, attend each weekly meeting, provide recommendations to the department regarding the action to take, and identify those cases that the OIG will monitor. Although the OIG and department attorneys participate in the central intake panel meetings, the Office of Internal Affairs makes the final decision regarding the action to take on a hiring authority's referral.

The Office of Internal Affairs made a timely determination regarding hiring authority referrals in 96 percent of the cases the OIG monitored and closed during the July through December 2018 reporting period, as shown in the figure below. A timely initial determination by the Office of Internal Affairs is critical to completing a timely investigation, and the Office of Internal Affairs performed well in this area.

Figure 10. Percentages of Cases with Timely Determinations Made by the Office of Internal Affairs Central Intake Unit

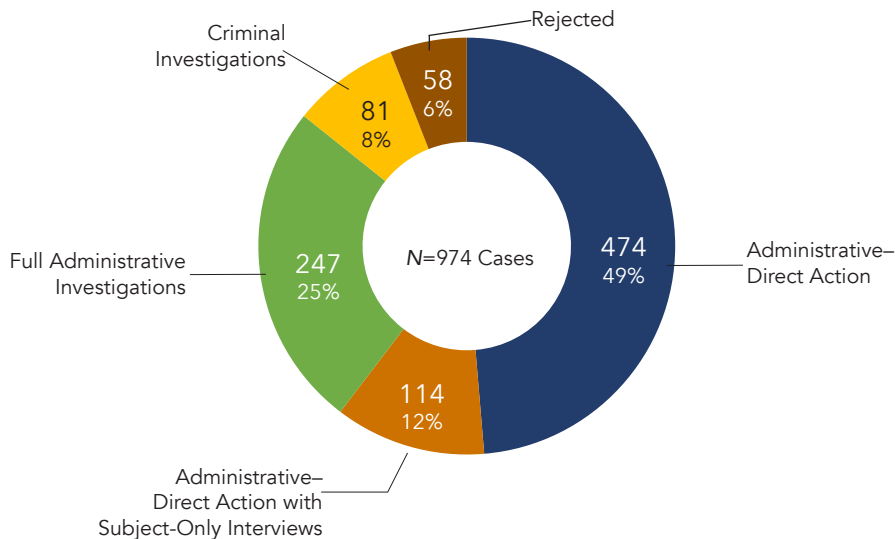


Source: Office of the Inspector General Tracking and Reporting System.

Between July 1, 2018, and December 31, 2018, hiring authorities submitted 988 referrals to the Office of Internal Affairs concerning suspected employee administrative misconduct or employee criminal activity. Of this total, the Office of Internal Affairs made a decision on 974 referrals before December 31, 2018. Since the Office of Internal Affairs meets on a weekly basis to address the referrals, it planned to address the remaining 14 referrals after December 2018 to give special agents time to adequately review the cases.

Of the 974 cases, the Office of Internal Affairs opened 916 cases; it rejected 58 cases (6 percent) as demonstrating insufficient evidence of employee misconduct or criminal activity. The Office of Internal Affairs returned nearly half of the 974 cases to hiring authorities to take direct action on employee misconduct allegations without pursuing any investigation. The Office of Internal Affairs approved interviews only for employees accused of misconduct in approximately 12 percent of the cases. In only 25 percent of the cases did the Office of Internal Affairs conduct a full administrative investigation, which included not only interviewing the employees accused of misconduct, but also interviewing any witnesses and obtaining any additional documentary or forensic evidence. The Office of Internal Affairs opened 8 percent of the referrals as criminal investigations. The figure below shows this distribution.

Figure 11: Case Types as Decided by the Office of Internal Affairs Central Intake Unit from July through December 2018



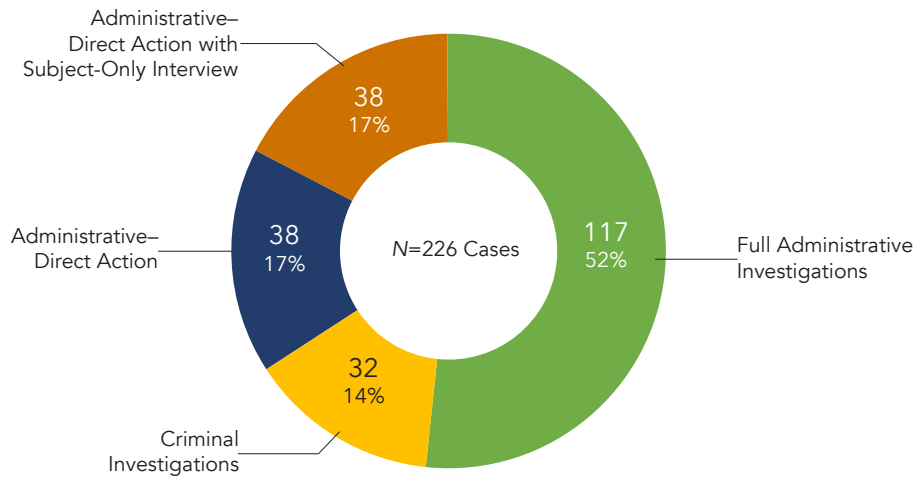
Source: Office of the Inspector General Tracking and Reporting System.

The OIG only monitors cases involving more serious misconduct, and a higher percentage of those cases require a full investigation, as opposed to an interview only of the employee suspected of misconduct. Of the 916 cases the Office of Internal Affairs accepted after a hiring authority referral from July through December 2018, the OIG identified 226 of the cases for monitoring.¹⁰

Of these 226 cases, 117 cases (52 percent) involved full administrative investigations; 32 cases (14 percent) involved a criminal investigation; in 39 cases (17 percent), the Office of Internal Affairs approved only an interview of the employee who was the subject of the investigation, and not a full investigation; and in 38 cases the OIG identified for monitoring (17 percent), the Office of Internal Affairs determined sufficient evidence was available for the hiring authority to make a determination concerning the allegations or to take disciplinary action without conducting an investigation. The numbers of administrative and criminal investigation cases include those involving the use of deadly force. The figure below reflects these percentages.

The Office of Internal Affairs made a timely determination within 30 days regarding the hiring authority's referrals in 97 percent (219 out of 226) of the cases the OIG accepted for monitoring from July through December 2018.

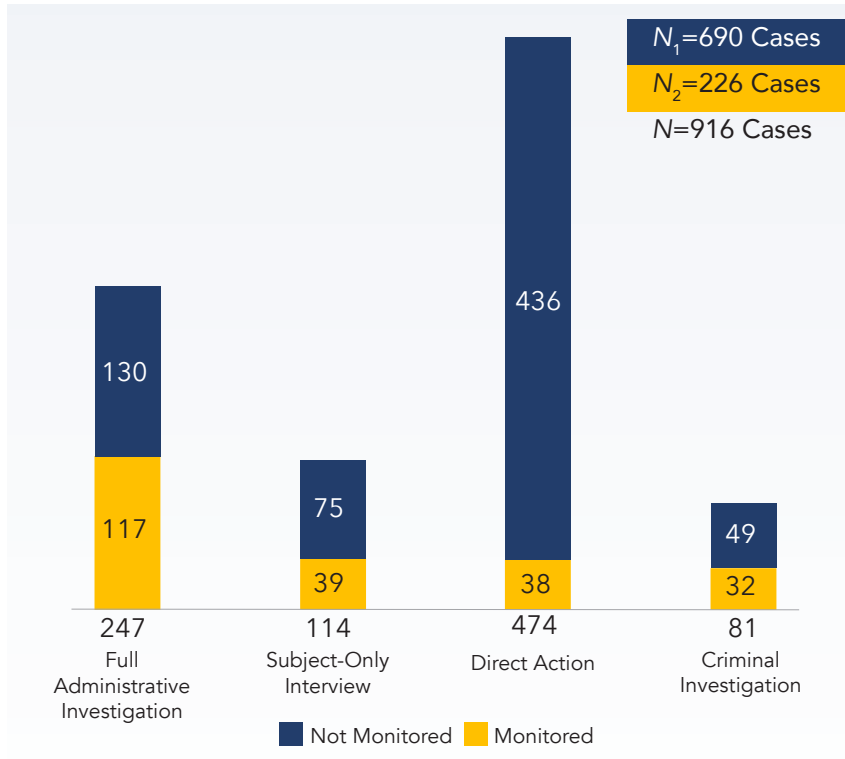
Figure 12. Percentages of Case Types the OIG Accepted for Monitoring



Source: Office of the Inspector General Tracking and Reporting System.

¹⁰ The OIG began monitoring these cases that the Office of Internal Affairs approved for investigation or direct action in the July through December 2018 reporting period. Elsewhere in the report, we mention that we are reporting on 233 cases, which are those the OIG monitored and closed during the July through December 2018 reporting period.

Figure 13. The Number of Cases the OIG Accepted for Monitoring Among the Cases the Office of Internal Affairs Approved



Source: Office of the Inspector General Tracking and Reporting System.

Overall, the Office of Internal Affairs Timely Completed Its Investigations Prior to the Deadline to Take Disciplinary Action or the Deadline to File Criminal Charges

Addressing administrative or criminal allegations before the deadline either to impose discipline or to file criminal charges depends on a joint effort between the hiring authority and the Office of Internal Affairs. On pages 21 to 23 of this report, we discuss the timeliness of hiring authority referrals to the Office of Internal Affairs. However, the Office of Internal Affairs plays a significant role in whether the department's investigations are timely completed. Pursuant to DOM, Section 31140.30, internal investigations "shall be conducted with due diligence and completed in a timely manner in accordance with the law, applicable MOU's [*sic*], and the OIA's Investigator's Field Guide."¹¹

During this reporting period, we found that in the majority of cases, overall, the department took action or addressed cases before the deadline expired to take disciplinary action in administrative cases or the deadline to file charges in criminal cases. The Office of Internal Affairs did not complete the investigation prior to the deadline to take disciplinary action or file charges in seven cases (4 percent), five of which were criminal cases and two of which were administrative.

In five of the 33 criminal cases not involving allegations of deadly force,¹² the Office of Internal Affairs did not timely complete the investigation or timely refer the matter to the district attorney's office before the deadline to file some criminal charges.

Law enforcement agencies conduct criminal investigations into both felony and misdemeanor crimes, the latter being the less serious offenses that carry lesser penalties. Prosecuting agencies are required to file charges before the applicable statute of limitations period has elapsed. Generally, a prosecuting agency must file charges three years from the commission of a felony offense and one year from the date of a misdemeanor offense. An example of a felony crime is the introduction of a controlled substance into a prison (California Penal Code section 4573). Examples of misdemeanors are unauthorized communication with an inmate (California Penal Code section 4570) and introduction of a mobile phone into a prison (California Penal Code section 4576). There are also some offenses, called *wobblers*, that the prosecutor has

¹¹ DOM, 2019.

¹² The OIG monitored 43 criminal cases; however, 10 of these involved criminal investigations conducted by an Office of Internal Affairs' Deadly Force Investigation Team. Different policies and procedures govern these investigations.

discretion to file as either a felony or a misdemeanor (*People v. Adams* (1974) 43 Cal.3d 697.707). An example of a wobbler offense is making criminal threats (California Penal Code section 422).

The majority of criminal cases in which the Office of Internal Affairs did not complete investigations before the deadline to file criminal charges involved cases in which the Office of Internal Affairs investigated both felony and misdemeanor crimes in the same investigation, but allowed the deadline to file misdemeanor charges to pass. As we note in the case examples below, most of these cases resulted in the filing of a felony complaint against the employee.

However, at the outset of a criminal investigation, the Office of Internal Affairs identifies only felony crimes for investigation, and not misdemeanor crimes, even though misdemeanor crimes are often implicated in the cases it investigates. As an investigation progresses, the Office of Internal Affairs will, at times, allow the deadline for the misdemeanor charges to pass while it continues to investigate the felony crimes. This approach is problematic because, in these instances, the Office of Internal Affairs improperly usurps the prosecutorial function, authority, and discretion granted solely to prosecuting agencies.

Per California Government Code section 26500, the district attorney is the public prosecutor and within its discretion shall initiate and conduct all prosecutions for public offenses. Furthermore, a “prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451). Also, the “district attorney’s interests are not limited to prosecution of crime; in fact, a prosecutor’s discretion is greatest before charges are filed” (*People v. Parmar* (2001) 86 Cal.App.4th 781).

When the Office of Internal Affairs allows a misdemeanor deadline to pass, it has a practical impact on subsequent decisions by the prosecuting agency. First, it essentially removes the prosecuting agency’s legal discretion to determine the seriousness of the charges that should be filed. It also effectively eliminates the prosecuting agency’s ability to file less serious charges and decreases the number of criminal violations it may prosecute. For example, a prosecuting agency may review an investigation and determine there is insufficient evidence to file felony charges, while the misdemeanor charge, which the Office of Internal Affairs could have pursued, is provable and could have been filed by the prosecuting agency. However, if the Office of Internal Affairs allows the deadline to file the misdemeanor charge to pass, it precludes the prosecuting agency’s ability to file the charge.

This approach also removes a potential misdemeanor charge that the prosecuting agency may have used to resolve the case and thus constrains

the flexibility to fashion reasonable plea agreements. In addition to affecting prosecutorial discretion, the Office of Internal Affairs' approach also potentially reduces the sentencing options available for a court in the event of a conviction.

The OIG recognizes that, in the majority of the cases in which the Office of Internal Affairs utilized this approach of allowing the time for the filing of misdemeanor charges to elapse while continuing to pursue felony charges, a prosecuting agency, such as a district attorney, subsequently filed felony charges. However, in light of the concerns demonstrated above, the OIG recommends that, unless the prosecuting agency indicates it will not consider filing misdemeanor charges in the case, the Office of Internal Affairs should submit criminal investigations to the prosecuting agency prior to the deadline to file misdemeanor charges.

The five cases in which the deadline to file criminal charges passed involved allegations of introduction of contraband into the institution or sexual misconduct, and, in some cases, both.

- In one of the criminal investigation cases, a materials and stores supervisor allegedly conspired with and received bribes from inmates to smuggle narcotics, mobile phones, and tobacco into an institution in exchange for sexual favors. The Office of Internal Affairs did not complete the investigation until after the deadline for filing misdemeanor charges. The Office of Internal Affairs determined there was insufficient evidence to refer the matter to the district attorney for felony prosecution.
- In a second case, an officer allegedly engaged in sexual activity with an inmate, conspired to bring mobile phones into the institution, and communicated with the inmate on a social networking site. The special agent did not complete any substantive work for nine months, and the Office of Internal Affairs did not complete the investigation and refer the matter to the district attorney's office until 38 days after the deadline for filing one of the misdemeanor charges. The district attorney filed a felony complaint for bribery, engaging in a sexual act with an inmate, and providing a mobile phone to an inmate. The criminal case is still pending as of the date of this report.
- In another criminal investigation case, a supervising cook allegedly conspired with inmates to introduce mobile phones into the institution, provided phones to inmates in exchange for sexual favors, and received bribes from persons acquainted with inmates to introduce mobile phones into the institution. The Office of Internal Affairs did not complete critical interviews and the investigation until after the one-year deadline for filing misdemeanor charges for

three of the alleged crimes, which limited the district attorney's filing options. Nevertheless, the Office of Internal Affairs referred the matter to the district attorney's office for prosecution. As of the date of this report, the district attorney's office has not made a filing determination.

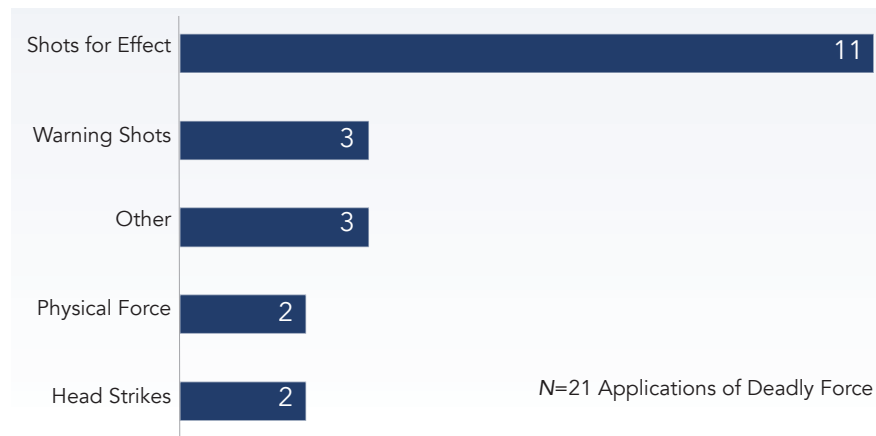
- In another case, a plumber allegedly engaged in sexual acts with an inmate and communicated with her by mobile phone. The Office of Internal Affairs did not complete its investigation and refer the matter to the district attorney's office until one month after the deadline for filing misdemeanor charges. The Office of Internal Affairs referred the matter to the district attorney's office, but the district attorney declined to prosecute.
- The final case in which the criminal deadline passed involved an office technician who allegedly engaged in sexual activity with an inmate, a laboratory technician who communicated with the inmate by phone, and a second laboratory technician who wrote letters to the inmate. The Office of Internal Affairs did not complete its investigation and refer the matter to the district attorney until 63 days after the deadline for one of the charges. The district attorney filed felony charges against the office technician for unlawful sexual activity with an inmate and misdemeanor charges against both laboratory technicians for unlawful communication with an inmate. The office technician suffered two felony convictions. The district attorney dismissed the criminal charges against the two laboratory technicians.

The Department Conducted Thorough Deadly Force Investigations

Between July 2018 and December 2018, the OIG monitored and closed 18 Office of Internal Affairs use-of-deadly-force investigations. Appendix D contains the details of these cases. Figure 14 displays the types of deadly force used. The figures do not reflect the total number of *cases* in which departmental staff used deadly force, but instead reflect the number of *times* each type of deadly force was used. The total (21 uses of force) is greater than the number of cases we monitored and closed (18) because departmental staff may use multiple types of deadly force in a single incident.¹³

Pursuant to the department's deadly force investigation procedures, the Office of Internal Affairs must complete deadly force administrative and criminal investigations within 90 days of the incident and complete all interviews in criminal deadly force investigations within 72 hours.¹⁴ However, the Office of Internal Affairs met both time frames in only 33 percent of the cases.

Figure 14. Number and Types of Deadly Force Applications



Source: Office of the Inspector General Tracking and Reporting System.

As noted above, there are two prescribed time frames outside of which delays can occur: a delay in completing all interviews in criminal deadly force investigations within 72 hours, or a delay in completing a criminal or administrative deadly force investigation within 90 days

¹³ For example, in one incident, an officer may discharge a shot for effect (intending to shoot a target, such as an inmate) and a warning shot (not intending to shoot a target, but a shot issued to get the attention of inmates who are engaging in prohibited behavior and to get them to stop). In this type of instance, even though it is only one deadly force case we monitored, it involved two uses of deadly force.

¹⁴ Office of Internal Affairs Deadly Force Investigations Team Procedures, June 6, 2007, Sections IV and VII(G)(5).

of the incident. In four of the 10 criminal deadly force cases, the Office of Internal Affairs did not complete all interviews within 72 hours, and the delays ranged from special agents completing all interviews within 75 days to the special agents completing all interviews within five months of the incident. Special agents did not complete their investigations within 90 days of the incident in 11 of the 18 deadly force cases, and the delays ranged from 96 days to one year and four months after the incident.

Reasons for the delayed deadly force investigations varied from case to case; they included the need for numerous interviews, pending criminal investigations, and autopsy results. Overall, however, we found that despite the delays, the Office of Internal Affairs made efforts to act diligently in completing the majority of its deadly force investigations.

We also found that the department conducted thorough investigations in most of these cases. In one incident that resulted in an inmate's death, which involved both a criminal deadly force investigation and an administrative deadly force investigation, the special agents performed exceptionally well. An officer allegedly pulled a restrained inmate's feet out from under him and pushed the inmate from behind to the ground, resulting in a broken jaw. The inmate died at an outside hospital two days later. A lieutenant, a sergeant, and seven officers, including the first officer, allegedly conspired to conceal the battery on the inmate, and five of those officers allegedly wrote false reports. During the criminal investigation, the special agents performed exceptionally well while gathering an extremely large amount of email and mobile phone data, and the Office of Internal Affairs performed particularly well in planning for and simultaneously executing search warrants on multiple officers, a sergeant, and a lieutenant, at multiple locations. As a result, the Office of Internal Affairs was able to seize and access all relevant evidence it sought.

The Department's Process for Handling Cases That Involved Both Criminal and Administrative Misconduct Resulted in Delays in Taking Administrative Action

Of the 33 criminal cases we monitored and closed, excluding investigations of the use of deadly force, the Office of Internal Affairs Central Intake Unit referred 22 companion cases to the hiring authority to take appropriate administrative action.

The typical process involves the Office of Internal Affairs Central Intake Unit first reviewing the allegation and approving a criminal investigation—a process that can take up to 30 days. The matter is then referred to a regional office to conduct the investigation. Typically, the Office of Internal Affairs Central Intake Unit does not simultaneously approve an administrative investigation, approve an interview of the employee, or return the matter to the hiring authority to take action. Instead, the regional office typically waits until the completion of the criminal investigation, or in some cases consultation with the district attorney's office, before referring the matter back to the Office of Internal Affairs Central Intake Unit to make a determination regarding an administrative case. After the region refers the matter back to the Office of Internal Affairs Central Intake Unit, the unit again reviews the case and makes a determination, a process that can take up to 30 days.

We found that the Office of Internal Affairs had possession of cases for an extended period of time due to this process. The following case examples illustrate the delay caused by the Office of Internal Affairs' practice of deferring the decision to open an administrative investigation, interview the employee accused of misconduct, or return the matter to the hiring authority. In some cases, the delays postponed the employee's separation from the department or resolution of the case, unnecessarily costing the department approximately \$45,600.¹⁵

- In one case, a case records analyst allegedly engaged in sexual acts with an inmate. The hiring authority promptly referred the matter to the Office of Internal Affairs. The Office of Internal Affairs Central Intake Unit opened a criminal investigation, which the Office of Internal Affairs closed on February 6, 2018. However, the Office of Internal Affairs did not return the case to the hiring authority to take action until July 18, 2018, more than five months later. Meanwhile, the case records analyst remained on paid

¹⁵ To calculate the estimated costs of various delays in this report, we used the salary and benefits of each person's classification at mid-step, which for budgeting purposes, is the middle point of a classification's salary range. Next, we divided the mid-step salary and benefits value by the average number of days in a month to arrive at an average daily rate. For each instance, we then multiplied the average daily rate by the number of days that we determined the department caused an unnecessary delay in the process.

administrative leave and received benefits, unnecessarily costing the department approximately \$33,500. The hiring authority served the case records analyst a notice of dismissal. The case records analyst agreed to resign in lieu of termination. To calculate the delay and the associated approximate cost, the OIG identified the number of days between the date the Office of Internal Affairs closed the criminal case and the date it returned the case to the hiring authority to take action (approximately five months).

- A second case was discussed previously in this report to highlight a special agent's poor performance, but the delay in returning the case to the hiring authority is worth highlighting. A materials and stores supervisor allegedly conspired with and received bribes from an inmate to smuggle narcotics, mobile phones, and tobacco into an institution in exchange for sexual favors. The special agent did not consult with the district attorney to discuss a companion administrative investigation until nearly five months after the Office of Internal Affairs Central Intake Unit opened the criminal investigation. When the special agent finally consulted with the district attorney's office, the special agent learned the district attorney's office did not object to the department conducting an administrative investigation. Even then, the Office of Internal Affairs did not open a companion administrative investigation until a month after the special agent's consultation with the district attorney's office, and nearly six months after opening the criminal investigation. Meanwhile, the materials and stores supervisor remained on paid administrative leave and received full benefits, unnecessarily costing the department approximately \$5,800. The Office of Internal Affairs' handling of the case delayed the hiring authority's ability to take appropriate administrative action. To calculate the delay and the associated approximate cost, the OIG identified the number of days between the date the special agent consulted with the district attorney and the Office of Internal Affairs' decision to open an administrative case (approximately one month).
- In a third case, a teacher's assistant allegedly communicated with inmates on a social media website and engaged in sexual misconduct with an inmate. The hiring authority promptly referred the matter to the Office of Internal Affairs on April 5, 2018. The Office of Internal Affairs Central Intake Unit approved and conducted a criminal investigation only, which the Office of Internal Affairs concluded on August 13, 2018. However, the Office of Internal Affairs Central Intake Unit did not return the case to the hiring authority to take action, without an administrative investigation, until September 12, 2018, nearly a month after the criminal investigation concluded. Meanwhile,

the teacher's assistant remained on paid administrative leave and received benefits. The hiring authority sustained the allegations and served a notice of dismissal; the teacher's assistant then resigned. By conducting the administrative case simultaneously, the Office of Internal Affairs could have avoided this delay, saving approximately \$3,800. To calculate the delay and the associated approximate cost, the OIG identified the number of days between the date the Office of Internal Affairs closed the criminal case and the date it returned the case to the hiring authority to take action (27 days).

- In a fourth case, a custodial supervisor allegedly engaged in sexual acts with an inmate. The hiring authority learned of the alleged misconduct on April 10, 2018, and three days later referred the matter to the Office of Internal Affairs. On May 9, 2018, the Office of Internal Affairs Central Intake Unit opened a criminal investigation. A regional office conducted a criminal investigation and closed the investigation on October 1, 2018. The regional office then referred the matter back to the Office of Internal Affairs Central Intake Unit for a determination regarding an administrative case. Two weeks later, a day before the custodial supervisor's limited term expired, the Office of Internal Affairs Central Intake Unit returned the matter to the hiring authority to take action. By conducting the administrative case simultaneously, the department may have been able to dismiss the employee before his limited term expired, saving the department approximately \$2,500. To calculate the delay and the associated approximate cost, the OIG identified the number of days between the date the Office of Internal Affairs closed the criminal case and the expiration of the employee's limited term (16 days).

Overall, the Department Conducted Thorough Investigations, and in Some Cases the Special Agent Performed Exceptionally Well

The following case examples highlight excellent performance by special agents in criminal and administrative investigations:

- An officer allegedly engaged in sexual acts with an inmate. The special agent quickly and appropriately intervened to stop an ill-advised operational plan and performed exceptionally well in identifying and handling information indicating that the prison's investigative services unit may have altered, destroyed, and concealed evidence. The special agent also consulted with the district attorney's office throughout the investigation regarding evidentiary issues. The special agent referred the matter to the district attorney's office in sufficient time for the district attorney to make a determination whether to file misdemeanor or felony charges.
- An officer allegedly had unauthorized communications with inmates and an inmate's visitors, conspired with an inmate's visitor to introduce mobile phones into the institution, received a bribe, and introduced a mobile phone into the institution. He also allegedly lied during his interview with the Office of Internal Affairs. Because the hiring authority delayed the referral to the Office of Internal Affairs, and the remote date of alleged misconduct, the special agent faced an imminent statute of limitations but completed a complicated and thorough investigation 45 days prior to the deadline to take disciplinary action. After the hiring authority served the officer a notice of dismissal with a copy of the investigative report, the officer resigned before the disciplinary action could take effect.
- An officer allegedly swore at and threatened an inmate, and two other officers allegedly failed to report the first officer's misconduct. The first officer and one of the other officers allegedly shook and threw cans of soda against the inmate's cell door. Three of the officers allegedly tried to dissuade another inmate from reporting the first officer's misconduct. The special agent performed exceptional investigative work, including identifying and interviewing additional witnesses, conducting thorough interviews, and preparing a well-written, in-depth report.
- An associate warden allegedly used the department's email system to send personal email messages and engaged in relationships with female coworkers in violation of the department's nepotism and fraternization policy. The department also received an anonymous

complaint that the associate warden attempted to use his position of authority when he was a captain to coerce and intimidate female employees into relationships. The special agent took extraordinary and exhaustive measures to identify the anonymous complainant and employees who may have had knowledge regarding the complainant's allegations. The special agent reviewed numerous personnel records, analyzed many emails, worked closely with the prison's investigative services unit, and interviewed several witnesses.

Monitoring the Employee Disciplinary Process

Overall, the Department's Procedural Rating During the Disciplinary Phase Declined from the Prior Reporting Period, but Its Substantive Rating Improved

From a procedural perspective, for the cases the OIG monitored and closed during the July through December 2018 reporting period, we found the department performed sufficiently throughout the disciplinary phase in only 49 percent of the cases. From a substantive perspective, the department performed sufficiently in 79 percent of the cases. The procedural rating was one percentage point lower than that observed during the last reporting period, but the substantive rating improved three percentage points from the last rating period.

Consistent with our assessment methodology in the investigative phase, we base our procedural assessment for the disciplinary phase on how well the department complies with its own policies. This assessment includes whether it prepares legal documents in compliance with policy, as well as whether the hiring authority timely serves disciplinary actions. During the disciplinary phase, only hiring authorities and department attorneys are involved since the Office of Internal Affairs has already completed its work. In some cases, the department may not assign an attorney but instead assign an employee relations officer, who is not an attorney, to perform as the department's advocate. We assess the performance and advocacy work of both department attorneys and employee relations officers.

We base our substantive rating on our expert opinion of the hiring authority's or department attorney's performance and management of the disciplinary phase. This assessment includes whether the department attorney provided appropriate legal advice to the hiring authority, prepared adequate and legally sufficient documents, and adequately prepared for and represented the department during any State Personnel Board appeal proceedings.

The following four figures reflect the department's performance during the disciplinary phase from both procedural and substantive perspectives. The assessments are also broken down by region. We show that statewide substantive performance improved by three percentage points but procedural performance declined by one percentage point. Regionally, performances declined in general, with the exception of procedural performance in the northern region.

Figure 15. Disciplinary Phase Sufficiency, Statewide

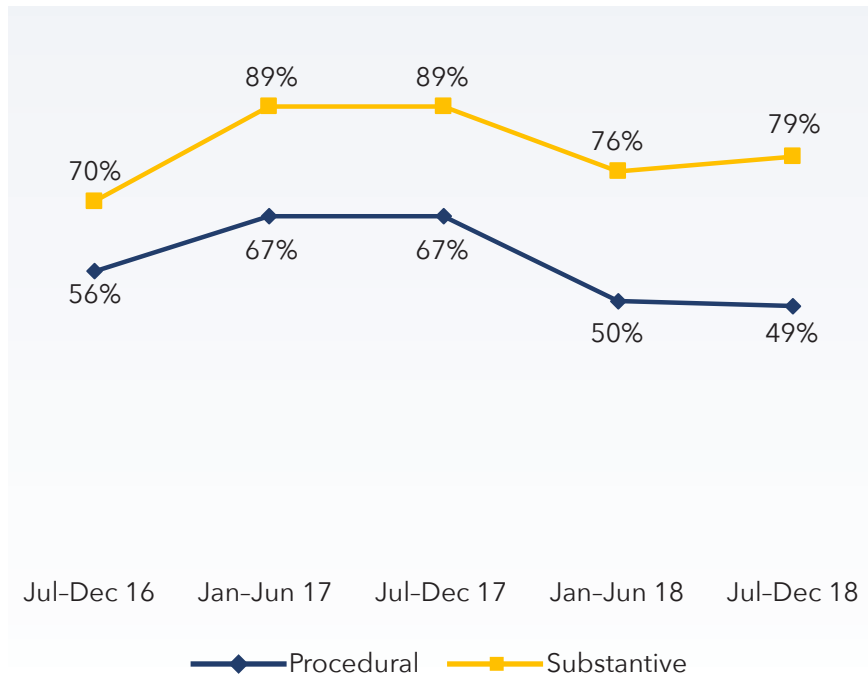


Figure 16. Disciplinary Phase Sufficiency, North Region

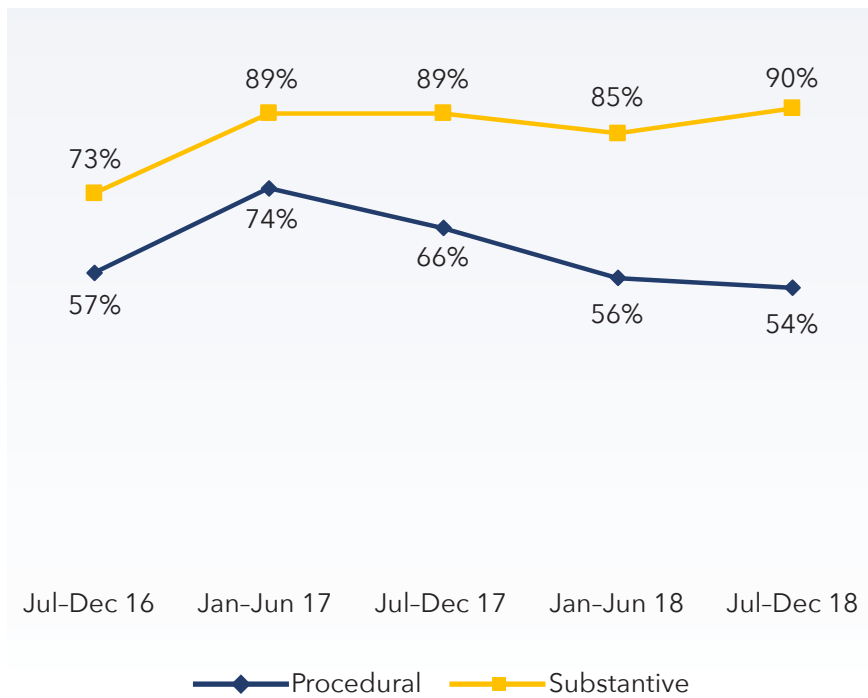


Figure 17. Disciplinary Phase Sufficiency, Central Region

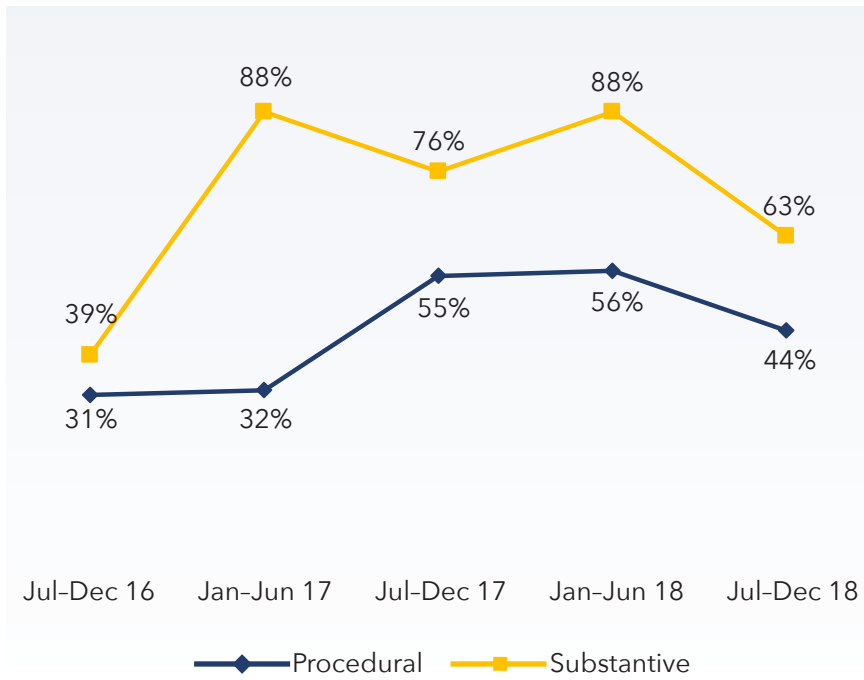
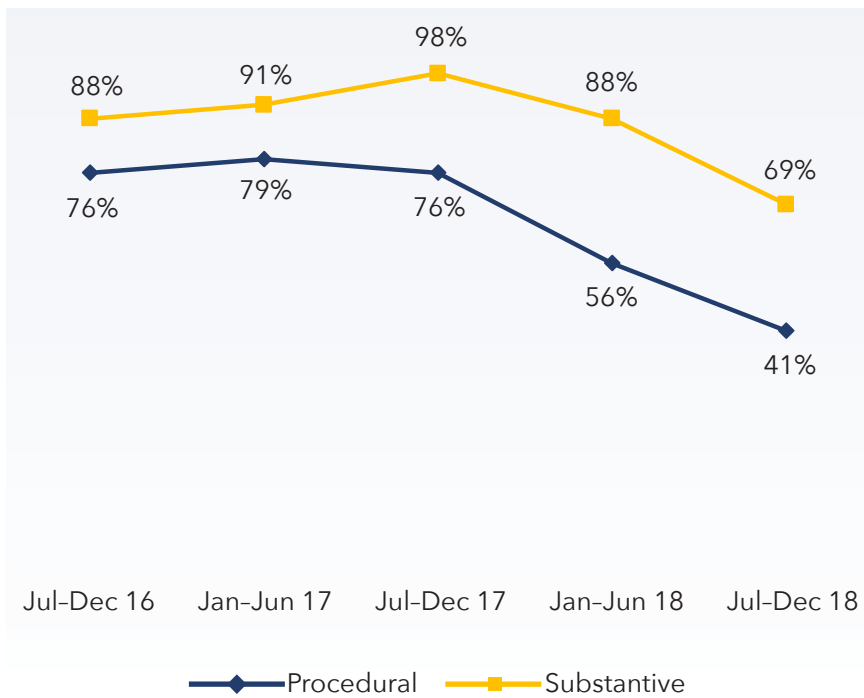


Figure 18. Disciplinary Phase Sufficiency, South Region



Source for Figures 15–18: Office of the Inspector General Tracking and Reporting System.

Similar to during the investigative phase, we found the department performed adequately in certain areas of the disciplinary phase. For example, in 99 percent of the cases, the hiring authority was adequately prepared to make a determination regarding the investigative findings and penalty.

Hiring Authorities Delayed in Making Investigative Findings and Penalties

For the cases the OIG monitored and closed during the July through December 2018 reporting period, hiring authorities conducted timely investigative and disciplinary findings conferences in only 62 percent of the cases, an 11 percentage point drop from the timeliness rating we noted for the January through June 2018 reporting period.

After the Office of Internal Affairs returns a case to a hiring authority, either after investigation or for the hiring authority to address the allegations without an investigation, the hiring authority must consult with OIG and department attorneys within 14 days to address the sufficiency of any investigation, the findings regarding the allegations, and the appropriate penalty, if any.¹⁶ Typically, the hiring authority makes all of these determinations at the same time. However, even if more than one consultation is required, the OIG renders only one assessment for this consultation.

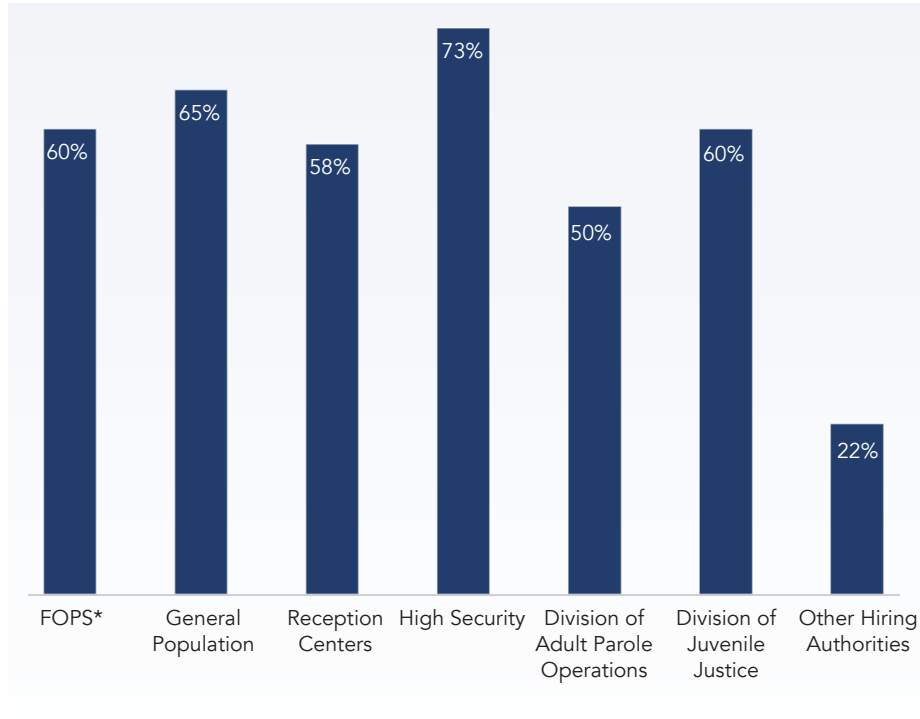
We also found that the timeliness of conducting conferences varied widely from prison to prison. The following cases highlight delays in cases involving peace officers:

- Outside law enforcement arrested an officer after he allegedly slapped and choked his girlfriend. Due to numerous minor extensions, the hiring authority did not conduct the disciplinary findings conference until five months after the officer's criminal case concluded.
- In another case, outside law enforcement responded after a counselor took his ex-girlfriend's mobile phone without her permission, following which a court issued a restraining order and a firearms restriction. The hiring authority did not conduct the disciplinary findings conference until more than four months after the Office of Internal Affairs returned the case to the hiring authority.

On the following page, the figure illustrates the timeliness of investigative findings conferences by prison mission and other divisions.

¹⁶ Although the consultation should typically occur within 14 days of the junctures specified above, at times there is good cause due to participants' unavailability for the consultation to occur later, but usually no later than 30 days.

Figure 19. Timeliness of Investigative and Disciplinary Findings Conferences by Prison Mission and Other Divisions



*Female Offender Programs and Services/Special Housing
Source: Office of the Inspector General Tracking and Reporting System.

The Department Delayed Service of Disciplinary Actions Involving Peace Officers

If a hiring authority sustains allegations, the hiring authority must decide whether to issue corrective action or discipline. If a hiring authority decides to impose discipline, either an employee relations officer or a department attorney composes the notice of disciplinary action.

Generally, the department must not only take disciplinary action against a peace officer no later than one year after the department learned of the alleged misconduct, but also within three years of the misconduct.¹⁷ The department's policy requires that the department serve such actions on peace officers within 30 days of the hiring authority's decision to take disciplinary action.¹⁸ The hiring authority makes this decision at a disciplinary findings or penalty conference.

As noted previously, the OIG is reporting on 233 cases it monitored and closed during the July through December 2018 reporting period. Of the 233 cases, 190 were administrative cases whereby an employee or employees faced potential discipline, and 43 cases involved alleged employee criminal activity. As to those cases in which the hiring authority served disciplinary action, except for two cases, the department timely served disciplinary actions, or served letters of intent to serve disciplinary action, prior to the deadline to take disciplinary action.

As to the 190 administrative cases, we independently identified whether the department prepared and served disciplinary actions in compliance with both the law and the department's policies. We observed that the department delayed serving disciplinary actions on peace officers, violating its own policy. In the last reporting period, the OIG identified that when the department served a disciplinary action on a peace officer,

¹⁷ If the employee is a peace officer, pursuant to California Government Code section 3304, the department must provide notice to the officer of the intent to take disciplinary action within one year from the date of discovery of the misconduct by an uninvolved supervisor. Except in cases of fraud, California Government Code section 19635 provides that no punitive action shall be valid against any state employee, including peace officers, for any cause for discipline based on any civil service law, unless notice of the punitive action is served within three years after the cause for discipline first arose.

¹⁸ DOM, Section 33033.22, provides that an employee relations officer, in consultation with the department attorney, shall ensure the following: "If the subject is a peace officer, he or she is being served with the Notice of Adverse Action within thirty (30) calendar days of the decision to take disciplinary action." Departmental policy does not require the department to serve disciplinary actions on non-peace-officers within a specified time after the hiring authority's decision to take disciplinary action. The OIG has noted this policy resulted in disparate treatment and an increased delay in the department's service of disciplinary actions in cases that involved non-peace-officers. We plan to explore this disparity in more depth in the future.

the department delayed in serving it in 29 percent of the cases. During this reporting period, the department delayed in serving disciplinary actions on peace officers in 49 percent of the cases, a significant increase from the last reporting period.

In the cases we monitored and closed between July 2018 and December 2018, we found the following:

- Of the 190 administrative cases we monitored, 177 had subjects of the investigation who were peace officers. Of those 177 cases, the department served disciplinary actions on a peace officer in 97 (55 percent).
- Of the 97 cases in which the department served a disciplinary action on a peace officer, the department delayed serving the disciplinary action in 48 of them (49 percent). These delays ranged from 31 to 140 days after the hiring authority decided to take disciplinary action.
- A department attorney prepared the disciplinary actions in 47 of the 48 cases involving delayed service. An employee relations officer prepared the disciplinary action in the other case.

The department's Employment Advocacy and Prosecution Team's prior chief counsel advised department attorneys that the hiring authority does not actually "decide" to take disciplinary action until the hiring authority signs the departmental form memorializing the decision made at the penalty conference, provided the form is signed within 10 days of the conference. We disagree with the prior chief counsel's interpretation. Subsequent acting chief counsels have maintained its effect. Under the prior chief counsel's guidance, the department must serve disciplinary actions within 30 days from the date the hiring authority signs the departmental form documenting the penalty decided at the penalty conference rather than the conference date itself. Additionally, service must occur no later than 40 days from the conference date.

Even under the prior chief counsel's interpretation, the department delayed service in 31 of the 97 cases (32 percent) in which the department served a disciplinary action on a peace officer. Consequently, under either department policy or the prior chief counsel's interpretation, the delay we observed was significant.

The department's delayed service of disciplinary actions violated policy, delayed action intended to address significant unacceptable performance, and adversely affected the accused peace officers as they continued to live under clouds of suspicion and uncertainty regarding their employment. For example, in one case, a hiring authority decided to impose a 10 percent salary reduction for 24 months against an officer who allegedly

left her post without authorization, refused to follow a sergeant's order to return to her post, confronted another officer by referring to the officer as a "snitch" and claiming the officer "ratted her out," and made disparaging and vulgar comments about the sergeant's and a lieutenant's physical appearance. The department did not serve the disciplinary action until 140 days after the hiring authority's decision.

In addition, in dismissal cases, the department's delayed service of disciplinary action resulted in unnecessary cost to the department and, ultimately, the taxpayers of approximately \$108,400.¹⁹ The department served dismissals on peace officers in 32 separate administrative cases, but delayed in 15 of those 32 cases (47 percent). During these delays, these employees whom the hiring authority had already decided to dismiss were either still working in their positions, exposing the department to further liability, working in the mail room or some other equivalent position, or on paid administrative leave. The following are examples of delays in dismissal cases:

- In one case, a hiring authority decided to dismiss two officers. One of the officers hit an inmate multiple times in the face without cause and failed to report it, lied in a memorandum, and lied during his interview with the Office of Internal Affairs. The second officer allegedly held the inmate's legs and saw the first officer hit the inmate, failed to report the uses of force, and lied during his interview with the Office of Internal Affairs. The department did not serve the disciplinary actions until 84 days after the hiring authority's decision to terminate the officers. Both officers resigned in lieu of termination—the delay resulted in each officer receiving 54 days of pay and benefits they would not have otherwise received had the hiring authority served them timely. Collectively, these delays resulted in 108 days of pay and benefits. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary actions, unnecessarily cost the department approximately \$32,500.
- In a second case, a hiring authority decided to dismiss an officer for marijuana drug use, but the department did not serve the disciplinary action on the officer until 69 days after the hiring authority's decision. During the delay, the department placed the officer in a non-peace-officer position but continued to pay the officer a full salary and benefits of a peace officer. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department approximately \$11,700.

¹⁹ A hiring authority may place an employee on paid administrative leave pending service of a disciplinary action. DOM, Section 33030.27.

- In a third case, a hiring authority decided to dismiss an officer who drove under the influence of alcohol and lied to outside law enforcement, but the department did not serve the disciplinary action until 63 days after the hiring authority made his decision. The officer ultimately resigned in lieu of termination—the delay resulted in the officer receiving an additional 33 days of pay and benefits that he would not have otherwise received. The department’s delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department approximately \$9,900.
- In a fourth case, a hiring authority decided to dismiss an officer who punched his girlfriend in the stomach, pushed her, and knocked a telephone from her hand as she tried to call for help, and then violated a direct order from the Office of Internal Affairs to not discuss the incident and lied during his interview with the Office of Internal Affairs. The department did not serve the disciplinary action until 59 days after the hiring authority’s decision. The department’s delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department approximately \$8,700.

Certain Department Attorneys Significantly Contributed to the High Percentage of Delayed Disciplinary Actions

Of the 97 cases in which the department served a disciplinary action on a peace officer, 29 different attorneys and three employee relations officers were responsible for drafting the disciplinary actions statewide. Of the 29 different attorneys who were responsible for drafting disciplinary actions involving peace officers, 23 (79 percent) delayed in drafting at least one disciplinary action.

We identified that certain department attorneys were responsible for a high percentage of delayed disciplinary actions. Among the 29 attorneys assigned to cases we monitored this reporting period, seven were responsible for 56 percent of all cases with disciplinary delays.

- One department attorney was responsible for writing disciplinary actions in eight administrative cases involving peace officers. Of those eight cases, the attorney delayed preparing the disciplinary actions in seven (88 percent). Of those seven cases, the attorney was responsible for drafting 14 disciplinary actions, including 10 dismissals, all of which the attorney provided to the hiring authority after the department's own 30-day deadline for peace officers. The cumulative delay of service for those 14 actions beyond the 30-day deadline was 281 days (over nine months), unnecessarily costing the department approximately \$46,800.
- A second attorney was responsible for writing disciplinary actions in seven administrative cases involving peace officers, but the department delayed service of the disciplinary actions in four of the cases (57 percent). The cumulative delays totaled 33 days.
- A third attorney was responsible for writing disciplinary actions in four administrative cases involving peace officers, but service of the disciplinary actions was delayed in three cases (75 percent). The cumulative delays totaled 66 days.
- A fourth attorney was responsible for writing disciplinary actions in five administrative cases involving peace officers, but service of the disciplinary actions was delayed in four cases (80 percent). The cumulative delays totaled 50 days.
- A fifth attorney was responsible for writing disciplinary actions in four administrative cases involving peace officers, but service of the disciplinary actions was delayed in three of those cases (75 percent). The cumulative delays totaled 50 days.

- A sixth attorney was responsible for writing disciplinary actions in six administrative cases involving peace officers, but service of the disciplinary actions was delayed in three cases (50 percent). The cumulative delays totaled 38 days.
- A seventh attorney was responsible for writing disciplinary actions in four administrative cases involving peace officers, but service of the disciplinary actions was delayed in three cases (75 percent). The cumulative delays totaled 26 days.

The Department's Stakeholders' Separate Delays in Administrative Cases Amassed into Longer Cumulative Delays

Cases involving allegations of administrative misconduct are passed from one department stakeholder to another during the life of the case. The case begins with the department's discovery of alleged misconduct. Once the department identifies potential staff misconduct, the hiring authority refers the matter to the Office of Internal Affairs, which then determines whether an investigation or an interview of the employee accused of misconduct should be conducted, or if there is sufficient information for the hiring authority to take direct action. If an investigation or an interview of the employee is needed, the Office of Internal Affairs sends the case to an Office of Internal Affairs regional office, where a special agent is assigned to conduct the investigation or interview the employee. The special agent also writes an investigative report.

At this point, in administrative cases, the Office of Internal Affairs returns the cases to the hiring authority. After the Office of Internal Affairs returns the matter to the hiring authority, the hiring authority conducts a findings and penalty conference to determine the sufficiency of the investigation, whether the allegations should be sustained, and, if allegations are sustained, the appropriate penalty.

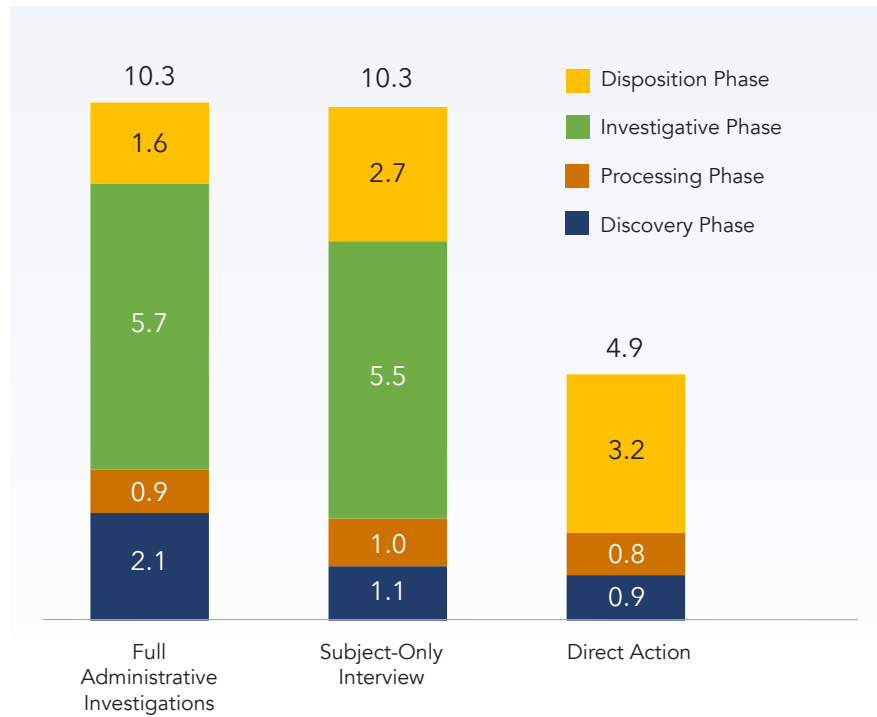
Figure 20 on the following page shows the lifespan of administrative investigations, subject interviews, and direct action. The chart identifies the average number of days between the following significant dates:

- Discovery phase: *from* the date of discovery of the allegations *to* the date the hiring authority first referred the matter to the Office of Internal Affairs.
- Processing phase: *from* the date of the Office of Internal Affairs referral *to* the date the Office of Internal Affairs Central Intake Unit made a decision regarding the referral.
- Investigative phase: *from* the date the Office of Internal Affairs Central Intake Unit made a decision *to* the date the case was returned to the hiring authority.

- Disposition phase: *from* the date of receipt of the case by the hiring authority *to* the end of the case.²⁰

Notably, it took the Office of Internal Affairs almost as long on average to complete a case involving only an interview of the subject employee as it did to conduct a full administrative investigation. In contrast to a subject-only interview case, a full administrative investigation includes collection of evidence and interviewing witnesses and the subject employee.

Figure 20. Lifespan (in Months) of Administrative Cases Involving Peace Officers



Source: Office of the Inspector General Tracking and Reporting System.

As discussed earlier in the report, department policy requires hiring authorities, department attorneys, and the Office of Internal Affairs to comply with objective prescribed time lines. These time lines are the outer limits for which the department has determined these tasks should be completed. The OIG found that the department delayed in two or more critical junctures in 43 out of 190 administrative cases the

²⁰ In cases in which the hiring authority determined a disciplinary action would be taken against an employee, the case end date is the date the disciplinary action was served on the employee. However, if the employee resigns, retires, or is separated by any other method other than disciplinary action after the findings and penalty conference, but before service of a disciplinary action, then the case end date is the date of separation. In cases in which the hiring authority determined no disciplinary action would be taken against an employee, the case end date is the date of the findings and penalty conference. In cases in which the employee separated from employment prior to the findings and penalty conference, the case end date is the date of the conference.

OIG monitored (23 percent). All 43 cases with multiple delays involved allegations of peace officer misconduct, and the average cumulative delay was 72 days beyond the specified time frames. The OIG also found that stakeholder delays were not isolated to one stakeholder; rather, multiple stakeholders contributed to the cumulative delays. The cumulative effect of delays postponed the separation of employees engaged in serious misconduct and extended employees' paid administrative leave with benefits. Additional findings include the following:

- Of the 190 administrative cases the OIG monitored, 125 (66 percent) had some delay in the process that exceeded the department's own time frames. In the 177 cases involving peace officers, the department exceeded at least one of its own prescribed time lines in 121 (68 percent) of them. In the 32 cases in which a peace officer was dismissed, 21 (66 percent) had delays. In those cases, the delays ranged from one day to 163 days. In the administrative cases involving peace officers the OIG monitored this reporting period, the hiring authority delayed in referring the allegations of misconduct to the Office of Internal Affairs in 49 cases (26 percent).
- Of the 97 administrative cases in which the peace officer was later served a disciplinary action, the hiring authority delayed in referring the allegations to the Office of Internal Affairs in 25 cases (26 percent).
- Of the 97 cases in which the department served a disciplinary action on a peace officer, the department delayed in conducting the findings and penalty conference in 37 cases (38 percent).
- Of the 97 cases in which the department served a disciplinary action on a peace officer, the department delayed in service of the disciplinary action in 48 (49 percent). These delays ranged from 31 to 140 days after the hiring authority decided to take disciplinary action.
- Of the 97 cases in which the department served a disciplinary action on a peace officer, a peace officer was dismissed in 32 cases. Of those 32 cases in which a peace officer was dismissed, the department delayed in service of the disciplinary action in 15 cases (47 percent).
- Of the 32 administrative cases in which peace officers were dismissed, the hiring authority delayed in referring the allegations to the Office of Internal Affairs in six cases (19 percent). Of the 32 cases in which the department served a dismissal on a peace officer, the department delayed in conducting the disciplinary findings and penalty conference or in serving the disciplinary action in 17 of the cases (53 percent).

As discussed earlier in the report, a delay in any part of the disciplinary process causes harm to the department, the employees, and taxpayers.

The OIG Sought Executive Reviews in Two Disciplinary Cases in Which It Believed the Department Made Unreasonable Findings

If a hiring authority makes a decision that either we or the department attorney believes is unreasonable, then either we or the department attorney may decide to elevate that decision to the attention of the hiring authority's supervisor (for example, from a warden to an associate director), with the goal of having the department review the decision to determine whether the hiring authority made a just and proper determination.²¹ If the supervisor also makes what we consider to be an unreasonable decision regarding the issue presented to him or her, the matter may be elevated again to the next step up to the Secretary of the department.

A stakeholder may seek a higher level of review, or executive review, during either the investigative or disciplinary phase, depending on the disagreement. For example, if a significant disagreement arises regarding whether an investigation is sufficient or whether the hiring authority should sustain allegations, a stakeholder may seek a higher level of review in the investigative phase. However, if the issue pertains to a penalty, the stakeholder would elevate the decision during the disciplinary phase.

For the 233 cases we monitored and closed during the July through December 2018 reporting period, the OIG sought a higher level of review in only two of them (less than 1 percent). The department ultimately made what we believe to be appropriate decisions in both cases.

The OIG uses the executive review process judiciously so as to maintain the integrity of the process. The following table summarizes the cases in which the OIG sought executive review regarding the decisions of hiring authorities.

During this same period, a department attorney did not seek a higher level of review in any cases.

²¹ DOM, Section 33030.14.

Executive Review Cases				
Case	Summary	Initial Department Position	OIG Position	Final Disposition
1	An officer allegedly used profanity and racial slurs toward inmates. A second and third officer allegedly failed to report the first officer's misconduct, and the third officer submitted a false memorandum. The three officers were also allegedly dishonest during their interviews with the Office of Internal Affairs.	The hiring authority sustained the allegations against the first officer and dismissed him. The hiring authority decided not to sustain the allegations against the second and third officers.	The OIG did not concur with the decision to not sustain the allegations against the second and third officers.	At the higher level of review, the hiring authority's supervisor agreed with the OIG, sustained the allegations, and served the officers notices of dismissal.
2	A parole agent allegedly entered false information in a parolee's record of supervision, failed to timely consult with a supervisor and document the parolee's possession of a mobile phone and camera, use of a computer, and viewing nude pictures. The parole agent also allegedly allowed a second parolee an unauthorized visit with a child, shared personal information with parolees, removed and replaced a third parolee's global positioning system device without authorization, and lied during her interview with the Office of Internal Affairs.	The hiring authority sustained the allegations the parole agent failed to properly document her actions, but not that she shared personal information with parolees, and imposed a 10 percent salary reduction for 24 months. The OIG concurred. During the <i>Skelly</i> hearing, the hiring authority learned of new information that the parole agent may have falsified documentation, which warranted further investigation.	The OIG recommended the hiring authority request further investigation, but the hiring authority disagreed. The OIG elevated the matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor agreed with the OIG and requested further investigation. After the investigation, the hiring authority added and sustained allegations the parole agent lied during her interview with the Office of Internal Affairs interview, failed to obtain authorization before removing a global positioning system from a parolee and allowed a parolee child visitation, and failed to document a parolee viewed nude pictures on a mobile phone, but not the remaining allegations, and dismissed the parole agent.

Source: Office of the Inspector General Tracking and Reporting System.

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The OIG Made a Positive Impact in Its Monitoring of Cases

OIG attorneys closely monitored the performances of special agents, department attorneys, and hiring authorities throughout the course of their oversight of the department's internal investigations and employee disciplinary process. In so doing, we believe that we made a positive impact on the department's management of several cases we monitored and closed during this reporting period, a few of which are noteworthy.

- In one case, an officer allegedly exchanged sexually explicit photographs with a minor over social media and engaged in a sexual relationship with the minor. Several years later, the officer allegedly admitted to having a sexual relationship with the minor but lied to outside law enforcement regarding the extent of the relationship. Due to the remote date of the officer's exchange of sexually explicit photographs and sexual relationship with the minor, the department determined the deadline to take disciplinary action against the officer had passed. The department determined it was precluded by law from terminating the officer. The OIG concurred in part, but recommended the department take disciplinary action against the officer for dishonesty to outside law enforcement regarding the extent of his relationship with the minor. The department attorney and hiring authority agreed with the OIG's legal analysis and recommendation; the department served the officer with a notice of dismissal for dishonesty during an interview with outside law enforcement, and the officer resigned.
- In a second case, a sergeant allegedly failed to initiate security protocols after being informed by a female officer that an inmate committed an act of indecent exposure toward her, directed the officer not to report the indecent exposure, lied to a lieutenant, discussed details of a discrimination complaint after being directed not to discuss it, and lied to an associate warden. The department attorney recommended the Office of Internal Affairs special agent not interview the sergeant and the affected officer and instead recommended the special agent "complete our standard brief report format by summarizing relevant case doc's [*sic*]" The department attorney indicated further interviews were a "waste of state resources" because the sergeant faced a dismissal in another case.

The OIG disagreed with the department attorney's recommendation and rationale and elevated the matter to the department attorney's supervisor, who also consulted with her

supervisor. After considering the OIG's recommendation and rationale for the recommendation, the department attorney's supervisors agreed with the OIG and directed the department attorney to recommend the Office of Internal Affairs special agent interview the sergeant and the officer. The Office of Internal Affairs subsequently conducted the interviews, as the OIG recommended. By conducting the interviews, the Office of Internal Affairs was able to provide the hiring authority sufficient information for the hiring authority to make an informed decision on the allegations.

- In a third case, an officer allegedly engaged in sexual misconduct with an inmate. During the investigative findings and penalty conference, the department attorney advised the hiring authority that the officer's admission to the Office of Internal Affairs special agent in a companion criminal investigation was inadmissible and recommended the Office of Internal Affairs conduct another interview. In the OIG's opinion, the officer's admission was admissible and another interview would unnecessarily prolong the disciplinary process. The hiring authority agreed with the OIG and served the officer a notice of dismissal. Thereafter, the officer resigned before the disciplinary action took effect.

Recommendations

For the July to December 2018 reporting period, we offer the following recommendations to the department:

1. To ensure timely prosecutions of criminal cases, unless the prosecuting agency indicates it will not consider filing misdemeanor charges in the case, the Office of Internal Affairs should submit criminal cases to the prosecuting agency prior to the deadline to file misdemeanor charges.
2. To ensure timely processing of administrative cases, the OIG recommends the Office of Internal Affairs simultaneously open criminal and administrative investigations if criminal and administrative misconduct are implicated. The OIG recognizes that at times, a concurrent administrative investigation may compromise a criminal investigation. Therefore, the OIG recommends that the Office of Internal Affairs consult with the prosecuting agency at the beginning of the criminal investigation to determine whether the prosecuting agency objects to the department conducting a concurrent administrative investigation.
3. To ensure employees receive timely service of their disciplinary actions, the department should:
 - Re-assess its internal review process so that it can detect and prevent delays in processing disciplinary actions.
 - Rescind the Employment and Advocacy Prosecution Team's prior chief counsel's directive regarding service of disciplinary actions.

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Monitoring Internal Investigations and
the Employee Disciplinary Process of the
California Department of Corrections
and Rehabilitation

*Semi-Annual Report
July–December 2018*

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE of CALIFORNIA
June 2019

OIG