



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

November 2019

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

*Semiannual Report
January–June 2019*

Electronic copies of reports published by the Office of the Inspector General are available free in portable document format (PDF) on our website.

We also offer an online subscription service.

For information on how to subscribe,
visit www.oig.ca.gov.

For questions concerning the contents of this report,
please contact Shaun Spillane, Public Information Officer,
at 916-255-1131.

 Regional Offices

 Sacramento
 Bakersfield
 Rancho Cucamonga

November 25, 2019

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

Dear Governor and Legislative Leaders:

Enclosed is the Office of the Inspector General's report titled *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. This is the Office of the Inspector General's 29th semiannual report, as mandated by California Penal Code sections 6126 (a) and 6133 (b)(1). This report addresses the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee discipline cases that we monitored and closed between January 1, 2019, and June 30, 2019.

Beginning with this reporting period, we have implemented a new monitoring methodology to assess the department's internal investigations and its handling of employee discipline cases, as well as the three main participants in the process: hiring authorities (such as wardens), investigators from its Office of Internal Affairs, and its department attorneys. Our new methodology consists of six units of measure which we call performance indicators (indicators). We apply them to assess the following: (1) the hiring authorities' discovery and referral of employee misconduct allegations; (2) the Office of Internal Affairs' processing and analysis of misconduct referrals; (3) the investigators' performance when conducting internal investigations; (4) the hiring authorities' performance in making findings regarding the alleged misconduct and the processing of the cases; (5) the department attorneys' provision of legal advice during the Office of Internal Affairs' handling of the cases; and (6) the work of department advocates, mostly department attorneys, in litigating misconduct cases.

We concluded that the department's performance in conducting internal investigations and handling employee discipline cases was overall *satisfactory* in the 170 cases we monitored and closed between January 1, 2019, and June 30, 2019. We assessed the department's overall performance as *superior* in three cases, *satisfactory* in 135 cases, and *poor* in 32 cases. In the three cases in which the department performed extremely well, all involved participants functioned well during every step of the process. Likewise, in the cases in which we assessed the department's overall performance as *poor*, the functionality of departmental staff suffered in several areas. Departmental staff, therefore, appear to work symbiotically and cohesively in the cases we rated as *superior*, but not so in those we rated as *poor*.

In particular, hiring authorities performed adequately in discovering and referring employee misconduct allegations to the Office of Internal Affairs, but, as noted in previous semiannual reports, need to improve their timeliness in referring allegations to the Office of Internal Affairs, as they submitted timely referrals in only 77 percent of the cases.

The Office of Internal Affairs performed well in processing and analyzing referrals from hiring authorities, processing them timely in 98 percent of cases, and, in our opinion, made an appropriate decision regarding the referrals in 86 percent of cases. However, we identified that the department lacked a policy or procedure



for identifying and tracking referrals rejected by the Office of Internal Affairs and returned to hiring authorities for further inquiry. This void resulted in delays and increased the potential for staff misconduct to go unaddressed, as hiring authorities did not regularly conduct follow-up work concerning those referrals or delayed in doing so. Notably, we found that hiring authorities did not conduct or delayed conducting further inquiry in 12 of the 17 referrals the Office of Internal Affairs rejected and returned to the hiring authority for further inquiry. We also determined that the Office of Internal Affairs continues to unnecessarily limit the scope of investigations, as we noted in a prior report.

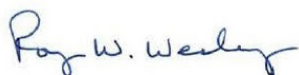
We found that, overall, the Office of Internal Affairs performed very well in conducting investigations. In 96 percent of cases, the Office of Internal Affairs conducted thorough investigations; in 99 percent of cases, the Office of Internal Affairs completed all necessary and relevant interviews; in all cases, used effective interviewing techniques; and, in 99 percent of cases, produced comprehensive investigative reports.

Once hiring authorities received the Office of Internal Affairs' completed investigative reports or the approval to proceed on misconduct allegations without the Office of Internal Affairs conducting an investigation, hiring authorities conducted investigative and disciplinary findings conferences in a timely manner for only 55 percent of cases. However, the department's policy regarding the time frame in which hiring authorities are required to hold these conferences and make findings lacks clarity and, therefore, we recommend that the department promulgate a specific policy in this regard. Even so, when hiring authorities ultimately held these conferences, whether timely or not, in the OIG's opinion, they made appropriate findings regarding the allegations and selected the appropriate disciplinary penalty in 93 percent of cases.

Another area of concern we identified is the timeliness with which the department—once it decides to discipline a peace officer—serves the notice advising the peace officer of the disciplinary action. In 60 percent of cases, the department did not serve disciplinary actions on peace officers in compliance with the departmental policy requiring they be served within 30 days of the decision to discipline the peace officer. Furthermore, the department delayed serving disciplinary actions in 63 percent of cases in which an employee was ultimately dismissed or resigned employment. These delays resulted in a cost to the department and taxpayers of \$150,352. In addition, during this reporting period, we examined the timeliness of the department's performance in cases we monitored in which the department dismissed an employee and focused, in particular, on four critical steps in the department's internal investigations and employee disciplinary process. We concluded that the department's delays as to these four critical steps in dismissal cases resulted in unnecessary costs to the department and taxpayers totaling \$313,941.

Finally, department attorneys performed well in providing legal advice to the Office of Internal Affairs concerning its investigations, providing appropriate legal advice to investigators in 98 percent of cases. However, department attorneys performed poorly in litigating employee discipline cases, as they contributed to the delayed service of disciplinary actions on peace officers. Specifically, department attorneys prepared the disciplinary actions in all 45 cases we reviewed in which the department delayed serving the disciplinary action on at least one peace officer.

Sincerely,



Roy W. Wesley
Inspector General

Contents

Illustrations	iv
Executive Summary	1
Introduction	9
Background	9
Scope and Methodology	12
Monitoring Results	23
The Department's Overall Performance in Investigating Employee Misconduct and in Handling Its Employee Disciplinary Process Was Satisfactory	23
<i>Indicator 1</i> The Performance by Hiring Authorities in Discovering and Referring Allegations of Employee Misconduct Was Satisfactory	28
<i>Indicator 2</i> The Performance by the Office of Internal Affairs in Processing and Analyzing Hiring Authority Referrals of Employee Misconduct Was Satisfactory	33
<i>Indicator 3</i> The Performance by the Office of Internal Affairs in Investigating Allegations of Employee Misconduct Was Satisfactory	41
<i>Indicator 4</i> The Performance by Hiring Authorities in Determining Findings regarding Alleged Misconduct and Processing the Misconduct Cases Was Poor	48
<i>Indicator 5</i> The Performance by Department Attorneys in Providing Legal Advice while the Office of Internal Affairs Processed Employee Misconduct Hiring Authority Referrals and Conducted Internal Investigations Was Satisfactory	57
<i>Indicator 6</i> The Performance of Department Attorneys and Employee Relations Officers in Providing Legal Representation during Litigation Was Poor	58
The Department Untimely Processed Dismissal Cases, Resulting in Approximately \$313,941 in Unnecessary Costs to the Department and to Taxpayers	62
The Office of Internal Affairs Continues to Needlessly Limit the Scope of Investigations and Should Conduct Interviews of All Employees Suspected of Committing Misconduct	70
The OIG Added Value in Its Monitoring of Cases	74
Recommendations	77

Illustrations

Figures

1. Decisions Made by the Office of Internal Affairs' Central Intake Unit from January through June 2019	14
2. Number of Cases the OIG Accepted for Monitoring among Cases the Office of Internal Affairs Opened for the Period from January through June 2019	15
3. Percentages of Each Case Type the OIG Accepted for Monitoring from January through June 2019	16
4. Types of Cases the OIG Monitored and Closed from January through June 2019	17
5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed from January through June 2019	18
6. Percentages of Monitored Cases the Hiring Authorities Referred to the Office of Internal Affairs within 45 Days	31
7. Timely Hiring Authority Referrals by Divisions; Division of Adult Institutions' Missions; and Other Hiring Authorities	32
8. Percentages of Cases with Timely Determinations Made by the Office of Internal Affairs' Central Intake Unit	34
9. Disagreements with Office of Internal Affairs' Decisions concerning Referrals in the 170 Cases the OIG Monitored and Closed from January through June 2019	36
10. Decision Letter from the Office of Internal Affairs	39
11. Emailed Message the Subject's Then-Wife Sent to the Subject's Departmental Email Account	43
12. Memorandum the Subject Sent to the Department regarding the Subject's Destroyed Mobile Phone	44
13. Number and Types of Deadly Force Used in Cases We Monitored and Closed from January through June 2019	46
14. Administrative Cases: Findings Determined by Hiring Authorities	49
15. Timeliness of Investigative and Disciplinary Findings Conferences by Divisions; Division of Adult Institutions' Missions; and Other Hiring Authorities	55

Tables

Terms Used in This Report	vi
1. Overall Results	3
2. Monitoring Criteria Used by the Office of the Inspector General	12
3. Ratings by Case Type: <i>Superior</i> , <i>Satisfactory</i> , and <i>Poor</i>	25
4. Assessment Indicators for 32 Cases Rated as <i>Poor</i>	26
5. Executive Review Cases	51
6. Costs Associated with Unnecessary Delays in Dismissal Cases	68
7. Detailed Information regarding Costs Associated with Unnecessary Delays in Dismissal Cases	69

Graphics

1. Lady Justice	v
2. The California Department of Corrections and Rehabilitation: Institutions and Parole Regions	viii

"Lady Justice" (page v): Adapted from an illustration at www.vecteezy.com

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



Terms Used in This Report

Case Management System	The California Department of Corrections and Rehabilitation's computer program and database that staff use to enter and maintain information regarding internal investigations and employee discipline cases.
Corrective Action	A documented nonadverse 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."
Department Operations Manual	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 attorneys in the California Department of Corrections and Rehabilitation's Office of Legal Affairs 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.

Continued on next page.

Terms Used in This Report (continued)	
Inquiry	The collection of preliminary information concerning an allegation of employee misconduct necessary to evaluate whether the matter should be referred to the Office of Internal Affairs' Central Intake Unit.
Investigative and Disciplinary Findings Conference	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case.
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.
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 that reviews hiring authority referrals regarding allegations of employee misconduct and which is responsible for ensuring 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.
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.
Vertical Advocate	A department attorney assigned to the Employment and Advocacy Prosecution Team of the California Department of Corrections and Rehabilitation's Office of Legal Affairs.

Source: The Office of the Inspector General.



California Department of Corrections and Rehabilitation Institutions and Parole Regions



CDCR Headquarters

Department of Corrections and Rehabilitation
1515 'S' St.
Sacramento, CA 95811

CDCR Training Center

Richard A. McGee Training Center
9850 Twin Cities Rd.
Galt, CA 95632

Parole Regions

North Parole Region South Parole Region

Adult Institutions

ABRV	FACILITY NAME	LOCATION
1	PBSP Pelican Bay State Prison	Crescent City
2	CCC California Correctional Center	Susarville
3	HDSP High Desert State Prison	Susarville
4	FSP Folsom State Prison	Represa
5	SAC California State Prison, Sacramento	Represa
6	CMF California Medical Facility	Vacaville
7	SOL California State Prison, Solano	Vacaville
8	MCSP Mule Creek State Prison	Ione
9	SC California State Prison, San Quentin	San Quentin
10	CHCF California Health Care Facility	Stockton
11	SCC Sierra Conservation Center	Jamestown
12	DVI Deuel Vocational Institution	Tracy
13	CCWF Central California Women's Facility	Chowchilla
14	VSP Valley State Prison	Chowchilla
15	CTF Correctional Training Facility	Soledad
16	SVSP Salinas Valley State Prison	Soledad
17	PVSP Pleasant Valley State Prison	Coalinga
18	CCR California State Prison, Corcoran	Corcoran
19	SATF Substance Abuse Treatment Facility	Corcoran
20	ASP Avenal State Prison	Avenal
21	NKSP North Kern State Prison	Delano
22	WSP Wasco State Prison	Wasco
23	KVSP Kern Valley State Prison	Delano
24	CMC California Men's Colony	San Luis Obispo
25	CCI California Correctional Institution	Tehachapi
26	LAC California State Prison, L.A. County	Lancaster
27	CIM California Institution for Men	Chino
28	CIW California Institution for Women	Corona
29	CRC California Rehabilitation Center	Norco
30	CVSP Chuckawalla Valley State Prison	Blythe
31	ISP Ironwood State Prison	Blythe
32	CAL Calipatria State Prison	Calipatria
33	CEN Centinela State Prison	Imperial
34	RJD RJ Donovan Correctional Facility	San Diego
*	CAC Cal City Correctional Center	California City

Juvenile Institutions

ABRV	FACILITY NAME	LOCATION
1	NAC N.A. Chaderjian Youth Correctional Facility	Stockton
2	OHC O.H. Close Youth Correctional Facility	Stockton
3	VYCF Ventura Youth Correctional Facility	Camarillo

Community Correctional Facilities

ABRV	FACILITY NAME	LOCATION
1	DCCF Delano CCF	Delano
2	GSMCCF Golden State Modified CCF	McFarland
3	CVMCCF Central Valley Modified CCF	McFarland
4	SMCCF Shafter Modified CCF	Shafter
5	TMCCF Taft Modified CCF	Taft
6	DVMCCF Desert View Modified CCF	Adelanto

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

Executive Summary

Pursuant to California Penal Code sections 6126 (a) and 6133, the Office of the Inspector General (OIG) is responsible for monitoring and reporting on the internal investigations and employee disciplinary process of the California Department of Corrections and Rehabilitation (the department). This is our 29th semiannual report and, herein, we present our assessment of the 170 employee misconduct cases OIG attorneys monitored and closed from January 1, 2019, through June 30, 2019.

In the past, the OIG reported on its monitoring of the department's employee misconduct cases using a methodology by which the department received a rating for the handling of each case as a whole, irrespective of which particular departmental unit or participant was responsible for the success or the less-than-optimal handling of each case.

Commencing with this reporting period, the OIG presents its assessment of the department's internal investigations and handling of employee misconduct cases using data and information garnered from a new monitoring methodology and tool. We developed this tool to measure the department's effectiveness in investigating and handling employee misconduct cases, and it divides the department's processes into six units of measurement that we refer to as performance indicators (indicators). These indicators focus on discrete functions performed by the different departmental units involved in handling these cases. These departmental units are hiring authorities, investigators from the Office of Internal Affairs, and department attorneys from the Office of Legal Affairs, Employment Advocacy and Prosecution Team.

Pursuant to the six indicators, we measured the performance of hiring authorities in discovering and referring employee misconduct cases to the Office of Internal Affairs and how well the hiring authorities made investigative and disciplinary findings regarding the alleged misconduct and processed the cases; the Office of Internal Affairs' performance in processing employee misconduct allegations from hiring authorities and in investigating the allegations; and the legal advice offered by department attorneys during the Office of Internal Affairs' handling of the cases and also the performance of department advocates, such as department attorneys and employee relations officers, in litigating employee disciplinary cases.



Concerning each of the indicators, OIG attorneys answered various compliance- or performance-related questions. In addition, they rated

each of the six indicators as *superior*, *satisfactory*, or *poor* based on the collective answers to the indicator questions. Finally, for each of the cases we monitored, we analyzed each case as a whole and determined an overall rating for each case, using the same descriptors.

From there, we assigned a point value to each of the indicator ratings and case ratings (discussed in detail in the scope and methodology section of this report), resulting in a percentage figure. We used these figures to arrive at an overall rating concerning the performance of the departmental units as to each of the six indicators and for the department, as a whole, in its treatment of internal investigations and the employee disciplinary process from January 1, 2019, through June 30, 2019.

The OIG concluded that, overall, the department performed in a *satisfactory* manner when conducting internal investigations and handling employee discipline cases for those cases we monitored and closed from January 1, 2019, through June 30, 2019. Specifically, hiring authorities received a *satisfactory* rating for discovering and referring allegations of misconduct to the Office of Internal Affairs, and even though they mostly made appropriate findings regarding alleged misconduct, they received an overall *poor* rating for their delayed processing of misconduct cases. The Office of Internal Affairs received a *satisfactory* rating for its processing and analysis of allegations from hiring authorities and for its performance in conducting investigations concerning the alleged misconduct. Lastly, department attorneys performed satisfactorily in providing legal advice to the Office of Internal Affairs, but poorly in their litigation of employee discipline cases. Table 1 on the next page shows the results.

Table 1. Overall Results

How effective was the department's investigative and employee disciplinary process?		SATISFACTORY	
1	<i>Discovery and Referral</i> How well did the department discover and refer allegations of employee misconduct?	Hiring Authority	 Satisfactory
2	<i>Initial Determination</i> How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities?	Office of Internal Affairs	 Satisfactory
3	<i>Investigation</i> How well did the department investigate allegations of employee misconduct?	Office of Internal Affairs	 Satisfactory
4	<i>Findings</i> How well did the department determine its findings for alleged misconduct and process cases?	Hiring Authority	 Poor
5	<i>Legal Advice during Investigation</i> How well did the department attorneys provide legal advice during the Office of Internal Affairs' Central Intake Panel meeting and the investigative process?	Department Attorney	 Satisfactory
6	<i>Legal Representation during Litigation</i> How well did the department provide legal representation during litigation?	Department Attorney or Employee Relations Officer	 Poor

Source: The Office of the Inspector General.

During the January through June 2019 reporting period, we monitored and closed 170 cases and rated three cases as *superior*, 135 as *satisfactory*, and 32 as *poor*. Significantly, regarding the 32 cases that received an overall rating of *poor*—which amounted to almost one-fifth of the total—we determined that multiple failures were distributed among departmental units. For these cases, both hiring authorities and department attorneys performed poorly in each of their assigned indicators, and although the Office of Internal Affairs received a *satisfactory* rating overall for these cases, its performance was marginal. For cases that received an overall rating of *poor*, the Office of Internal Affairs earned *satisfactory* ratings in the categories of processing and analyzing hiring authority misconduct allegations (71.88 percent) and conducting investigations (70.37 percent).

Therefore, we found that when the department earned an overall *poor* rating on a case, these were cases with a demonstrably *poor* performance by the three departmental units (hiring authorities, the Office of Internal Affairs, and department attorneys) involved in the case.

Hiring Authorities

The department's hiring authorities are authorized to hire, discipline, and dismiss employees under their authority. Within the department, a hiring authority can be the secretary, the general counsel, an undersecretary, or any chief deputy secretary, executive officer, chief information officer, assistant secretary, director, deputy director, associate deputy director, associate director, warden, superintendent, health care manager, regional health care administrator, or regional parole administrator, as noted in the Department Operations Manual.¹

For the January through June 2019 reporting period, we determined that hiring authorities performed satisfactorily in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs. However, we remain concerned about the timeliness of the referrals, an issue we previously reported on in our two prior semiannual reports. During this reporting period, hiring authorities timely submitted employee misconduct referrals in 77 percent of cases. Therefore, in 23 percent of cases, or almost a quarter of the cases which we monitored and closed, hiring authorities delayed in referring cases of suspected employee misconduct to the Office of Internal Affairs. This is a significant area of concern because a delay at the start of a case could impact the timeliness in which the Office of Internal Affairs conducts investigations and in which the department serves its employees with disciplinary actions. This is also a particular concern regarding peace officer cases as the individuals involved must be provided notice of disciplinary action, according to California Government Code section 3304 (d)(1), within one year of the discovery of the misconduct.

The other category in which we assessed hiring authorities was their effectiveness in making findings regarding the internal investigations and alleged misconduct, and in processing the cases. Hiring authorities performed poorly in processing the cases. Most notably, we found that hiring authorities timely conducted investigative and disciplinary findings conferences, in which they made decisions regarding the allegations and the appropriate penalty, in only 55 percent of cases. However, the department's policy concerning when hiring authorities must hold these conferences and make related findings is unclear, as it does not indicate within how many days hiring authorities must

1. Department Operations Manual, Section 33030.4 (hereafter: the DOM).

hold the conference and make their findings. Therefore, to eliminate confusion, the OIG recommends that the department issue a policy with specific enumerated time frames in which the conference is to be held and when a hiring authority is to make findings.

We determined, however, that once the hiring authorities held the conferences, they generally made appropriate decisions during those meetings. In the OIG's opinion, hiring authorities made appropriate findings regarding the allegations and selected the appropriate disciplinary penalty in 93 percent of cases.

Nonetheless, once hiring authorities decided to impose discipline, they regularly delayed in serving disciplinary actions on employees, and, in particular, peace officer employees. In 60 percent of cases, the department did not serve disciplinary actions on peace officers in compliance with the departmental policy requiring that these employees be served within 30 days of the decision to impose discipline.

The Office of Internal Affairs

The Office of Internal Affairs is another departmental unit involved in the department's handling of employee misconduct cases; this unit primarily comprises investigators it refers to as special agents. These special agents are responsible for processing hiring authority referrals of employee misconduct and for investigating the allegations. For the January through June 2019 reporting period, we concluded that the Office of Internal Affairs performed well in processing hiring authority referrals of alleged employee misconduct and in investigating those allegations. It performed particularly well in certain areas, such as the timeliness with which it processed hiring authority employee misconduct referrals (98 percent timely) and in how well it conducted investigations. As to the Office of Internal Affairs' performance in conducting investigations, in the OIG's opinion, it conducted thorough investigations in 96 percent of cases; in 99 percent of cases, the special agents completed all necessary and relevant interviews; in all cases, used effective interviewing techniques; and, in 99 percent of cases, the Office of Internal Affairs produced thorough investigative reports.

As the OIG has reported in previous semiannual reports, we continue to disagree with a fair amount of the decisions the Office of Internal Affairs makes concerning hiring authority referrals. In this report, that figure is 14 percent. While the nature of the disputes varied during this reporting period, such disputes ranged from our disagreement with the Office of Internal Affairs' decision to not add allegations to a case (such as dishonesty or code of silence allegations) to its decision to not conduct an investigation or an interview of the subject of an investigation.

Another area of concern is how quickly the Office of Internal Affairs completed investigations involving uses of deadly force by departmental staff. In the 19 deadly force investigation cases we monitored and closed during this reporting period, the Office of Internal Affairs completed only three cases (16 percent) within the 90-day time frame set forth in its procedures governing deadly force investigations.

As noted above, the Office of Internal Affairs performed well overall in processing employee misconduct referrals from hiring authorities. However, we have identified a deficiency in the manner in which the department handled referrals that the Office of Internal Affairs rejected and returned to hiring authorities for further inquiry (the first steps in an investigation, such as the initial interviews or collection of documents). These are cases the Office of Internal Affairs returned to a hiring authority to conduct further inquiry work before the Office of Internal Affairs decided whether to approve an investigation or reject a referral. The department does not have a policy or procedure in place to identify and track these cases and determine whether prison staff, under the direction of a hiring authority, completed the requested further inquiry. During this reporting period, the Office of Internal Affairs rejected and returned 17 cases to hiring authorities to conduct further inquiry. We determined in 12 of the 17 cases, hiring authorities did not conduct further inquiry or delayed in doing so until we asked about the cases.

Without a tracking mechanism in place, the potential exists for staff misconduct to go unaddressed as the department does not track whether the hiring authorities complete the additional requested work. Therefore, the OIG recommends that the department develop a procedure to identify and track the cases that the Office of Internal Affairs rejects and returns to hiring authorities for further inquiry.

We also found that the Office of Internal Affairs continued to needlessly limit the scope of internal investigations and not conduct interviews of subjects of investigations. Therefore, we renew our recommendation that the department revise its procedures for scoping investigations and that it interview all subjects of internal investigations.

Department Attorneys

The third departmental unit consists of department attorneys from its Office of Legal Affairs, Employment Advocacy and Prosecution Team. These individuals are responsible for providing legal representation to the department during internal investigations and the employee disciplinary process. The department refers to these attorneys as *vertical advocates*.

Overall, department attorneys performed satisfactorily in providing legal advice to the department during the Office of Internal Affairs' processing of employee misconduct referrals and during Office of Internal Affairs' investigations. They performed well, in particular, in providing advice to the Office of Internal Affairs while special agents conducted investigations. Department attorneys provided appropriate legal advice to special agents during the course of investigations in 98 percent of cases.

Once the department decided to discipline an employee, a department advocate handled the related litigation. The department advocate was either a department attorney or, in some less-serious cases, an employee who is not an attorney whom the department refers to as an *employee relations officer*. We found that department advocates did not perform well and delayed in litigating employee disciplinary cases. In 60 percent of cases, the department did not serve disciplinary actions on peace officers in compliance with the departmental policy requiring they be served within 30 days of the decision to discipline the peace officer. In these cases, department attorneys contributed to the delays by not expeditiously drafting the disciplinary actions and making them available to be served within 30 days or, as the department's legal representative, not ensuring that other departmental staff timely served the peace officers with the disciplinary actions. Furthermore, in 37 percent of cases, department attorneys prepared disciplinary actions that contained an incorrect legal reference or did not provide an advisement required by departmental policy. However, these latter failures were not fatal to the discipline cases.

In addition, in 21 percent of cases, department attorneys did not timely enter critical dates regarding deadlines to take disciplinary action into the department's database regarding employee disciplinary cases. In 11 percent of the cases, department attorneys entered incorrect information. This information regarding deadlines is critical because other departmental units rely on the information in the database when performing their respective duties during internal investigations and handling the employee disciplinary process.

8 | Monitoring the Internal Investigations and Employee Disciplinary Process

(This page left blank for reproduction purposes.)

Introduction

Background

California Penal Code sections 6126 (a) and 6133 mandate the Office of the Inspector General (OIG) monitor and report on the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Whenever a hiring authority reasonably believes employee misconduct or criminal activity may have occurred, the hiring authority must timely submit a request to the department's Office of Internal Affairs' Central Intake Unit requesting an investigation or requesting approval to address the allegations without an investigation.²

A Central Intake Panel, consisting of participants 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 advice to the Office of Internal Affairs. The OIG participates to monitor the process, to provide recommendations regarding the Office of Internal Affairs' decisions regarding hiring authority referrals, and to determine which cases the OIG 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. The possible actions are as follows:

- To conduct an administrative investigation.³
- To conduct a criminal investigation.⁴
- To conduct only an interview of the employee (or employees) suspected of misconduct and no other investigative activity.
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct.

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

3. Elsewhere in this report, we also refer to an *administrative investigation* as a *full administrative investigation* or a *full investigation*.

4. While a criminal investigation is conducted to investigate whether there is a criminal law violation (leading to a potential criminal conviction with incarceration, criminal fines, or probation), an administrative investigation is conducted, generally, 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).

- To reject the case without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred, or to reject the case and return it to the hiring authority to conduct further inquiry.⁵

The OIG monitors the Office of Internal Affairs' investigations and its interviews of employees suspected of misconduct that meet our monitoring criteria, as set forth on page 12, and determines the adequacy of the investigative work the Office of Internal Affairs conducts. We also assess the hiring authorities' performance in addressing allegations of misconduct and handling of the employee disciplinary process. We evaluate the department attorneys' performance in providing legal advice as the Office of Internal Affairs processes and investigates the allegations. We also monitor the performance of department advocates, including department attorneys and employee relations officers, who represent the department during the litigation of disciplinary actions.

We provide information for the 170 cases we monitored and closed from January through June 2019, in the case summaries for this report. They include assessments of the departmental units' performances in individual cases. We present the details regarding the administrative cases we monitored and closed from January through June 2019. These are cases in which the Office of Internal Affairs conducted an investigation or an interview 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.

These case summaries also include cases for which the Office of Internal Affairs did not conduct an investigation, but returned the case to the hiring authority to take direct action on the allegation or allegations. They also include cases for which the Office of Internal Affairs conducted an investigation, but the hiring authority did not sustain any allegations. Our report contains only those cases that were concluded during this reporting period. To protect the integrity of the process, the OIG only reports cases after all administrative proceedings are final.

Lastly, these summaries also present details concerning the criminal investigations we monitored and closed from January through June 2019.

5. An allegation inquiry is the collection of preliminary information concerning an allegation of employee misconduct necessary to evaluate whether the matter shall be referred to the Office of Internal Affairs' Central Intake Unit (DOM, Sections 31140.3 and 31140.14). Generally, a hiring authority conducts an initial inquiry before submitting an employee misconduct referral to the Office of Internal Affairs' Central Intake Unit. The Office of Internal Affairs sometimes requests that hiring authorities conduct additional inquiry.

The OIG reports these cases once the Office of Internal Affairs completes its criminal investigation and either refers the case to a prosecuting agency for filing consideration or determines there is insufficient evidence for a referral.

Beginning with this reporting period, we are deploying a new feature on the OIG website (www.oig.ca.gov) that will allow individuals to directly access discipline monitoring case summaries, as described above. Clicking on the image below will take the reader to the interactive dashboard and will allow one to utilize a number of filters (such as reporting period, region, or case rating) to select the case summaries for review. The dashboard includes summaries for cases the OIG monitored and closed from January 2019 to the present. Furthermore, as OIG attorneys conclude their monitoring of cases, new case summaries will be added to the dashboard on an ongoing, monthly basis.

OFFICE of the INSPECTOR GENERAL
INDEPENDENT PRISON OVERSIGHT

About Us | Publications | Services | Careers | Connect

Discipline Monitoring

Case Summaries

Case Summaries

Reporting Period: 2019-1 | Case Type: [ALL]

Division or Mission: [ALL] | Region: [ALL]

Allegation: [ALL] | Finding: [ALL]

Penalty: [ALL] | Case Rating: [ALL]

Incident Start Date: | Incident End Date: |

Reset Filters | Filtered Cases: 170

Incident Date
August 31, 1998

OIG Case Number
18-0027966-DM

Allegations
Dishonesty
Theft
Misuse of Authority
Confidential Information
Misuse of State Equipment or Property

Case Type
Administrative Investigation

Indicator Ratings*
Indicators 1-6
Satisfactory
*Ratings subject to change
Show Indicator Subquestions

Incident Summary
Between August 31, 1998, and September 20, 2015, a lieutenant allegedly falsified documents to have an inmate sentenced to life in prison and stole personal property from inmates. Between October 26, 2012, and October 24, 2013, the lieutenant allegedly misused state equipment when he accessed confidential information without a valid reason. On August 20, 2016, the lieutenant allegedly provided a sergeant confidential interview questions prior to the sergeant's promotional interview and between August 29, 2016, and August 31, 2016, allegedly chaired the sergeant's interview panel. On August 20, 2016, the sergeant allegedly received confidential interview questions and between August 29, 2016, and August 31, 2016, allegedly fraudulently obtained a promotion after receiving the confidential interview questions.

Disposition
The hiring authority found insufficient evidence to sustain the allegations. The OIG concurred.

Case Rating
The department's performance was *satisfactory*.

Indicator 1: How well did the department discover and refer allegations of employee misconduct?
The hiring authority discovered and referred allegations of employee misconduct to the Office of Internal Affairs in a *satisfactory* manner.

Indicator 2: How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities?
Overall, the Office of Internal Affairs' performance in analyzing allegations from the hiring authority was *satisfactory*.

Indicator 3: How well did the department investigate allegations of employee misconduct?
The Office of Internal Affairs investigated allegations of employee misconduct in a *satisfactory* manner.

Indicator 4: How well did the department determine its findings for alleged misconduct and process the case?
The hiring authority determined its findings for allegations of employee misconduct in a *satisfactory* manner.

Indicator 5: How well did the department attorney provide legal advice during the Office of Internal Affairs Central Intake Panel meeting and the Investigative process?
The department attorney provided legal advice to the Office of Internal Affairs and the hiring

QUICK LINKS:

Office of Governor GAVIN NEWSOM | C-ROB | California Department of Corrections and Rehabilitation

Office of the Inspector General
© Copyright State of California Office of the Inspector General 2019. All rights reserved.

Careers | Privacy Policy | Accessibility | Contact Us | Register to Vote

Scope and Methodology

Scope

The OIG monitored and assessed 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 monitored involved employees who were peace officers. We monitored the cases with the most serious allegations of misconduct and also focused on peace officer employee cases because peace officers are held to a higher standard, and their actions were the core focus of the *Madrid* case (889 F. Supp. 1146 (N.D. Cal. 1995)), which led to the statutes pursuant to which the OIG monitors the department's internal investigations and employee disciplinary process. The following table lists criteria we used to determine which cases to accept for monitoring.

Table 2. Monitoring Criteria Used by the Office of the Inspector General

<i>Madrid</i> -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 which could have resulted in, serious injury or death; or material misrepresentation during an internal 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).

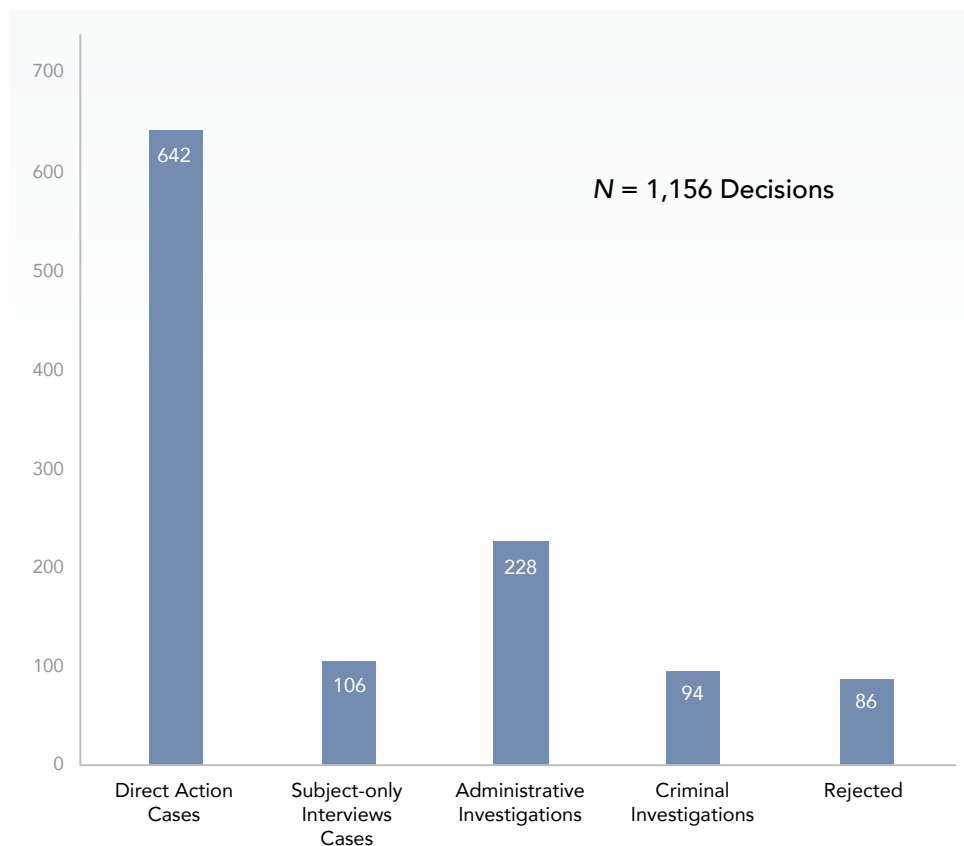
* *Madrid v. (Gomez) Cate*, 889 F. Supp. 1146 (N.D. Cal. 1995) (citation (URL) accessed on 11-19-19).

Between January 1, 2019, and June 30, 2019, hiring authorities submitted 1,135 referrals to the Office of Internal Affairs concerning suspected employee misconduct. During this period, the Office of Internal Affairs decided on the disposition of 1,156 referrals before July 1, 2019. The number of decisions exceeds the number of referrals because the Office of Internal Affairs also addressed referrals received before January 1, 2019.

Of the 1,156 referrals, the Office of Internal Affairs accepted 1,070. It rejected 86 referrals (7 percent) as demonstrating insufficient evidence of employee misconduct or criminal activity, or requiring further inquiry by the hiring authority. Of the 86 referrals the Office of Internal Affairs rejected, it returned 17 of those to the hiring authority for further inquiry.

Of the 1,070 referrals it accepted, according to the Office of Internal Affairs, its staff returned 642 (60 percent) to hiring authorities to take direct action on employee misconduct allegations without pursuing an investigation or interview of the employee. As to 106 referrals (10 percent), the Office of Internal Affairs approved interviews only of employees suspected of misconduct, but did not approve full administrative investigations. These are cases in which the Office of Internal Affairs determined that, in order for a hiring authority to make decisions regarding the allegation, it was only necessary to interview the subject of the investigation and not conduct any other investigative work, such as interviewing other witnesses or collecting other evidence. As to 228 referrals (21 percent), the Office of Internal Affairs deemed it necessary to conduct full administrative investigations, which included not only interviewing the employees suspected of misconduct, but also interviewing witnesses and obtaining additional documentary or forensic evidence. Lastly, the Office of Internal Affairs opened 94 out of the 1,070 referrals it approved (9 percent) as criminal investigations. Figure 1 on the next page reflects these statistics.

Figure 1. Decisions Made by the Office of Internal Affairs' Central Intake Unit from January through June 2019



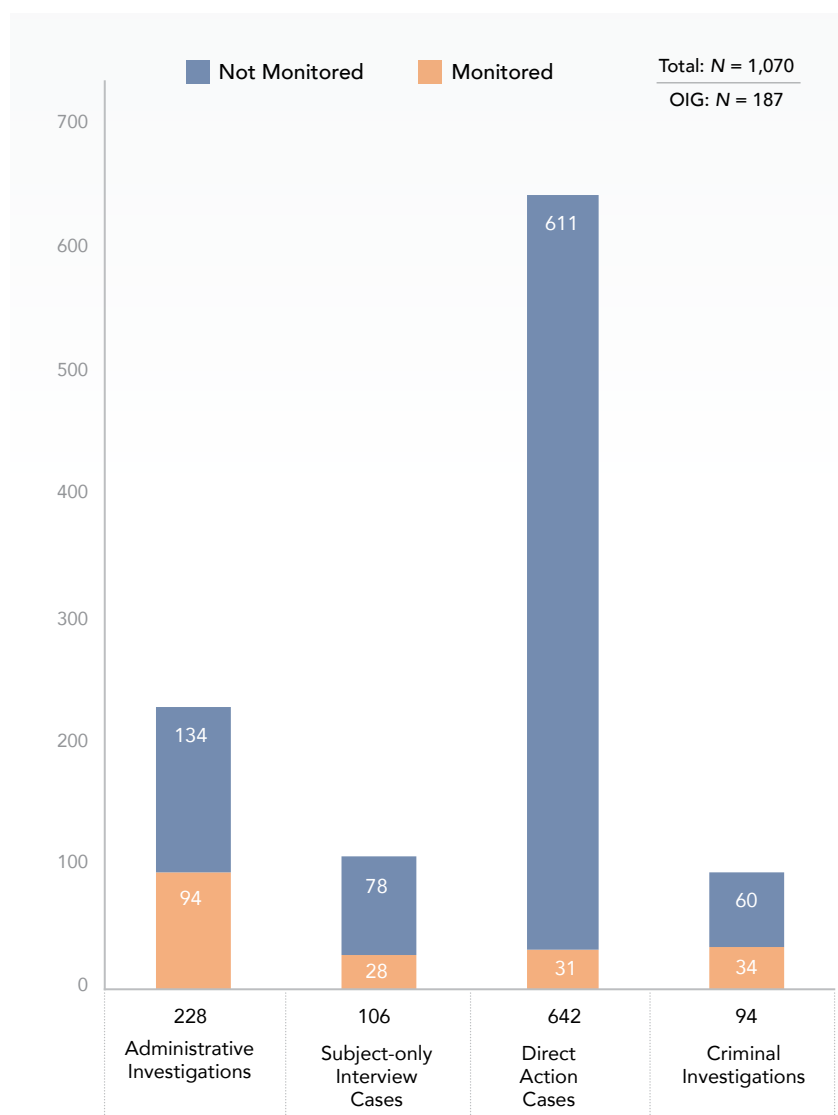
Source: The California Department of Corrections and Rehabilitation's Office of Internal Affairs.

As noted in the introductory paragraph on scope, the OIG only monitors cases involving serious misconduct, and a higher percentage of those cases require a full administrative investigation, as opposed to only an interview of the employee suspected of misconduct. Of the 1,070 referrals the Office of Internal Affairs accepted from January through June 2019, the OIG identified 187 of the cases (17 percent) for monitoring.⁶ If the Office of Internal Affairs approved a *referral*, it then became a *case*. Of these 187 cases, 94 cases (50 percent) involved administrative investigations, and 34 cases (18 percent) involved a criminal investigation. In 31 cases (17 percent) that the OIG identified for monitoring, the Office of Internal Affairs decided sufficient evidence was available for the hiring authority to make a determination

6. The OIG *began monitoring* these 187 cases that the Office of Internal Affairs approved for investigation or direct action in the January through June 2019 reporting period. Elsewhere in the report, we mention that we are reporting on 170 cases that the OIG *monitored and closed* during the January through June 2019 reporting period.

concerning the allegations or to take disciplinary action without an investigation; and in 28 cases (15 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. Figure 2 below reflects the number of cases opened by the Office of Internal Affairs from January through June 2019, the types of cases, and the number of cases the OIG accepted for monitoring as to each case.

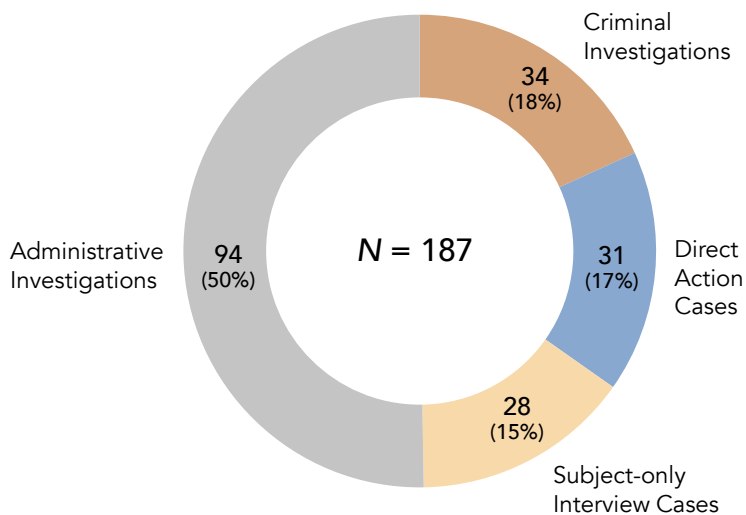
Figure 2. Number of Cases the OIG Accepted for Monitoring among Cases the Office of Internal Affairs Opened for the Period from January through June 2019



Source: The California Department of Corrections and Rehabilitation's Office of Internal Affairs.

Figure 3 below reflects the percentages as to each case type we accepted during the monitoring period.

Figure 3. Percentages of Each Case Type the OIG Accepted for Monitoring from January through June 2019

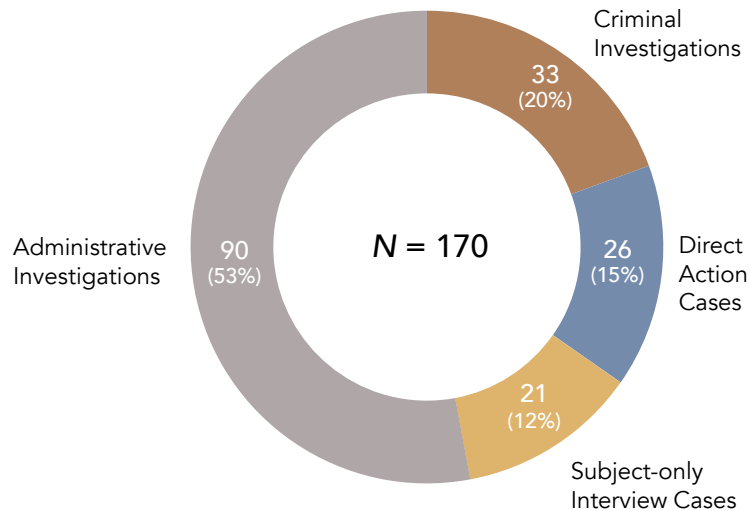


Source: The Office of the Inspector General Tracking and Reporting System.

This report provides an assessment of 170 cases the OIG monitored and closed from January 1, 2019, through June 30, 2019. The department alleged administrative misconduct in 137 cases, and the remaining 33 involved alleged employee criminal activity. Among the 170 cases we monitored and closed, 147 involved peace officers, 20 involved employees who were not peace officers, and three involved both peace officers and employees who were not peace officers.

Figure 4 below reflects the percentages of case types the OIG monitored, closed, and is reporting for the January through June 2019 period.

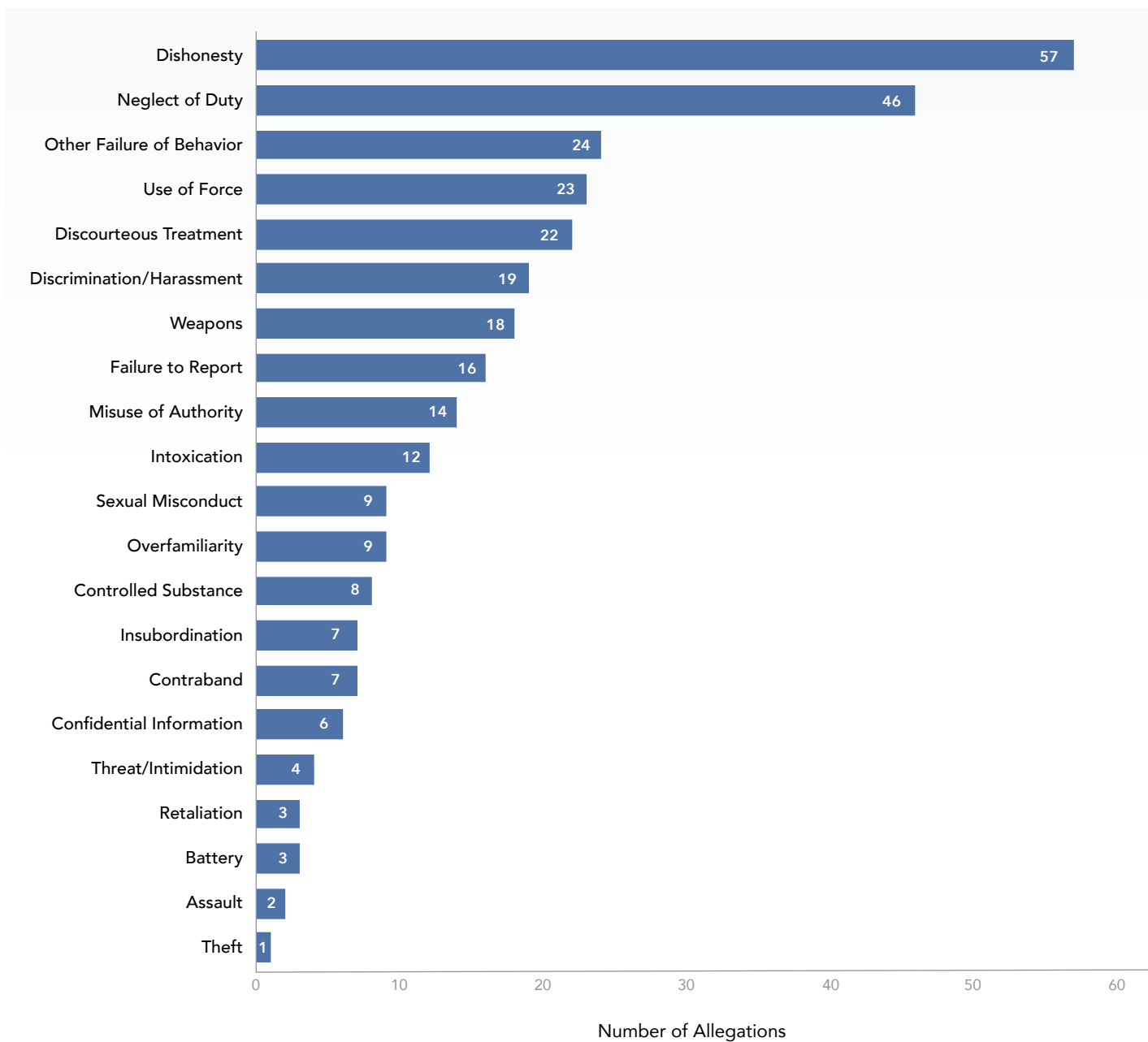
Figure 4. Types of Cases the OIG *Monitored* and *Closed* from January through June 2019



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

Figure 5 on the next page lists the types of allegations in the administrative cases we monitored and closed from January through June 2019. The total is greater than the number of cases we monitored and closed because a case may have included multiple allegations of differing types. For example, in one case, the department may have alleged that an officer engaged in sexual misconduct with an inmate, introduced marijuana 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.

Figure 5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed from January through June 2019



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

Methodology

The Office of the Inspector General monitors the department's adherence to its policies and procedures as well as to best practices concerning investigations and the handling of employee disciplinary cases. In the past, the OIG reported on its monitoring of the department's alleged employee misconduct cases utilizing a methodology in which the department, as a whole, received a rating for the handling of each case, irrespective of which particular departmental unit was responsible for the success or the mishandling of each case. This methodology did not allow us, the department, the public, or other stakeholders to distinguish which departmental units performed well and those that did not.

Toward that end, the OIG developed a new monitoring methodology and a tool to use in distilling the department's investigative and discipline processes into six elements for assessment; as noted in the Executive Summary, we label these our six performance indicators (indicators). These indicators focus on discrete functions or steps the primary departmental units undertake when pursuing their internal investigations and the employee disciplinary process. The three units are the hiring authorities, the Office of Internal Affairs, and the department attorneys. We describe our indicators below:

- **Indicator 1** addresses how well a hiring authority discovered and referred allegations of misconduct to the Office of Internal Affairs, including the timeliness of the referral and the quality of the inquiry preceding the referral.
- **Indicator 2** addresses how well the Office of Internal Affairs' Central Intake Unit processed the hiring authority's referral, including the Office of Internal Affairs' Central Intake Unit special agent's analysis of the referral, the Office of Internal Affairs' decision regarding the referral, and the timeliness of the decision.
- **Indicator 3** addresses both the timeliness and effectiveness of the Office of Internal Affairs' performance in conducting investigations.
- **Indicator 4** addresses the hiring authority's performance (after the Office of Internal Affairs returned the case subsequent to an investigation or interview or after authorizing the hiring authority to take direct action on the allegations), including the hiring authority's findings on the allegations, identification of the appropriate disciplinary penalty, and the service of the disciplinary action.

- **Indicator 5** addresses the department attorney's performance in providing legal advice to the Office of Internal Affairs as special agents processed and analyzed hiring authority employee misconduct referrals and investigated allegations.
- **Indicator 6** addresses how well the department attorney (or employee relations officer) represented the department during litigation, including the drafting of the disciplinary action and advocacy during administrative hearings before the State Personnel Board.

Concerning each indicator, the OIG developed a series of compliance- or performance-related questions. The OIG attorneys who monitored the cases answered the questions and, based on the collective answers, rated each of the six indicators for each case as *superior*, *satisfactory*, or *poor*. Then, using the same rating descriptors, our attorneys determined an overall rating for each case they monitored.

The rating for each indicator is based on the department's compliance with its own policies regarding internal investigations and the employee disciplinary process, combined with the OIG's opinion regarding the quality of the department's handling of a case from referral, investigation (if any), to the completion of any appeals process if a hiring authority takes disciplinary action. The OIG understands that procedural errors do not necessarily render the department's performance as *poor*. However, we may assign a *poor* rating when major or multiple departures from the process occur because such departures could cause breakdowns that lead to inefficiencies or delays, increase the potential for harm, or result in an unnecessary cost to the department and to taxpayers. We may also assess a departmental unit's performance as *poor* if, in our opinion, the departmental unit made a significant error or caused identifiable harm or detriment to the case.

To arrive at meaningful data for the OIG to monitor during this reporting period and to track over time, we assigned a numerical point value to each of the individual indicator ratings and to the overall rating for each case. The point system is as follows:

Superior 4 points

Satisfactory 3 points

Poor 2 points

We then added the collective value of the assigned points and divided the result by the total number of points possible to arrive at a weighted average score. To illustrate how this scoring method works, consider a hypothetical example consisting of 10 cases. The maximum point value—the denominator—would be 40 points (10 cases multiplied by 4 points). If the department scored one *superior* result, seven *satisfactory* results, and two *poor* results, its raw score—the numerator—would be 29 points. To arrive at the weighted average score, we would then divide 29 by 40, yielding a score of 72.5 percent. The formula for the hypothetical situation is given in the equation below.

Equation. Scoring Methodology

$$\frac{[(1 \text{ superior} \times 4 \text{ points}) + (7 \text{ satisfactory} \times 3 \text{ points}) + (2 \text{ poor} \times 2 \text{ points})]}{(10 \text{ cases} \times 4 \text{ points})}$$

Finally, we assigned a rating of *superior* to weighted averages that fell between 100 percent and 80 percent, *satisfactory* to weighted averages that fell between 79 percent and 70 percent, and *poor* to weighted averages that fell between 69 percent and 50 percent.⁷ Thus, using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent.

Results & Percentages		
Superior	Satisfactory	Poor
100%–80%	79%–70%	69%–50%

7. As we assign a minimum of two points to each rating, the minimum weighted average percentage value is 50 percent.

(This page left blank for reproduction purposes.)

Monitoring Results

The Department's Overall Performance in Investigating Employee Misconduct and in Handling Its Employee Disciplinary Process Was *Satisfactory*

The OIG found that the department's overall performance in investigating allegations of employee misconduct and handling its employee disciplinary process was *satisfactory*. The process began when the hiring authority discovered potential misconduct and referred a case to the Office of Internal Affairs, or when the Office of Internal Affairs opened a case on its own. It concluded when one of the following occurred:

1. the hiring authority sustained an allegation and imposed discipline and the employee either:
 - a. accepted the penalty; or
 - b. filed an appeal, and the resulting litigation at the State Personnel Board or in the California courts was resolved; or
 - c. entered into a settlement regarding the disciplinary action; or
2. the hiring authority sustained an allegation, but later withdrew the case; or
3. the hiring authority decided to impose discipline, but the employee resigned before the hiring authority imposed discipline; or
4. the hiring authority determined there was insufficient evidence to sustain the allegations or that the allegations were unfounded.

The department's handling of a criminal case ended when the Office of Internal Affairs completed its criminal investigation and either submitted the investigation for filing consideration to a prosecuting agency, such as a county district attorney's office, 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 concluded there was insufficient evidence for a criminal referral.

The OIG's overall assessment of the department's effectiveness in handling cases involving investigations into employee misconduct and

the employee disciplinary process is based on a cumulative assessment of our six identified indicators. Two indicators are assigned to each of three involved departmental units: the hiring authority, the Office of Internal Affairs, and the department attorney. The OIG's rating for each of the six indicators was based on the answers to specific compliance- or performance-related questions. To answer the questions, we used the standards outlined in the Department Operations Manual and other established procedures, such as the Office of Internal Affairs' Field Guide and its deadly force investigations procedures memoranda, and also our opinion.⁸

In assessing the hiring authority's performance, we used information from answers to **Indicator 1** to determine how well the hiring authority discovered and referred allegations of employee misconduct to the Office of Internal Affairs and **Indicator 4** to assess how well the hiring authority determined its findings regarding alleged misconduct. **Indicator 4** did not apply in cases involving criminal investigations because the hiring authority did not make investigative and disciplinary findings in criminal cases.

In assessing the Office of Internal Affairs' performance, we used information from answers to **Indicator 2** to assess how well the Office of Internal Affairs' Central Intake Unit analyzed hiring authority referrals of employee misconduct and **Indicator 3** to assess how well the Office of Internal Affairs investigated allegations of employee misconduct or conducted interviews of the employee suspected of misconduct. If the Office of Internal Affairs did not conduct an administrative or criminal investigation, or interview the employee suspected of misconduct, **Indicator 3** did not apply.

We used information from the two remaining indicators to assess the performance of department attorneys, if any were assigned.⁹ We used information from answers to **Indicator 5** to assess how well the department attorney provided legal advice as the Office of Internal Affairs processed hiring authority employee misconduct referrals and conducted investigations, and also how well the department attorney provided legal advice during the investigative and disciplinary findings conference the hiring authority conducted. In **Indicator 6**, we assessed how well the department attorney (or employee relations officer, if the case was not assigned to a department attorney) handled employee discipline litigation.

8. The DOM is defined in the table of [terms used in this report](#).

9. The department does not assign an attorney to every internal investigation or employee discipline case.

In this reporting period, the OIG assessed the majority of cases as *satisfactory*, and the department's overall performance as also *satisfactory*. We assessed the department's overall performance as *superior* in three cases, *satisfactory* in 135 cases, and *poor* in 32 cases. Table 3 below displays the department's overall ratings by case type.

Table 3. Ratings by Case Type: Superior, Satisfactory, and Poor

Case Type	Superior	Satisfactory	Poor	Total
Full Administrative Investigation	4% (3 cases)	72% (55 cases)	24% (18 cases)	100% (76 cases)
Criminal Investigation	None	93% (26 cases)	7% (2 cases)	100% (28 cases)
Direct Action	None	81% (21 cases)	19% (5 cases)	100% (26 cases)
Direct Action with Subject Interview	None	81% (17 cases)	19% (4 cases)	100% (21 cases)
Administrative Use of Deadly Force	None	86% (12 cases)	14% (2 cases)	100% (14 cases)
Criminal Use of Deadly Force	None	80% (4 cases)	20% (1 case)	100% (5 cases)
Totals	2% (3 cases)	79% (135 cases)	19% (32 cases)	100% (170 cases)

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

As noted above, we rated the department's overall performance as *satisfactory* in conducting internal investigations and handling employee discipline cases. The department garnered an overall 70.74 percentage score, meaning that it narrowly achieved an overall *satisfactory* rating. We assessed almost one-fifth of the cases we monitored, 32 of 170 cases, as *poor*, overall. The indicator ratings for the 32 cases we rated as *poor* can be seen in Table 4 on the next page.

Table 4. Assessment Indicators for 32 Cases Rated as Poor

		Ratings						Case Rating
		Superior	Satisfactory	Poor	Legal Advice during Investigation	Legal Representation during Litigation		
N = 32								
OIG Case Number	Discovery and Referral	Initial Determination	Investigation	Findings	Legal Advice during Investigation	Legal Representation during Litigation		Case Rating
North	17-0022084-DM	■	■	■	■	■	■	■
	17-0023948-DM	■	■	■	■	■	■	■
	17-0024055-DM	■	■	■	■	■	■	■
	17-0024323-DM	■	■	■	■	■	■	■
	18-0025473-DM	■	■	■	■	■	■	■
	18-0025565-DM	■	■	■	■	■	■	■
	18-0025642-DM	■	■	■	■	■	■	■
	18-0025833-DM	■	■	■	■	■	■	■
	18-0026279-DM	■	■	■	■	■	■	■
	18-0026404-DM	■	■	■	■	■	■	■
	18-0026405-DM	■	■	■	■	■	■	■
	18-0026421-DM	■	■	■	■	■	■	■
	18-0026626-DM	■	■	■	■	■	■	■
	18-0026631-DM	■	■	■	■	■	■	■
	18-0026648-CM	■	■	■	■	■	■	■
	18-0026867-DM	■	■	■	■	■	■	■
18-0027652-DM	■	■	■	■	■	■	■	
Central	16-0002084-DM	■	■	■	■	■	■	■
	17-0024620-DM	■	■	■	■	■	■	■
	18-0025410-DM	■	■	■	■	■	■	■
	18-0025411-CM	■	■	■	■	■	■	■
	18-0025697-DM	■	■	■	■	■	■	■
	18-0026037-DM	■	■	■	■	■	■	■
	18-0026570-DM	■	■	■	■	■	■	■
	18-0026787-DM	■	■	■	■	■	■	■
	18-0026869-DM	■	■	■	■	■	■	■
	18-0027680-DM	■	■	■	■	■	■	■
South	16-0001781-DM	■	■	■	■	■	■	■
	18-0025637-DM	■	■	■	■	■	■	■
	18-0025882-CM	■	■	■	■	■	■	■
Other	18-0027565-DM	■	■	■	■	■	■	■
	18-0027664-DM	■	■	■	■	■	■	■

Notes: The first column on the left-hand side of the table refers to the region in which the cases originated. **Other** refers to one case from the department's headquarters and another case from the Prison Industry Authority. A blank space in a column indicates this category was not applicable.

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

In cases we assessed as *poor*, it appears that the three primary departmental units involved in the department's internal investigations and employee disciplinary process (hiring authorities, the Office of Internal Affairs, and the department attorneys) all contributed to the *poor* rating. While the overall negative rating in cases rated *poor* does not appear to be attributable to any one departmental unit, in a significant amount of cases, all departmental units were responsible for the overall *poor* rating, as seen in the table on the previous page.

For the 32 cases we rated overall *poor*, in four cases, the OIG assessed all three departmental units' performances as *poor*. The following examples highlight cases in which all departmental units performed poorly:

- In one case, a hiring authority sustained allegations that an officer unnecessarily struck an inmate several times with a baton and lied about the incident. The Office of Internal Affairs did not initially open an investigation and did not add a dishonesty allegation; and the hiring authority did not hold a timely investigative and disciplinary findings conference. The department attorney was not prepared for the conference and did not respond to more than 10 inquiries from the hiring authority to reschedule the conference. The department also served the disciplinary action on the officer, whom the hiring authority decided to dismiss, 62 days after the decision, or 32 days after policy required.
- In a second case, a hiring authority sustained allegations and imposed a 5-percent salary reduction for three months against a sergeant who inappropriately sent draft reports to two officers. The special agent did not confer with the OIG before finalizing an investigation plan, did not notify the OIG of witness interviews until after conducting the interviews, and took three months after completing the final interview to draft and finalize the investigative report. The hiring authority did not timely conduct the investigative and disciplinary findings conference, and delayed serving the disciplinary action until 86 days after the decision, or 56 days after policy required. The department attorney did not contact the OIG to discuss the elements of a thorough investigation, did not provide the OIG with a summary of critical discussions regarding the draft investigation report, and did not provide written confirmation of the matters discussed during the investigative and disciplinary findings conference. In the OIG's opinion, the department attorney gave poor legal advice to the hiring authority that there was insufficient evidence to sustain the allegation. The State Personnel Board ultimately upheld the allegation.

Indicator Score
Satisfactory
 (73.38%)

Superior
 14 cases

Satisfactory
 131 cases

Poor
 25 cases

Indicator 1: The Performance by Hiring Authorities in Discovering and Referring Allegations of Employee Misconduct Was Satisfactory

Among cases we monitored and closed from January through June 2019, hiring authorities' performance in discovering and referring allegations of employee misconduct was *satisfactory*. The OIG assessed the hiring authorities' performance as *superior* in 14 cases, *satisfactory* in 131 cases, and *poor* in 25 cases. We based our assessment on the hiring authority's handling of inquiries that preceded the referrals of employee misconduct cases to the Office of Internal Affairs and the timeliness of those referrals. We assessed the timeliness based on departmental policy and on procedures set forth in a June 20, 2014, Office of Internal Affairs memorandum, which provides that hiring authorities must refer matters of alleged employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.¹⁰

Although we determined that the hiring authorities' performance in discovering and referring allegations of misconduct was *satisfactory*, hiring authorities continued to delay submitting referrals to the Office of Internal Affairs, a continuing issue we noted in previous reports. For the January through June 2019 reporting period, hiring authorities were late in referring alleged employee misconduct cases to the Office of Internal Affairs 23 percent of the time, only a slight improvement from the 24 percent for the prior reporting period of July through December 2018.

The hiring authority's late referral of allegations of misconduct was the primary cause for *poor* ratings in this indicator. In all 25 cases the OIG assessed as *poor* in this indicator, the hiring authority untimely referred allegations of employee misconduct to the Office of Internal Affairs. Although a late referral does not necessarily deem the indicator *poor*, in some of these cases, the OIG found the delays unreasonably excessive. For all cases we monitored during this reporting period, the delays by hiring authorities in referring suspected employee misconduct ranged from only one day beyond what policy required to 256 days thereafter.

On a positive note, in all 14 cases in which the OIG assessed this indicator as *superior*, the hiring authorities promptly referred the allegations of employee misconduct to the Office of Internal Affairs. For example, in one case the hiring authority referred the matter to the Office of Internal Affairs in just two days, and in another, in five days after the department learned of the potential misconduct.

10. Refers to DOM, Section 33030.5.2, which sets forth that hiring authorities are to submit employee misconduct referrals to the Office of Internal Affairs' Central Intake Unit, and the Office of Internal Affairs' Memorandum dated June 20, 2014, which sets forth the time frames for hiring authorities to submit referrals.

The OIG identified that hiring authorities delayed referring 52 percent of the cases involving allegations of unreasonable use of force, which was 31 percent of all delayed referrals. The following are case examples of delayed referrals involving allegations of unreasonable use of force:

- In one case, an officer allegedly intentionally pushed his body into an inmate, striking the inmate's head and neck area; directed profanity toward an inmate; threatened to sexually assault the inmate; and failed to document his use of force. In the same case, a sergeant allegedly failed to report the inmate's allegations that the officer used unreasonable force and threatened to sexually assault him. A second officer allegedly failed to report the first officer's comments to the inmate, and the second officer and a dentist allegedly failed to report the inmate's allegations that the first officer threatened to sexually assault the inmate. The hiring authority did not refer the matter to the Office of Internal Affairs until 105 days after the department learned of the alleged misconduct, 60 days after policy required.
- In a second case, an officer allegedly unnecessarily punched an inmate and, three weeks later, punched a different inmate and made disparaging remarks to him. The hiring authority did not refer the matter to the Office of Internal Affairs until 85 days after the department learned of the misconduct, 40 days after policy required.
- In a third case, an officer allegedly slammed an inmate's head against a wall on multiple occasions. The hiring authority did not refer the matter to the Office of Internal Affairs until 78 days after the department learned of the alleged misconduct, 33 days after policy required.

The hiring authorities delayed in referring other serious allegations to the Office of Internal Affairs, not just those involving unreasonable use of force. The following examples highlight delayed referrals in cases involving other serious allegations of misconduct:

- In one case, an officer allegedly video-recorded himself and an office technician engaging in a sexual act and distributed the recording without the office technician's knowledge or consent. The hiring authority did not refer the matter to the Office of Internal Affairs until 192 days after learning of the alleged misconduct, 147 days after policy required.

- Another case involved allegations that an officer sent sexually explicit messages to his 14-year-old step-daughter soliciting sex. The hiring authority did not refer the matter to the Office of Internal Affairs until 122 days after learning of the alleged misconduct, 77 days after policy required.

In some cases, delayed referrals by hiring authorities postponed an employee's eventual separation from the department. The following cases illustrate this occurrence:

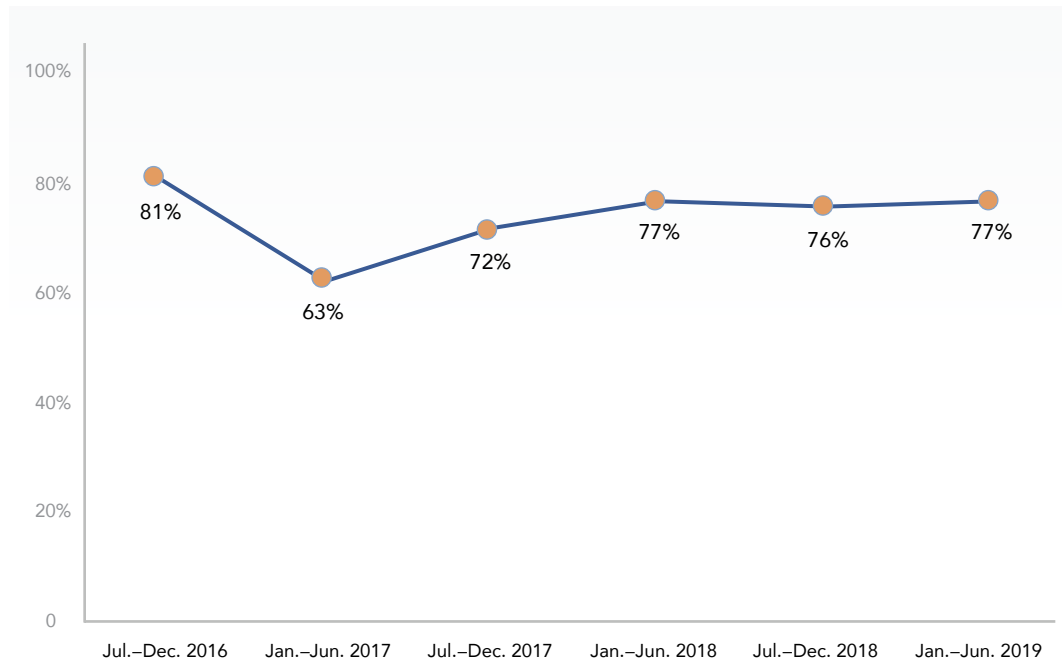
- A youth counselor allegedly engaged in an overly familiar relationship with two wards, failed to complete training, and inappropriately provided a ward with clothing and food. The hiring authority referred the matter to the Office of Internal Affairs 121 days after learning of the alleged misconduct, 76 days after policy required. The youth counselor eventually resigned, pending her interview with the Office of Internal Affairs.
- In another case, an officer allegedly allowed approximately 30 inmates to have an unauthorized party for a deceased gang member in a secured housing unit, released the inmates into the secured housing yard for the party without searching them or notifying a sergeant or lieutenant, and delivered a package prepared by inmates to another inmate in an administrative segregation unit as a reward for the inmate's involvement in a homicide. The hiring authority did not refer the matter to the Office of Internal Affairs until 47 days after policy required. During his Office of Internal Affairs' interview, the officer admitted that an inmate told him the inmates had been drinking inmate-manufactured alcohol during the party, he did not issue the inmates a rules violation report, and he made no effort to identify the inmates who had been drinking or to search the unit for additional inmate-manufactured alcohol. The hiring authority decided to dismiss the officer. During the officer's *Skelly* (predeprivation) hearing,¹¹ when asked the date he last issued a rules violation report to an inmate and whether he should have issued a rules violation report in this instance, he replied, "Shit, I don't know," and "I don't read Title 15, so I don't know." Regarding the allegation that he jeopardized the safety and security of the institution by not searching the

11. *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (citation accessed on 11-19-19).

inmates, the officer indignantly stated, “I didn’t put staff in jeopardy, and I don’t give a shit about inmates.” The officer eventually entered into a settlement agreement wherein he agreed to resign in lieu of termination. The OIG agreed with the settlement agreement.

Figure 6 below reflects the percentages of timely hiring authority referrals statewide over the last six reporting periods.

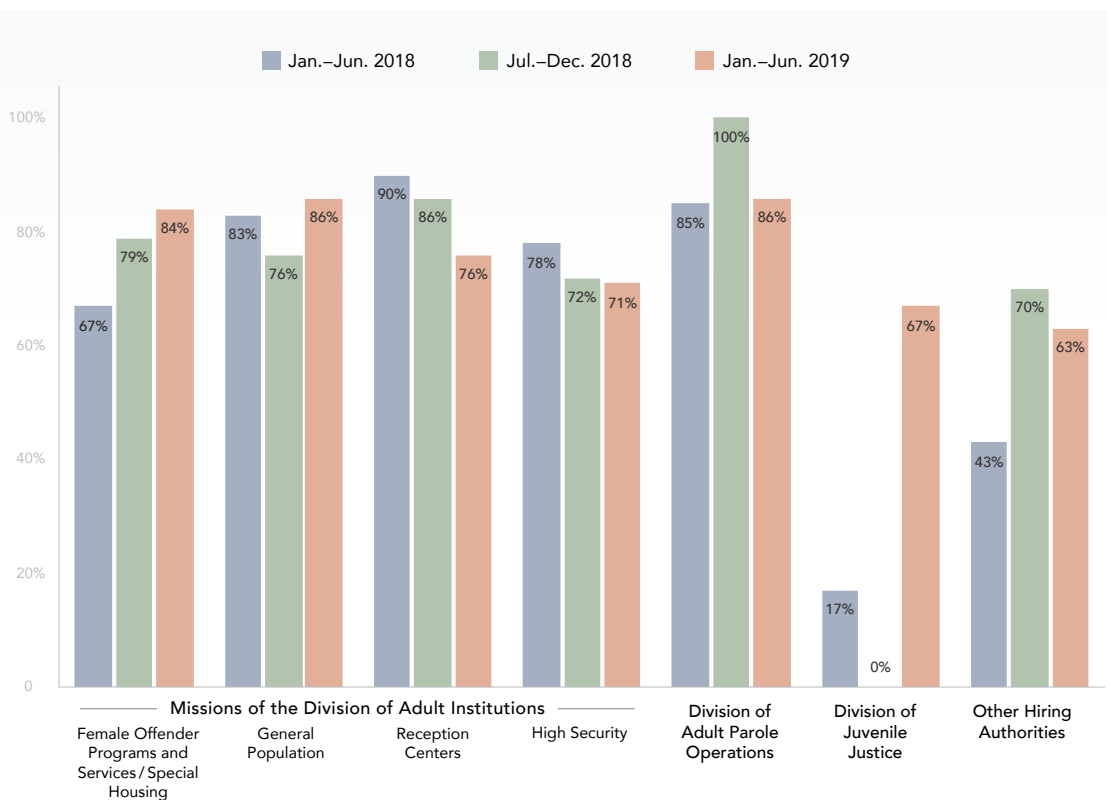
Figure 6. Percentages of Monitored Cases the Hiring Authorities Referred to the Office of Internal Affairs within 45 Days



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

Figure 7 below presents specific information regarding hiring authority referrals by divisions and also by the Division of Adult Institutions' missions, as established by the department, for the reporting period of January through June 2019, as well as for the two prior reporting periods. The OIG reports the timeliness of hiring authority referrals by division and mission because the department is divided into different divisions, such as the Division of Adult Institutions or the Division of Adult Parole Operations, with a separate director assigned to oversee each division. In addition, regarding the Division of Adult Institutions, the department groups prisons into different collectives of institutions, called *missions*, with a separate associate director assigned to oversee each mission. The principal missions in the Division of Adult Institutions are *Female Offender Programs and Services/Special Housing*, *General Population*, *Reception Centers*, and *High Security*.

Figure 7. Timely Hiring Authority Referrals by Divisions; Division of Adult Institutions' Missions; and Other Hiring Authorities



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

The performance by hiring authorities from the Division of Adult Institutions' *General Population* mission in timely referring suspected employee misconduct to the Office of Internal Affairs improved, rising from a rate of 76 percent during the July through December 2018 reporting period to 86 percent during January through June 2019. The Division of Juvenile Justice's performance also improved, rising from 17 percent and zero percent in the previous two reporting periods, respectively, to 67 percent in this reporting period. Specifically, the hiring authorities from the Division of Juvenile Justice timely referred two of three cases to the Office of Internal Affairs.

Indicator 2: The Performance by the Office of Internal Affairs in Processing and Analyzing Hiring Authority Referrals of Employee Misconduct Was *Satisfactory*

Following hiring authorities' discovery and referrals of employee misconduct, the Office of Internal Affairs processed and analyzed the referrals and allegations. The Office of Internal Affairs' performance in processing and analyzing allegations from hiring authorities was *satisfactory*. The OIG assessed the Office of Internal Affairs' performance as *satisfactory* in 158 cases and *poor* in 12 cases.

Departmental policy requires the Office of Internal Affairs to reach a decision regarding each hiring authority referral within 30 days of receipt. To that end, a Central Intake Panel led by the Office of Internal Affairs met weekly to review referrals submitted from hiring authorities throughout the department. Before the weekly meeting, a special agent assigned to the Office of Internal Affairs' Central Intake Unit reviewed the hiring authority's referral. Next, the special agent prepared a written analysis that set forth his or her belief as to the appropriate subjects and appropriate allegations. Finally, the special agent recommended whether the Office of Internal Affairs should approve an administrative or criminal investigation; only interview the subject of the investigation; return the case to the hiring authority without investigating or interviewing the employee who was the subject of the investigation; or reject the referral.

OIG attorneys reviewed all referrals and the special agents' analyses, attended each weekly meeting, provided recommendations to the department, and identified cases for OIG monitoring.

For this indicator, we based our assessment on the Office of Internal Affairs' Central Intake Unit special agent's analysis of the hiring authority's referral, the special agent's recommendation regarding

Indicator Score
Satisfactory
(73.24%)

Superior
Zero cases

Satisfactory
158 cases

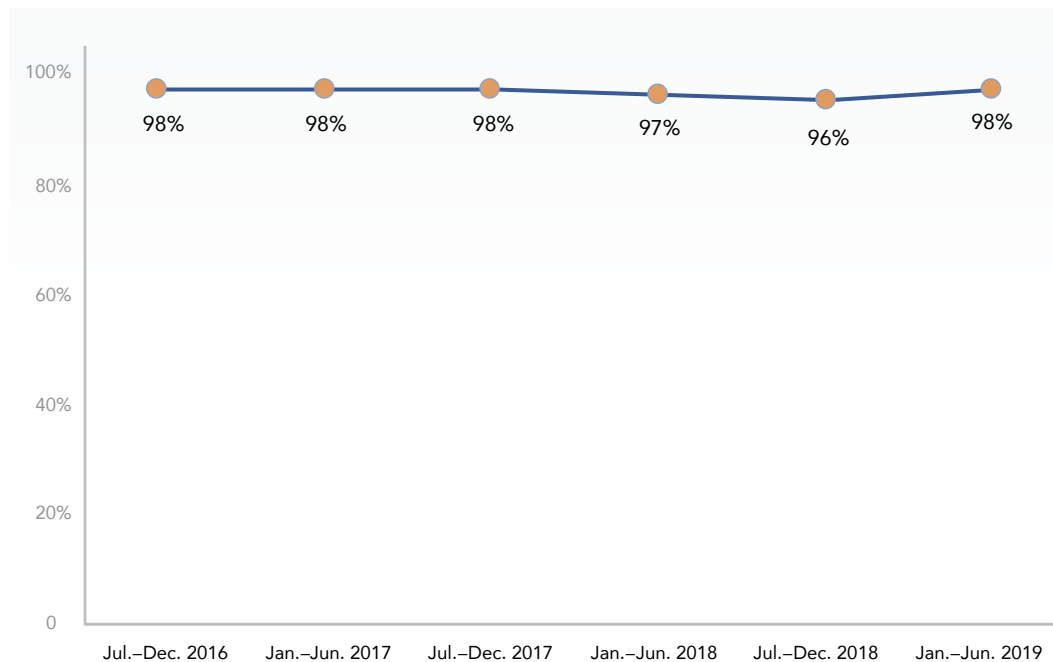
Poor
12 cases

the referral, the Office of Internal Affairs' final decision regarding the referral, and the timeliness of the Office of Internal Affairs' decision.

The OIG found that the Office of Internal Affairs made a timely determination regarding hiring authority referrals in 98 percent of the cases the OIG monitored and closed during the January through June 2019 reporting period (166 out of 170 cases). A timely initial determination by the Office of Internal Affairs is critical to completing a timely investigation, and the Office of Internal Affairs performed very well in this area. Figure 8 below shows the percentages of cases for which the department made timely determinations over the last six reporting periods.

As we have previously reported in prior semiannual reports, we continue to disagree with a fair amount of the decisions the Office of Internal Affairs made concerning hiring authority referrals. For cases the OIG monitored and closed during the January through June 2019 reporting period, the OIG disagreed with the decisions the Office of Internal Affairs made regarding the disposition of hiring authority referrals in 24 of the 170 cases (14 percent). For each case, the Office of Internal Affairs is required to make multiple decisions,

Figure 8. Percentages of Cases with Timely Determinations Made by the Office of Internal Affairs' Central Intake Unit



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

including not only whether it will open a case or reject a referral, but the identity of the appropriate subject or subjects of the case, the appropriate allegations, and the appropriate case type, such as whether the Office of Internal Affairs will open a criminal investigation or an administrative investigation. The OIG had 27 disagreements with the Office of Internal Affairs in 24 cases because there were some cases in which the OIG disagreed with only one aspect of the Office of Internal Affairs' decisions, while there were others in which the OIG disagreed with more than one aspect. For example, in one case, the OIG disagreed with the Office of Internal Affairs' decisions to not approve an interview of an officer and also its decision to not add a dishonesty allegation. Furthermore, as to the Office of Internal Affairs' decisions to reject 86 hiring authority referrals, the OIG disagreed with eight of those decisions.

The nature of the disputes varied, but ranged from our disagreement with the Office of Internal Affairs' decision to not add allegations to a case (such as dishonesty or code of silence allegations) to its decision to not conduct an investigation or an interview of the subject of the investigation. Specifically, in 11 cases, we disagreed with the Office of Internal Affairs' decision to not, at least, conduct an interview of a subject of the investigation; in nine cases, we disagreed with the decision to not add allegations; and in two cases, we disagreed with the Office of Internal Affairs' decision to not open a criminal investigation as opposed to an administrative investigation. Figure 9 on the next page lists these disagreements.

The department's handling of referrals the Office of Internal Affairs' Central Intake Unit rejected and returned to hiring authorities for inquiry or further inquiry created the potential for misconduct to go unaddressed.

The department lacks a policy or procedure for identifying, and a mechanism for tracking, hiring authority referrals the Office of Internal Affairs' Central Intake Unit rejects and returns to the hiring authority for further inquiry. When a hiring authority first suspects alleged employee misconduct, he or she typically assigns investigators from the prison's investigative services unit to conduct an initial inquiry. During the inquiry, prison staff typically perform initial investigative activities such as preliminary interviews or the collection of documents and applicable policies to determine whether there is reasonable belief of misconduct. If so, the hiring authority submits a referral to the Office of Internal Affairs.¹²

12. DOM, Section 31140.15.

Figure 9.

Disagreements with Office of Internal Affairs' Decisions concerning Referrals in the 170 Cases the OIG Monitored and Closed from January through June 2019

2	OIA's classification of a case as administrative or criminal
2	OIA's decision to not add a subject to a case
9	OIA's decision to not add an allegation
2	OIA's decision to not open a full administrative investigation (and OIA approved only an interview of the subject)
11	OIA's decision to not approve at least an interview of the subject(s) (OIA returned the case to the hiring authority without an investigation or interview)
1	Disagreement with OIA's initial decision to reject a case (OIA subsequently opened case after OIG appeal to OIA management)
27	Total Disagreements

Notes: In this figure, the abbreviation *OIA* refers to the Office of Internal Affairs.

Of the 170 cases, we had disagreements in 24 cases (14 percent): in 21 cases, we had one disagreement regarding OIA's decisions regarding a case; and in three cases, we had more than one disagreement regarding OIA's decisions regarding a case.

These amounts do not include cases in which we disagreed with OIA's final decision to reject a case because the list above only includes cases the OIG monitored and closed from January through June 2019. If OIA did not open a case, there was no case for the OIG to monitor.

From January through June 2019, OIA made decisions regarding 1,156 referrals. Of those cases, OIA rejected 86 referrals. The OIG disagreed with eight of the 86 rejections. The OIA reconsidered its decisions in three of those cases and accepted the referrals. Despite the OIG's disagreement, the other five referrals remained rejected.

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

The Office of Internal Affairs' Central Intake Unit evaluates each referral and makes a decision regarding the case within 30 days. In some cases, the Office of Internal Affairs may decide that more information is needed before making a decision regarding a hiring authority's referral. In these cases, the Office of Internal Affairs typically rejects the case and returns the matter to the hiring authority to conduct additional inquiry and provide the additional information to the Office of Internal Affairs. The Office of Internal Affairs identifies these matters as *rejected* cases, which means the Office of Internal Affairs does not keep the matter on the list of cases pending a determination.

If the Office of Internal Affairs rejects and returns a case to the hiring authority for further inquiry, the Office of Internal Affairs may advise the hiring authority of the specific information needed in order to decide on a case, but frequently, the Office of Internal Affairs simply returns the matter to the hiring authority for further inquiry without specific guidance (see example, Figure 10, on page 39). In addition, the Office of Internal Affairs typically does not provide a timeline for the hiring authority to submit the additional information but, instead, relies on the hiring authority to follow through in a timely manner. Policy indicates that a hiring authority is to provide the information within 10 calendar days.¹³ However, a hiring authority may or may not complete the additional inquiry.

The department does not have mechanisms to identify and track the cases the Office of Internal Affairs rejects and returns to hiring authorities for further inquiry. Foremost, the Office of Internal Affairs does not have a process to easily identify these cases. The department's case management system does not differentiate between cases the Office of Internal Affairs rejected because the Office of Internal Affairs determined there was no reasonable belief misconduct occurred or those it rejected for the hiring authority to complete further inquiry. Equally important, the department does not track these cases and whether or not the hiring authorities conducted the requested follow-up inquiry. In fact, sometimes hiring authorities do not return these cases to the Office of Internal Affairs at all. If the further inquiry is not completed, this can mean that the alleged employee misconduct is never adequately addressed or investigated.

The Office of Internal Affairs' Central Intake Unit processes a high number of employee misconduct referrals from hiring authorities, typically approximately 1,000 cases in a six-month period. As noted earlier in this report, between January 1, 2019, and June 30, 2019, hiring authorities submitted 1,135 referrals to the Office of Internal Affairs

13. DOM, Section 31140.16.

concerning suspected employee misconduct. In the OIG's opinion, based on the number of cases the Office of Internal Affairs' Central Intake Unit processes, absent a policy and procedure to identify and a mechanism to track the cases the Office of Internal Affairs rejects and returns to the hiring authority for inquiry, there is a high likelihood that some allegations of employee misconduct will not be investigated or addressed.

During this reporting period, the Office of Internal Affairs' Central Intake Unit rejected 86 cases, 17 of which it returned to the hiring authority to conduct a further inquiry. In 12 of those 17 cases, the hiring authority failed to conduct an inquiry, delayed in conducting an inquiry,¹⁴ or initiated the inquiry only after the OIG requested an update regarding the status of the inquiry. Hiring authorities timely conducted an inquiry in the remaining five cases, and in two of those cases, the hiring authority resubmitted the matter, and the Office of Internal Affairs approved the request for an investigation. In the other three cases, the hiring authority's further inquiry did not reveal new information to support a reasonable belief that misconduct occurred, and for these three cases, the OIG agreed with the conclusions.

The following examples underscore the problems that may result in the absence of a policy or procedure for the department to identify and track hiring authority referrals the Office of Internal Affairs rejects and returns to hiring authorities for inquiry:

- In one case, a hiring authority submitted a referral requesting the Office of Internal Affairs approve an administrative investigation into allegations that an officer provided false testimony during a State Personnel Board hearing pertaining to the dismissal of another officer. The hiring authority submitted compelling memoranda from a department attorney and an employee relations officer that contained firsthand accounts detailing the officer's prior statements and contradictory testimony. Despite the recommendation of an OIG attorney and a department attorney that the Office of Internal Affairs should have approved an investigation, the Office of Internal Affairs rejected the hiring authority's referral and returned the case to the hiring authority for further inquiry. The Office of Internal Affairs sent a letter to the hiring authority, which is reproduced as Figure 10 on the next page.

14. The hiring authority delayed an inquiry if it had not been conducted within 10 calendar days.

Figure 10. Decision Letter from the Office of Internal Affairs

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OFFICE OF INTERNAL AFFAIRS (OIA) - CENTRAL INTAKE UNIT (CIU) CENTRAL INTAKE PANEL (CIP) DECISION LETTER		
CASE NUMBER: _____		
ASSIGNED CIU AGENT: _____		
HIRING AUTHORITY (HA) REQUESTED:		
989 REQUEST:	<input checked="" type="checkbox"/> Investigation	<input type="checkbox"/> DAA <input type="checkbox"/> DAA w/SOI
OTHER:	<input type="checkbox"/> Split <input type="checkbox"/> Appeal <input type="checkbox"/> DFIT <input type="checkbox"/> Exigent <input type="checkbox"/> Worker's Comp.	
CIU AGENT RECOMMENDATION:		
INVESTIGATION:	<input type="checkbox"/> Administrative <input type="checkbox"/> Criminal <input type="checkbox"/> Subject Only Interview (SOI)	
DIRECT ACTION:	<input type="checkbox"/> Training, Corrective Action, or Direct Adverse Action	
REJECTION:	<input checked="" type="checkbox"/> No Misconduct <input type="checkbox"/> Local Inquiry Required	
CIP FINAL DECISION:		
INVESTIGATION:	<input type="checkbox"/> Administrative <input type="checkbox"/> Criminal <input type="checkbox"/> Subject Only Interview (SOI)	
<input type="checkbox"/> DIRECT ACTION:	CIU referred this case back to the HA for the HA's determination of training, corrective action, direct adverse action, or other disposition. (Note: If this was an inmate initiated complaint, the HA is responsible for notification per BU6 MOU 9.09D)	
<input type="checkbox"/> REJECTED (No Misconduct Identified):	CIU returned this case to the HA because there is no reasonable belief misconduct occurred. (Note: If this was an inmate initiated complaint, the HA is responsible for notification per BU6 MOU 9.09D)	
<input checked="" type="checkbox"/> REJECTED (Further Local Inquiry Required):	Per CCR 3084.9(i)(3)(B) and DOM 31140.16, this case is returned to the HA, to complete a local allegation inquiry, local UOF Review, and/or EEO-LIP. If the HA later discovers additional new information, which establishes a reasonable belief misconduct occurred that warrants adverse action, the HA can resubmit this case via Appeal (Reconsideration). (Note: If this was an inmate initiated complaint, the HA is responsible for notification per BU6 MOU 9.09D)	
<input type="checkbox"/> NO D.F.R.B. REFERRAL:	This Direct Adverse Action will not be reviewed by DFRB. The Institution/Unit should now complete the local UOF review process for this incident.	
<input type="checkbox"/> Subjects added:	_____	
<input type="checkbox"/> Subjects removed:	_____	
CIP Decision Date:	_____	CIU Supervisor Signature: _____
Notes: Case will be rejected at this point in time. The case can be resubmitted under appeal/reconsideration should the SPB records develop a reasonable belief misconduct occurred.		
Note: See CMS Case Dashboard to determine if Designated by EAPT or Monitored by OIG.		
Revised 11/1/18		

Notes: Although the OIG and department attorneys participated in the Office of Internal Affairs' Central Intake Panel meetings, the Central Intake Panel itself did not make decisions regarding the disposition of hiring authority referrals, but rather, the Office of Internal Affairs made the final decision regarding the action taken on each hiring authority's referral.

We have redacted confidential, identifying information.

The arrows indicate sections the OIG has highlighted for emphasis; they are ours alone and not the department's. These highlighted sections provide an example of when the Office of Internal Affairs returned a referral to a hiring authority without specific guidance, as referenced on page 37.

Source: The California Department of Corrections and Rehabilitation's Office of Internal Affairs.

One month later, a department attorney provided the Office of Internal Affairs' Central Intake Unit a copy of the State Personnel Board recording of the officer's testimony, and an Office of Internal Affairs' special agent reviewed the recording, but did not recommend that the Office of Internal Affairs' Central Intake Unit approve the hiring authority's initial request for an investigation. Instead, the Office of Internal Affairs' Central Intake Unit sent the recording to the institution, where it was lost. It was not until the OIG requested the department provide a copy of the hiring authority's referral, the State Personnel Board recording, and an update on the inquiry that the department recognized the matter was still pending and that it had lost the State Personnel Board recording of the officer's testimony. Approximately six months later, after the department first received a copy of the recording of the State Personnel Board proceeding, the hiring authority secured another copy of the recording and referred the matter to the Office of Internal Affairs again. The Office of Internal Affairs ultimately approved the case for an investigation seven months after the initial rejection. As of the date of publication of this report, the investigation is still pending.

- In another case, a hiring authority referred an allegation that an officer approved two inmates be housed together with the knowledge that one of the inmates planned to attack the other inmate. The attack did occur, resulting in one inmate killing the other. Before the meeting at which the Office of Internal Affairs was to decide on the referral, a Central Intake Unit special agent discussed the case with the hiring authority, who agreed to conduct further inquiry and resubmit the matter upon discovery of additional information. The Office of Internal Affairs then rejected the referral and returned the matter to the hiring authority to conduct the inquiry. However, one month later, when the OIG requested an update on the inquiry, the institution had not yet conducted the inquiry, and an inmate witness, who was critical to determining the facts, had already been transferred to another institution. Two months after the Office of Internal Affairs returned the case, and one month after the OIG contacted the hiring authority, the prison's investigative services unit finally conducted the inquiry. The investigative services unit, however, conducted an inadequate inquiry and did not sufficiently address the

allegations. Even so, the hiring authority deemed the matter closed. Subsequently, the OIG and the Office of Internal Affairs discussed with the hiring authority the inadequate inquiry and recommended that the hiring authority direct the investigative services unit to conduct further inquiry, including a more thorough interview of the inmate who reported the officer's admission. The hiring authority accepted the recommendation. Nearly two months later, four months after the Office of Internal Affairs initially returned the case to the hiring authority, the investigative services unit concluded the additional inquiry, and the hiring authority found that there was not a reasonable belief that the officer knew the attack would happen. However, the inquiry revealed that the officer may not have searched an inmate's property, and as of the date of the publication of this report, the investigative services unit is conducting further inquiry.

Indicator 3: The Performance by the Office of Internal Affairs in Investigating Allegations of Employee Misconduct Was *Satisfactory*

If, after review of a hiring authority's employee misconduct referral, the Office of Internal Affairs approved an investigation, or only an interview of the employee suspected of misconduct, then the Office of Internal Affairs assigned the case to one of its special agents in a regional office (in Sacramento, Bakersfield, or Rancho Cucamonga) or its headquarters office to conduct the investigation or interview the employee. For the cases the OIG monitored and closed from January through June 2019, the OIG determined that the Office of Internal Affairs' performance in investigating allegations of employee misconduct was *satisfactory*. The OIG determined that the Office of Internal Affairs' performance was *superior* in seven cases, *satisfactory* in 118 cases, and *poor* in 19 cases.

The OIG considered several factors in completing assessments for this indicator, including the following: whether the special agent completed the investigation with due diligence; the special agent's compliance with departmental policy and the Office of Internal Affairs' field guide; the thoroughness and quality of the investigation and interviews; and whether the special agent consulted with the hiring authority, a department attorney, and an OIG attorney.

The Office of Internal Affairs performed particularly well in certain areas. In the OIG's opinion, the Office of Internal Affairs conducted

Indicator Score
Satisfactory
(72.92%)

Superior
7 cases

Satisfactory
118 cases

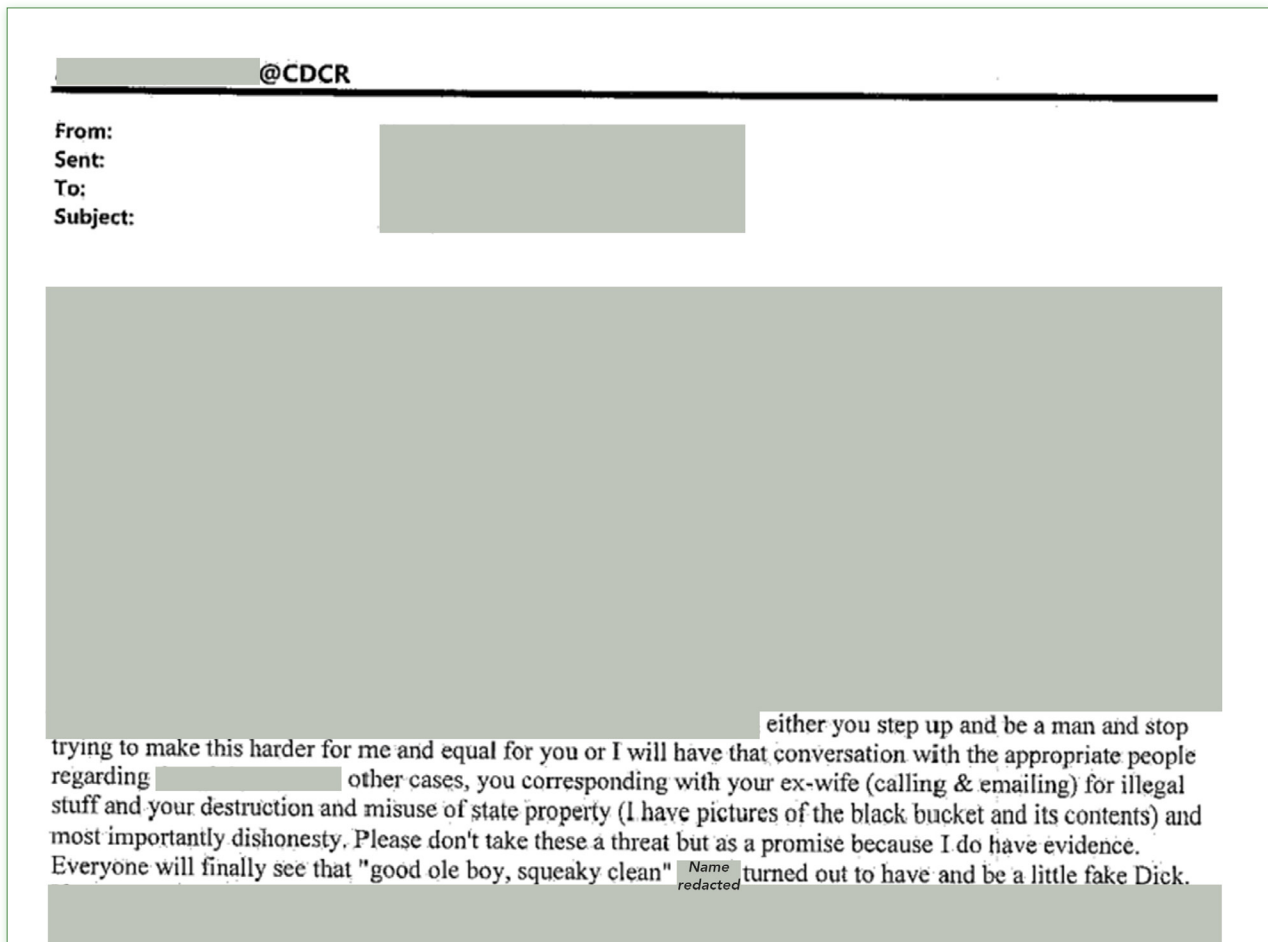
Poor
19 cases

thorough investigations in 96 percent of cases the OIG monitored and closed between January through June 2019. In 99 percent of cases, the special agents completed all necessary and relevant interviews; in all cases, used effective interviewing techniques; and in 99 percent of cases, produced thorough investigative reports.

Typically, the OIG assessed the performance as *superior* based on a special agent expeditiously completing a thorough investigation and final report, conducting comprehensive reviews and analyses of records, skillfully interviewing witnesses and subjects of investigations, or otherwise going beyond what is expected. The following cases highlight exemplary performances by special agents, resulting in a *superior* assessment:

- In one case, an investigator allegedly sent and received sexually explicit emails to his girlfriend using the state email system; forwarded confidential internal investigation reports to his personal email account; dishonestly reported that he lost his state-issued mobile phone when he had, in fact, destroyed it; and lied during his Office of Internal Affairs' interview. The investigator came forward to report part of his misconduct only after his then-wife sent an email message to his departmental email account, an image of which is reproduced on the next page as Figure 11.



Figure 11. Emailed Message the Subject's Then-Wife Sent to the Subject's Departmental Email Account




Source: The California Department of Corrections and Rehabilitation's Office of Internal Affairs.


After receipt of his wife's email message, the investigator submitted a memorandum to a chief stating that he had proffered a false memorandum in 2012 regarding the status of his state-issued mobile phone, an image of which is reproduced on the next page as Figure 12.

Figure 12. Memorandum the Subject Sent to the Department regarding the Subject's Destroyed Mobile Phone

State of California  Department of Corrections and Rehabilitation 

Memorandum

Date : 


To :  Headquarters Operations

Subject : **DESTRUCTION OF STATE ISSUED CELL PHONE**

The purpose of this memorandum is to inform you of my destruction of state property.

In 2012, I destroyed my State-issued cell phone. I had previously made personal telephone calls and wanted to prevent the calls from being discovered. Once the State-issued cell phone was destroyed; I reported it as lost. I was subsequently issued another State-issued cell phone.

Should you have any questions or concerns, I am available.



ODC 1617 (3/89)

Source: The California Department of Corrections and Rehabilitation's Office of Internal Affairs.

During the investigator's interview with the Office of Internal Affairs, the investigator, who himself was very experienced in conducting interviews, continuously parsed words to downplay or deny committing misconduct and repeatedly evaded answering direct questions. Two senior special agents employed superb interviewing techniques to skillfully expose the dishonesty of the investigator. They tenaciously interrogated the investigator while still maintaining their professionalism. The hiring authority ultimately sustained multiple allegations against the investigator, including an allegation that he lied during an interview with the Office of Internal Affairs, and decided to dismiss the investigator. Thereafter, the department agreed to accept the investigator's resignation with an effective date prior to the dismissal taking effect.

- In a second case, a special agent reviewed a significant amount of audio and video evidence that identified the extensive nature of employee misconduct and revealed evidence that led to additional allegations against an officer who accessed an inmate's confidential records without justification, illegally corresponded with the inmate, and lied during an Office of Internal Affairs' interview.
- In a third case, a special agent completed a complicated investigation in fewer than 30 days and wrote an exceptionally thorough report.
- In a fourth case, a special agent completed a comprehensive investigation regarding complex allegations in fewer than three months. The special agent was also receptive to the OIG's investigative recommendations, resulting in the discovery of critical evidence.

The Office of Internal Affairs generally delayed completing deadly force investigations.

Between January and June 2019, the OIG monitored and closed 19 Office of Internal Affairs' investigations that concerned the use of deadly force. Of these 19 cases, the Office of Internal Affairs conducted administrative investigations in 14 cases and criminal investigations in five cases.

Figure 13 below lists the number and types of deadly force used in cases the OIG monitored and closed during this reporting period. The figures do not reflect the total number of cases, but rather the number of times departmental staff used deadly force. The total, 27 uses of deadly force, is greater than the number of cases we monitored and closed because departmental staff may have used multiple types of deadly force in one incident. 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



Ruger Mini-14 .223 caliber rifle

Figure 13.

Types of Deadly Force Used

	Cases
Shots for Effect	12
Warning Shots	8
Physical Force	4
Other	3
Total	27



Source: Office of the Inspector General Tracking and Reporting System. Figures for the period from January through June 2019.

Photographs courtesy of the Department of Corrections and Rehabilitation.

issued to get the attention of inmates who are engaging in prohibited behavior and to get them to stop). In such an instance, even though we monitored only one deadly force case, it involved two uses of deadly force.

Of the 19 cases the OIG monitored and closed from January through June 2019, the OIG assessed nine of these cases as *poor*. The primary factor in the ratings of those cases was the Office of Internal Affairs' failure to comply with its internal time frames for completing investigations in cases involving the use of deadly force. Pursuant to the department's deadly force investigation procedures, Office of Internal Affairs' special agents must complete deadly force investigations within 90 days of assignment and complete all interviews in criminal deadly force investigations within 72 hours.¹⁵

Special agents did not complete investigations within 90 days of the incident in 16 of the 19 deadly force cases. In some cases, despite the delays, the Office of Internal Affairs made diligent efforts to complete the investigations, and the conclusion of its investigations depended on the activities of outside entities, such as instances in which it waited for the completion of a related criminal investigation by an outside law enforcement agency or for autopsy results. As far as the five criminal deadly force cases, the Office of Internal Affairs completed all interviews in four cases within the required 72-hour time period, and did not do so in one case.

On a related note, on September 6, 2019, the Office of Internal Affairs issued a memorandum announcing modifications to its deadly force investigation procedures, reflecting that its special agents are to complete administrative deadly force investigations within 90 days of assignment, but that based on investigative need or external processes, an extension may be provided. The other significant modification the Office of Internal Affairs made to its procedures concerns the time in which interviews in criminal deadly force investigations must be completed. The interviews will no longer be required to be completed within 72 hours, but only as soon "as reasonably practical after the incident."¹⁶ The OIG recommended to the Office of Internal Affairs that it maintain the 72-hour requirement for completion of interviews in criminal deadly force investigations, but allow for exceptions to that requirement when needed. However, the Office of Internal Affairs rejected the OIG's recommendation.

15. Office of Internal Affairs Deadly Force Investigations Team Procedures, June 6, 2007.

16. Office of Internal Affairs Deadly Force Investigations Team Procedures, September 6, 2019.

Indicator Score
Poor
(65.51%)
Superior
1 case
Satisfactory
83 cases
Poor
53 cases

Indicator 4: The Performance by Hiring Authorities in Determining Findings regarding Alleged Misconduct and Processing the Misconduct Cases Was Poor

After the Office of Internal Affairs completed an administrative investigation or interview of an employee suspected of misconduct, or returned a case to the hiring authority to address the misconduct allegation or allegations without an investigation or interview of the employee, the hiring authority was responsible for making findings concerning the allegations, identifying the appropriate penalty, and serving the disciplinary action if discipline was taken. During this reporting period, the OIG assessed the hiring authority's performance in these areas in 137 cases. For the cases the OIG monitored and closed during the January through June 2019 reporting period, we found the hiring authorities' overall performance in this indicator was *poor*. We assessed the hiring authorities' performance as *superior* in one case, as *satisfactory* in 83 cases, and as *poor* in 53 cases.

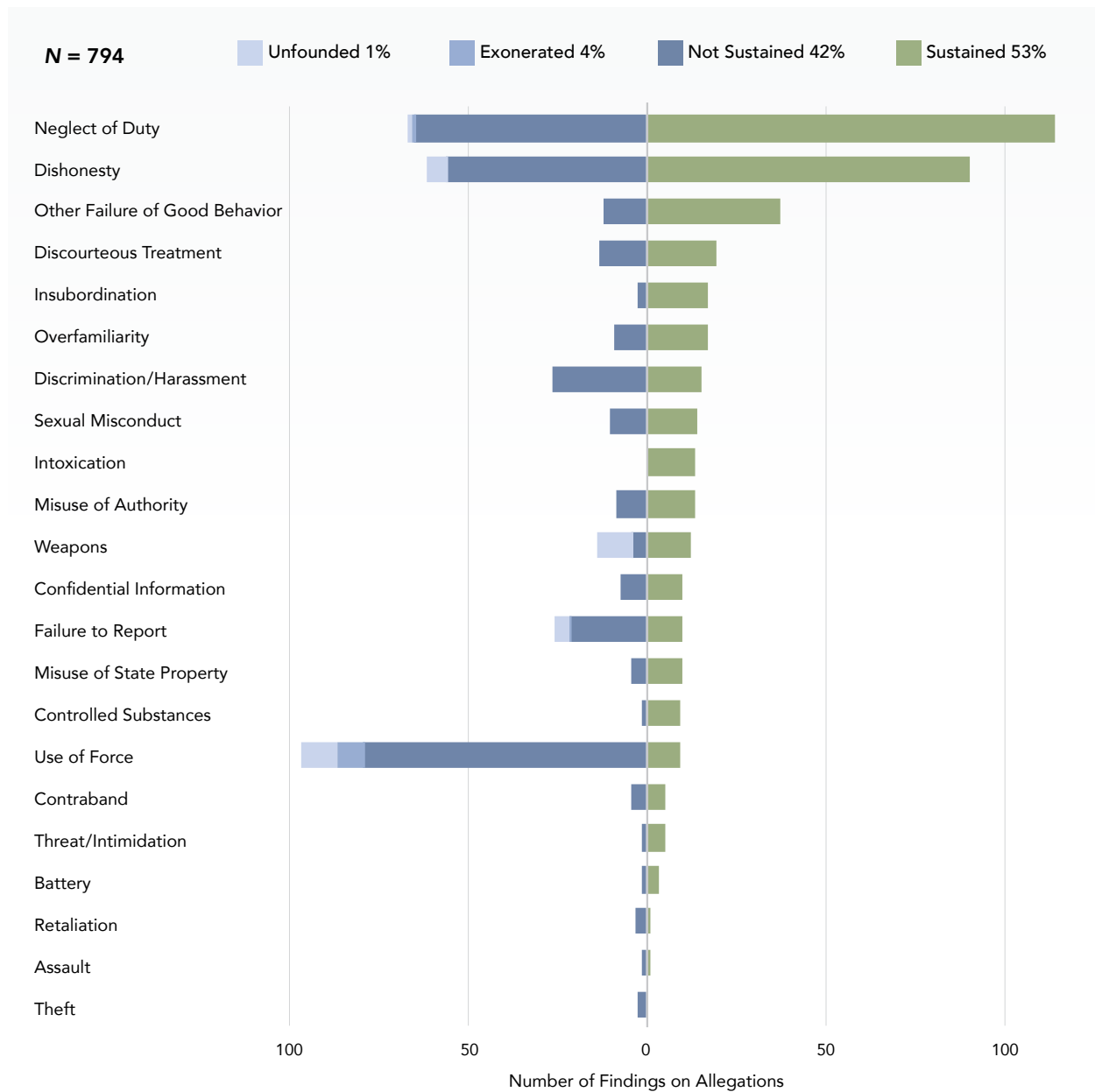
In assessing the hiring authorities pursuant to this indicator, the OIG primarily focused on the timeliness of the investigative and disciplinary findings conferences, the hiring authorities' level of preparation for the conferences, whether hiring authorities made appropriate investigative and disciplinary findings, and the timeliness of serving the disciplinary actions.

Hiring authorities mostly made appropriate investigative findings and penalty determinations.

Prior to an investigative and disciplinary findings conference, a hiring authority was required to review available evidence regarding the misconduct allegation(s), including reports prepared by outside law enforcement agencies, Office of Internal Affairs' investigative reports, audio and video recordings, and supporting documentation. At the conference, the hiring authority consulted with the department attorney, if assigned, and the OIG attorney, if monitored. The hiring authority determined whether there was sufficient evidence to make decisions regarding the allegations and, if the Office of Internal Affairs submitted a report, whether the report was sufficient or additional investigation was necessary. If the hiring authority determined there was sufficient evidence or the investigative report was sufficient, the hiring authority made findings pertaining to the allegations. If the hiring authority sustained any allegation, the hiring authority determined whether to impose corrective action or discipline and, if so, the specific action to be taken.

For the January through June 2019 period, the OIG determined that hiring authorities identified the appropriate subjects and allegations in 99 percent of the cases we monitored. We also concluded that hiring authorities made the appropriate findings for each allegation and identified the appropriate penalty in 93 percent of these cases. Figure 14 below displays the findings hiring authorities made regarding allegations presented to them for review.

Figure 14. Administrative Cases: Findings Determined by Hiring Authorities



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

Hiring authorities proposed an unreasonable course of action in four disciplinary cases, and the OIG sought reviews by departmental executives in those cases.

If a hiring authority makes a decision that either the OIG or the department attorney believes is unreasonable, then either the OIG or a department attorney may elevate that decision to the hiring authority's supervisor, with the goal of having the department review the decision to determine whether the hiring authority made a just and proper determination.¹⁷ If the hiring authority's supervisor also makes what we consider to be an unreasonable decision regarding the issue presented to him or her, the matter may be raised to higher levels, such as to a director, an undersecretary, or the Secretary of the department.

For the 170 cases the OIG monitored and closed during the January through June 2019 reporting period, the OIG sought a higher level of review in only four cases (2 percent). The department ultimately made what we believe to be appropriate decisions in three of the four cases. In the remaining case, in the OIG's opinion, the department did not make an appropriate decision regarding the case.

The OIG uses the executive review process sparingly and judiciously in order to maintain the integrity of the process. We believe the process is a valuable tool to raise significant issues to higher levels within the department. Table 5 on the following page summarizes the cases in which the OIG sought executive review regarding the decisions of hiring authorities.

17. DOM, Section 33030.14.

Table 5. Executive Review Cases

Case N ^o	Summary	Initial Departmental Position	OIG Position	Final Disposition
1	A parole agent allegedly improperly stored safety equipment and a personal firearm in the backseat of an unattended state vehicle, from which the items were stolen; failed to properly report or document the theft; submitted a false report; lied to supervisors; and lied during an Office of Internal Affairs' interview. A supervising parole agent allegedly failed to properly document and report the theft, and lied during his Office of Internal Affairs' interview.	The hiring authority sustained the allegations against the parole agent and served a notice of dismissal. The hiring authority sustained the allegations against the supervising parole agent, except for a dishonesty allegation, and identified a 45-working-day suspension as the appropriate penalty.	The OIG did not concur with the hiring authority's decision to not sustain an allegation that the supervising agent was dishonest.	At the higher level of review, the hiring authority's supervisor sustained the dishonesty allegation and served a notice of dismissal.
2	An investigator allegedly sent and received personal email messages, some of which contained explicit sexual content, from his state-issued computer; sent confidential investigative reports, personnel records, and information regarding confidential investigations to his personal email account and to his wife; was dishonest when he reported his state-issued mobile phone was lost when in fact he intentionally destroyed it; misused his state-issued mobile phone for personal communication; and allegedly lied during interviews with the Office of Internal Affairs.	The hiring authority sustained the allegations, except for the allegation that the investigator sent investigative reports to his personal email account on certain dates and was dishonest during one of his interviews, and dismissed the investigator. The OIG concurred with the hiring authority's determinations. The investigator filed an appeal with the State Personnel Board. Initially, the department was willing to fashion a settlement that would have provided the investigator with life-long medical benefits to which the investigator was not entitled.	The OIG raised the discussions regarding the settlement to a higher level of review.	After the OIG raised the settlement discussion to a higher level, the department ultimately entered into a reasonable settlement agreement that did not provide the investigator with benefits he was not entitled to receive.
3	Outside law enforcement arrested an officer after he allegedly punched a private citizen, spat on a paramedic, and spat on, kicked, and directed profanity at an outside law enforcement officer.	The hiring authority sustained the allegations and imposed a 60-working-day suspension.	Based on the gravity of the sustained allegations, the OIG did not concur with the hiring authority's penalty determination and believed a higher penalty was warranted, elevating the matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor agreed with the hiring authority and determined the penalty would remain as initially determined.
4	An officer allegedly tested positive for cocaine.	The hiring authority sustained the allegation and dismissed the officer. The OIG concurred. Following a <i>Skelly</i> hearing, the hiring authority wanted to enter into a settlement agreement with the officer by reducing the penalty from a dismissal to a one-year suspension.	The OIG did not agree with the proposed settlement terms to reduce the penalty.	At the higher level of review, the hiring authority's supervisor agreed with the OIG and determined the penalty would remain as initially determined.

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

Hiring authorities often delayed conducting investigative and disciplinary findings conferences.

Even though hiring authorities mostly made appropriate investigative and disciplinary findings as to the cases the OIG monitored and closed during the January through June 2019 reporting period, hiring authorities' performance in timely conducting investigative and disciplinary findings conferences and in rendering timely service of disciplinary actions continued to worsen.¹⁸ Untimely investigative and disciplinary findings conferences and delayed service of disciplinary actions were the overwhelming reasons for *poor* assessments. In particular, hiring authorities delayed employee misconduct cases involving dishonesty allegations and cases resulting in the dismissal of peace officers.

For the July through December 2018 reporting period, the OIG found that the department conducted timely investigative and disciplinary findings conferences in only 62 percent of cases. In this reporting period of January through June 2019, the department conducted timely investigative and disciplinary findings conferences in only 55 percent (76 of 137) of cases the OIG monitored and closed. That represents a 7-percentage-point decline from the previous reporting period, and an 18-percentage-point decline from the January through June 2018 reporting period. The delays in this reporting period ranged from two to 93 days after the date the conference should have been held.

Significantly, the hiring authorities' performance in timely holding investigative and disciplinary findings conferences in cases with dishonesty allegations was slightly worse than its performance in cases in general. In the 57 cases in which at least one employee faced at least one allegation of dishonesty, the department conducted timely investigative and disciplinary findings conferences in only 31 of the cases, or 54 percent. This is important because in many cases, but not all, if dishonesty allegations are sustained against an employee, the resulting penalty will be dismissal from the department. It is important for the department to adjudicate these cases in a timely manner to ensure that employees who are facing allegations of dishonesty do not continue to work under a cloud of suspicion and uncertainty regarding their employment, to correct serious misconduct, and to limit the unnecessary costs to the department and to the taxpayers.

The department also performed poorly in conducting timely investigative and disciplinary findings conferences in cases in which the department served the employee with a disciplinary action for

18. In prior reports, we also used the term *findings and penalty conference* to refer to the same meeting.

dismissal and for which the employee ultimately separated from the department pursuant to a disciplinary action, a settlement, or resignation. There were 33 of these types of cases from January through June 2019, and the department conducted timely investigative and disciplinary findings conferences in only 20 of them, or 61 percent. There were 13 cases with delays. The delay in holding these conferences unnecessarily postponed the service of disciplinary actions and imposition of the dismissal of employees whose misconduct the hiring authority determined was serious enough to warrant a dismissal. During the delays, the department continued paying these employees their salary and benefits. These delays cost the department and taxpayers approximately \$98,746 in salary and benefits (including medical, dental, vision, and retirement benefits).¹⁹ The following are examples of some of these delays:

- In one case, an officer allegedly unnecessarily struck an inmate several times with a baton, and he and a second officer allegedly lied when they reported that the inmate acted aggressively toward the officer. The Office of Internal Affairs conducted three interviews, completed a thorough 13-page investigative report, and submitted the investigative report to the hiring authority in just over two months. However, it took the hiring authority more than three months to conduct the investigative and disciplinary findings conference. The hiring authority and the department attorney took longer to schedule a conference to review and discuss the investigative report than it took for the Office of Internal Affairs to conduct the entire investigation and prepare a thorough investigative report. The hiring authority eventually found insufficient evidence to sustain the allegation against the second officer, but sustained the allegations against the first officer and served the officer with a disciplinary action for dismissal. The department served the disciplinary action for dismissal 32 days after policy required. The officer retired just after receiving the disciplinary action, but was allowed to continue working during the substantial delays caused by the hiring authority and the department attorney. This delay in conducting

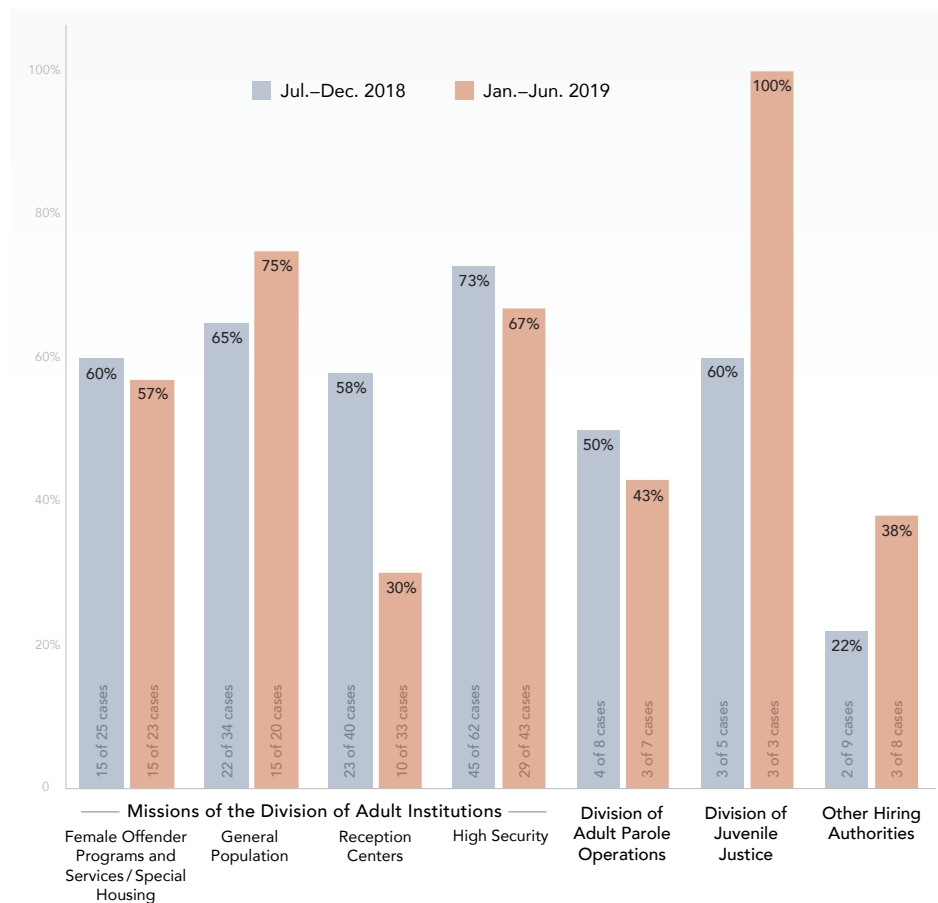
19. To calculate the estimated costs of various delays in this report, we used the salary and benefits of each person's classification at mid-step, which for budgeting purposes, is the middle point of a classification's salary range. Next, we divided the mid-step salary and benefits value by the average 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.

the investigative and disciplinary findings conference (irrespective of the delay in serving the disciplinary action) unnecessarily cost the department and taxpayers approximately \$29,388 in salary and benefits.

- In a second case, an officer allegedly failed to properly process a weapon he discovered, took the weapon home, lied to a sergeant regarding the incident, and lied during an Office of Internal Affairs' interview. The hiring authority did not conduct the investigative and disciplinary findings conference until 30 days after policy required. During that delay, the officer continued to work and receive a salary. The hiring authority finally sustained the allegations and served the officer with a disciplinary action for dismissal. The department served the disciplinary action 17 days after policy required. The delay in conducting the investigative and disciplinary findings conference (irrespective of the delay in serving the disciplinary action) unnecessarily cost the department and taxpayers approximately \$9,480 in salary and benefits.

We also found that divisions within the department, and also missions within the Division of Adult Institutions, varied widely concerning their timeliness in conducting these conferences. The number of conferences for which hiring authorities are responsible varies depending on the number of employee misconduct cases at the institution or under the purview of the hiring authority. For example, at larger institutions, there may be more employee misconduct cases than at institutions with fewer employees. Therefore, some hiring authorities may address 20 cases during a reporting period, while other hiring authorities may address only a few cases, such as three, during the same reporting period. Therefore, a value of 100 percent or zero percent could be misleading. On the next page, Figure 15 shows the total numbers of conferences to better identify those divisions and missions that performed well in this area, compared with those that did not.

Figure 15. Timeliness of Investigative and Disciplinary Findings Conferences by Divisions; Division of Adult Institutions' Missions; and Other Hiring Authorities



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

The department should promulgate a specific policy regarding time frames for hiring authorities to hold investigative and disciplinary findings conferences.

After the Office of Internal Affairs returned a case to the hiring authority, policy required the hiring authority to review the investigative report and supporting documentation “as soon as operationally possible, but no more than fourteen (14) calendar days following receipt of the investigative report.”²⁰ The hiring authority must consult with the assigned department and OIG attorneys when reviewing the investigation and making findings. The OIG interprets this policy to mean the hiring authority must hold an investigative and disciplinary findings conference within 14 days of receiving

20. DOM, Section 33030.13.

the investigative report or report of interview from the Office of Internal Affairs or receiving a case after the Office of Internal Affairs determined sufficient evidence exists for the hiring authority to make decisions on the allegations without investigative activity. However, the OIG will not negatively assess a hiring authority for a late conference as long as the hiring authority made a reasonable effort to schedule the conference within 14 days of receiving the case, but schedules prevented a meeting in that time frame, and as long as it was eventually held within 30 days.

Furthermore, the OIG acknowledges there were some instances in which the hiring authority appropriately delayed holding the investigative and disciplinary findings conferences. As an example, a hiring authority appropriately delayed holding a conference when a subject employee was facing related criminal charges that were not yet resolved. In this and similar cases, the OIG determined it was reasonable to delay the conference and did not negatively assess the timing of the conference.

The Office of Legal Affairs' Employment and Advocacy Prosecution Team disagrees with a plain reading of the policy and determines that the hiring authority need only review the investigative materials and reach out to the OIG and the department attorney to schedule a conference within 14 days. Office of Legal Affairs' management determined that the hiring authority should attempt to hold the investigative and disciplinary findings conference within 14 days, but if the stakeholders' schedules prevent it, then the hiring authority should hold the investigative and disciplinary findings conference within 30 days of receipt of the case from the Office of Internal Affairs, but no more than 60 days from that date.

Given this disagreement between the OIG and the Office of Legal Affairs' management regarding policy interpretation, and the current policy's opacity, the OIG recommends that the department either clarify its current policy or issue a precise policy setting forth a specific time frame in which a hiring authority must conduct an investigative and disciplinary findings conference and make findings regarding the following:

1. the sufficiency of an investigation,
2. the misconduct allegations themselves, and,
3. if there are sustained allegations, the corrective action or disciplinary penalty to be assessed.

The policy should set forth a specific period—reflected in number of days—the conference is to be held after a hiring authority receives an investigative report from the Office of Internal Affairs, a report of an interview, or notice of the approval to take direct action on employee misconduct allegations without an investigation or interview.

Indicator 5: The Performance by Department Attorneys in Providing Legal Advice while the Office of Internal Affairs Processed Employee Misconduct Hiring Authority Referrals and Conducted Internal Investigations Was *Satisfactory*

From January through June 2019, department attorneys provided legal advice in a *satisfactory* manner as the Office of Internal Affairs' Central Intake Unit processed employee misconduct referrals from hiring authorities and during Office of Internal Affairs' internal investigations. We assessed two cases as *superior*, 120 cases as *satisfactory*, and 20 cases as *poor*.

Department attorneys were assigned to some, but not all, Office of Internal Affairs' investigations. During the investigations, department attorneys provided legal advice to the assigned special agents. Notably, the OIG assessed that, during this period, department attorneys provided thorough and appropriate legal advice to the Office of Internal Affairs during investigations in 98 percent of the cases (106 of 108) the OIG monitored and closed. Furthermore, department attorneys attended key witness interviews to assess witness demeanor and credibility in 99 percent of the cases. A department attorney did not attend an interview of an officer who was the subject of an investigation in one case. Otherwise, department attorneys attended all key witness interviews in cases to which they were assigned. Furthermore, in the OIG's opinion, department attorneys appropriately consulted with hiring authorities regarding investigative findings in 96 percent of the cases (123 of 128) the OIG monitored and closed during this period.

However, department attorneys could improve the timeliness of their entries into the department's case management system concerning critical dates relative to the deadline to take disciplinary action. Policy requires department attorneys, within 21 days of assignment, to enter into the case management system the date of the reported incident, the date of discovery, the deadline for taking disciplinary action, and any exceptions to the deadline known at the time. Department attorneys failed to timely make the required entry in 29 out of 136 cases, or 21 percent. Furthermore, in 15 cases out of 133, or 11 percent, department attorneys incorrectly assessed dates regarding the deadline to take disciplinary action. The information is important because other

Indicator Score
Satisfactory (71.83%)
<i>Superior</i> 2 cases
<i>Satisfactory</i> 120 cases
<i>Poor</i> 20 cases

Indicator Score
Poor
(63.78%)
Superior
3 cases
Satisfactory
37 cases
Poor
38 cases

departmental units and staff rely on the information in the database when performing their respective duties during internal investigations and handling of the employee disciplinary process.

Indicator 6: The Performance of Department Attorneys and Employee Relations Officers in Providing Legal Representation during Litigation Was Poor

Finally, the OIG assessed the department's legal representation during litigation. This phase of the case spans the period from the drafting of the disciplinary actions through representation in hearings before the State Personnel Board and court proceedings. If a department attorney is assigned to an employee disciplinary case, he or she is responsible for litigating the matter. If a department attorney is not assigned, an employee relations officer will serve as the department advocate during the disciplinary process up to and including appeals before the State Personnel Board.

The OIG assessed the performance of the department advocate (whether the individual was a department attorney or an employee relations officer) in drafting a thorough and legally adequate disciplinary action in a timely manner, representing the department at prehearing settlement conferences before the State Personnel Board, preparing the case for an evidentiary hearing, and litigating the case before the State Personnel Board. Furthermore, regarding department attorneys, we also assess their representation of the department in writ or appeal proceedings before superior and appellate courts.

From January through June 2019, department advocates performed at a *poor* level during litigation, including the drafting of disciplinary actions. There were 78 cases for this reporting period in which we assessed a department advocate's provision of legal representation during litigation. Of the 78 cases, the OIG rated the department's performance *superior* in three cases, *satisfactory* in 37 cases, and *poor* in 38 cases.

The OIG assessed the adequacy and thoroughness of disciplinary actions drafted by department attorneys and employee relations officers in 78 cases. In all 78 cases, the OIG found that the department prepared disciplinary actions that contained the relevant facts, relevant and legally supported causes of action, and the factual allegations sustained by the hiring authorities. However, in 29 of those cases (37 percent), department attorneys prepared disciplinary actions that contained an incorrect legal reference or did not provide an advisement required by departmental policy. Nevertheless, the incorrect legal references did not affect the overall validity of the disciplinary actions.

Department attorneys often delayed composing disciplinary actions, which contributed to delayed service of employees, especially in cases involving peace officers.

The department did not perform well in timely serving disciplinary actions, particularly in cases involving peace officers. Department advocates contributed to this rating, in part, because they were responsible for drafting the disciplinary actions served on employees. Policy required that the department serve disciplinary actions on peace officers within 30 days of the hiring authority's decision to take disciplinary action. The hiring authority made this decision at an investigative and disciplinary findings conference attended by a department attorney, in cases for which one is assigned, and by an OIG attorney in monitored cases.

For the prior reporting period of July through December 2018, the OIG found that the department failed to serve disciplinary actions on peace officers within 30 days of the hiring authority making the decision to take disciplinary action in 48 out of 97 applicable cases, or 49 percent. Of those 97 cases in which the department took disciplinary action against a peace officer, 32 cases resulted in at least one dismissal. Of those 32 cases, the department delayed serving the disciplinary action in 15 of them, or 47 percent. The delays we reported for the cases we monitored and closed from July through December 2018 resulted in approximately \$108,400 in unnecessary costs to the department and to taxpayers.

For the current reporting period of January through June 2019, the department's performance worsened in this area, as the cost resulting from unnecessary delays increased to \$150,352 from the \$108,400 for the prior reporting period of July through December 2018. We discuss the issue of unnecessary costs due to delayed disciplinary actions in dismissal cases in more detail in the section that begins on page 62 of this report.

In cases we monitored and closed between January and June 2019, we determined the following:

- Of the 137 administrative cases the OIG monitored and closed, 130 cases had peace officers as subjects of the investigations. Of those 130 cases, the department ultimately served disciplinary actions on at least one peace officer in 75 cases, or 58 percent.
- Of the 75 cases in which the department served a disciplinary action on a peace officer, the department served the disciplinary action later than policy required in 45 cases, or 60 percent. These delays ranged from one to 117 days.

- In the cases we monitored and closed during this period, department attorneys prepared the disciplinary actions in all cases involving delayed service. These delayed disciplinary actions all pertained to cases involving peace officers. No employee relations officers were responsible for preparing the disciplinary actions in any of the cases involving delayed service of a disciplinary action.

When a department advocate delayed drafting a disciplinary action and the department delayed serving the action, there could be, and often were, multiple negative effects: the employee suspected of misconduct remained uncertain regarding his or her employment; the department did not correct unacceptable behavior of employees until it eventually served a disciplinary action; and delays may have resulted in unnecessary costs to the department and to taxpayers. The following examples illustrate these concerns:

- In one case, four officers faced allegations related to failing to document or conduct proper inmate counts. Two of the officers faced dishonesty allegations, which, if sustained, carried presumptive penalties for dismissal. The hiring authority sustained the allegations against three of the officers and decided to impose a 5-percent salary reduction for 12 months on one officer, a 5-percent salary reduction for six months on the second officer, and a 60-working-day suspension on the third officer. However, the department did not serve the disciplinary actions on the officers until, respectively, 40, 50, and 52 days after policy required. For months after the date the Office of Internal Affairs completed its investigation, the officers waited to learn what level of discipline, if any, they were to receive. Even though the delays caused no extra monetary cost to the taxpayer, these employees continued to work under a cloud of suspicion and uncertainty about their employment. The hiring authority did not sustain any allegations concerning the fourth officer, who also faced a dishonesty allegation.
- In a second case involving alleged sexual harassment, an officer allegedly sent text messages to a librarian demanding sexual favors in an aggressive and profane manner. The Office of Internal Affairs completed the investigation in fewer than three months. However, the hiring authority took almost three months to conduct the investigative and disciplinary findings conference, to decide to issue the officer a salary reduction, and to serve the officer with a disciplinary action.

- In a third case, a male officer allegedly exposed his genitals to a female officer, kissed her, stuck his hand inside her jumpsuit, and made several inappropriate comments of a sexual nature to her. He also allegedly introduced a personal mobile phone inside the institution. Furthermore, several other employees allegedly retaliated against the female officer for reporting the misconduct. The hiring authority sustained the allegation that the officer made several sexual comments, but none of the other allegations, and decided to impose a 10-percent salary reduction for 24 months. However, the department did not serve the disciplinary action until 62 days after the hiring authority's decision to take disciplinary action, or 32 days after policy required.

The Department Untimely Processed Dismissal Cases, Resulting in Approximately \$313,941 in Unnecessary Costs to the Department and to Taxpayers

For the January through June 2019 reporting period, the OIG examined the department's delays in dismissal cases relative to four critical steps in the department's internal investigations and employee disciplinary process, and concluded that the department's delays in these four critical steps resulted in the department and taxpayers paying out an unnecessary \$313,941 to certain employees.

For the July through December 2018 reporting period, the OIG examined the cost of delays affecting a smaller cohort of cases: the department's delay in serving disciplinary actions on peace officers in dismissal cases. We found that in 47 percent of cases wherein the department intended to dismiss a peace officer, the department served the peace officer with the disciplinary action beyond the 30-day period provided for in departmental policy. These delays resulted in a cost to the department and taxpayers of approximately \$108,400.

As noted above, for the January through June 2019 period, we expanded our examination of the department's delays in dismissal cases to three additional steps in a case (in addition to the service of a disciplinary action) to obtain a more complete picture of the situation. Therefore, regarding dismissal cases, we analyzed the department's delays in four critical steps, which are as follows:

- Whether the hiring authority timely referred allegations of employee misconduct to the Office of Internal Affairs.
- Whether the Office of Internal Affairs timely processed employee misconduct referrals from the hiring authority.
- Whether the hiring authority timely conducted the findings and penalty conference.
- Whether the department timely served the disciplinary action on a peace officer.

Each of these determinations represents an important step in the department's internal investigations and employee disciplinary process, and is outlined in the Department Operations Manual. The policies governing time frames for the first three steps applied to all departmental employees, while the policy governing the fourth applied only to peace officers. Hiring authorities are required to refer

allegations of employee misconduct to the Office of Internal Affairs within 45 days of discovering the allegation or allegations.²¹ Upon receipt, the Office of Internal Affairs must process and decide on the referral within 30 days. If the Office of Internal Affairs accepts the case for an investigation or an interview of the employee suspected of misconduct, it then conducts those activities, prepares a report, and submits it to the hiring authority.

After the Office of Internal Affairs submits the report or returns a case to the hiring authority to act without an investigation or interview, the hiring authority must review the investigative report, exhibits, and supporting materials within 14 days. The hiring authority then conducts an investigative and disciplinary findings conference. Finally, if a hiring authority decides to sustain an allegation or allegations and impose discipline, the department must serve a disciplinary action on the employee. If the employee is a peace officer, the department must serve the disciplinary action within 30 days of making the decision to impose discipline. A hiring authority makes the decision to impose discipline at an investigative and disciplinary findings conference.

Hiring Authorities Often Delayed Referring Allegations of Serious Misconduct to the Office of Internal Affairs

There are several types of serious allegations that, if sustained, carry a presumptive penalty of dismissal, including allegations of dishonesty and code of silence.²² Therefore, when hiring authorities become aware of employee misconduct allegations, based on the nature of the allegations, hiring authorities ought to be immediately aware of the seriousness of the allegations and the likelihood that, if the allegations are sustained, an employee could face dismissal.

During this reporting period of January through June 2019, hiring authorities delayed in identifying and referring some allegations of serious misconduct to the Office of Internal Affairs. In cases the OIG monitored and closed between January and June 2019, which resulted in the hiring authority deciding that dismissal was the appropriate penalty for an employee, the hiring authority delayed referring the allegations to the Office of Internal Affairs in seven of 47 cases, or 15 percent. Ultimately, not all of these cases resulted in a dismissal due to settlements or other modifications, such as modifications to the penalty decided upon by the State Personnel Board. Nevertheless, in dismissal cases in which the dismissal was eventually upheld, or the

21. DOM, Section 33030.5.2, and Office of Internal Affairs Memorandum dated June 20, 2014.

22. DOM, Section 33030.19.

employee resigned or retired, the hiring authority delayed referring the matter to the Office of Internal Affairs in five of 33 cases, or 15 percent.

In those five cases, the cumulative unnecessary delay in referrals was 178 days. This delay resulted in an unnecessary cost to the taxpayers of approximately \$58,207. During these delays, the would-be dismissed employees continued working in their positions, exposing the department to further liability; worked in the mail room or in some other equivalent position; or were placed on paid administrative leave.

The Office of Internal Affairs Timely Processed Allegations of Serious Misconduct from the Hiring Authorities

The Office of Internal Affairs must make a determination regarding a hiring authority's referral and decide whether to open an investigation or conduct an interview, return the case for the hiring authority to act on the allegations without conducting an investigation or interview, or reject the case within 30 days of receiving the hiring authority's referral.²³ From January through June 2019, the Office of Internal Affairs processed 47 cases for which a hiring authority would later review and determine that dismissal was the appropriate penalty. The Office of Internal Affairs delayed in processing these cases only once (2 percent of the cases). In dismissal cases in which the dismissal was eventually upheld, or the employee resigned or retired, the hiring authority delayed referring the matter to the Office of Internal Affairs in only one of 33 cases (3 percent). The delay resulted in a cost to the taxpayers of \$6,636. Notwithstanding the one delayed case, the Office of Internal Affairs continued to do an excellent job of timely processing referrals from hiring authorities.

Hiring Authorities Often Held Untimely Investigative and Disciplinary Findings Conferences in Dismissal Cases

Once the Office of Internal Affairs completes an investigation or an interview of the employee suspected of misconduct, or returns the case to the hiring authority to decide on the allegations without an investigation or interview, the hiring authority must review the investigative report and supporting documentation within 14 days.²⁴ By the time the hiring authority conducts an investigative and disciplinary findings conference, he or she must be prepared to discuss the adequacy of the investigation, whether any allegations should be sustained, and, if so, the appropriate penalty. The OIG will

23. DOM, Section 31140.16.

24. DOM, Section 33030.13.

not negatively assess a hiring authority for a late investigative and disciplinary findings conference as long as the hiring authority made a reasonable effort to schedule the findings and penalty conference within 14 days of receiving the case, but the schedules of the hiring authority, department attorney, or OIG attorney prevented a meeting in that time frame, and as long as the conference was eventually held within 30 days.

From January through June 2019, hiring authorities performed poorly in timely conducting findings and penalty conferences. In 47 cases that the OIG monitored and closed during the reporting period which resulted in the hiring authority deciding dismissal was the appropriate penalty, the hiring authority delayed in conducting the investigative and disciplinary findings conferences in 21 cases, or 45 percent. For cases in which a dismissal action was served and eventually upheld, or the employee resigned or retired, the hiring authority delayed conducting the findings and penalty conference in 13 of 33 cases, or 39 percent. The delays ranged from two to 93 days, for a total of 296 days of cumulative delays. These delays unnecessarily postponed the impositions of the dismissals and separations of employees whose misconduct the hiring authority eventually determined was serious enough to warrant the most severe discipline the department can impose. However, during the delays, the employees continued to be paid to work in their regular position or in another position, or to not work while on administrative leave, costing the department and taxpayers approximately \$98,746 in salary and benefits. The following are notable examples of delayed investigative and disciplinary findings conferences:

- In one case, an officer allegedly struck an inmate several times with a baton, and he and a second officer allegedly lied when they reported that the inmate acted aggressively before the use of force. The hiring authority did not conduct the investigative and disciplinary findings conference until 93 days after the date it should have been held. The hiring authority decided to dismiss the first officer at that conference. The department's delay, after factoring in a 14-day time period to conduct the findings and penalty conference, unnecessarily cost the department and taxpayers approximately \$29,388 in salary and benefits.
- In a second case, an officer allegedly failed to process a weapon into evidence, failed to follow an order to process the weapon, and lied to a supervisor and the Office of Internal Affairs about the matter. The hiring authority did not conduct the investigative and disciplinary findings conference until 30 days after the date it should have been held. The hiring authority decided to dismiss the officer at

the conference. The department's delay, after factoring in a 14-day time period to conduct the conference, unnecessarily cost the department and taxpayers approximately \$9,480 in salary and benefits.

The Performance of Hiring Authorities and Department Attorneys in Timely Serving Disciplinary Actions in Dismissal Cases Involving Peace Officers Declined Significantly from the Prior Reporting Period

Lastly, the OIG analyzed whether the department improved its performance in timely serving disciplinary actions on peace officers whom the hiring authority determined should be dismissed. This last step only applied to peace officers because there is no requirement in departmental policy that hiring authorities serve disciplinary actions on nonpeace officer employees within any specific time period, as long as such actions were served before the deadline to take disciplinary action expired.

From July through December 2018, the department delayed serving disciplinary actions on peace officers, notifying them they were being dismissed in 15 of 32 cases, or 47 percent. During this reporting period of January through June 2019, the department performed significantly worse. In cases the OIG monitored and closed during this period, the department delayed serving disciplinary actions on peace officers in 23 of 35 cases (66 percent).

For dismissal cases in which the dismissal was eventually upheld, or the employee resigned or retired, the department delayed service in 19 of 30 cases, or 63 percent. The delays ranged from one day to 117 days after policy required. For the 19 cases in which the department delayed serving a disciplinary action on a peace officer and the penalty was upheld or the peace officer later retired or resigned, the cumulative delay was 428 days at an unnecessary cost to the department and taxpayers of approximately \$150,352. During these delays, the would-be dismissed peace officers continued working in their positions, exposing the department to further liability; worked in the mail room or in some other equivalent position performing nonpeace officer duties; or were placed on paid administrative leave. The following are notable examples of delayed service of disciplinary actions in cases involving the dismissal of peace officers:

- In one case, outside law enforcement arrested an officer after the officer allegedly drove under the influence of alcohol while in possession of marijuana, drug paraphernalia, and four handguns, two of which were loaded. The

officer also lied to outside law enforcement. The hiring authority decided to dismiss the officer, but did not serve the disciplinary action until 117 days after policy required. The officer eventually agreed to resign as part of a settlement. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department and taxpayers approximately \$36,972 in salary and benefits.

- In a second case, a parole agent allegedly attempted to inappropriately obtain interview questions for a promotional interview from multiple people, lied to supervisors about not trying to get the questions, and lied to the Office of Internal Affairs. The hiring authority did not serve the disciplinary action on the parole agent until 20 days after policy required. Furthermore, the department attorney and the hiring authority planned to wait until a specific date to serve the parole agent because they believed he might retire on that date. The department decided to serve him earlier, but only after the OIG recommended serving him immediately, so the department and taxpayers would not continue to unnecessarily pay a salary to a parole agent whom the department planned to dismiss. The department served the disciplinary action on the parole agent 15 days earlier than the original date it had planned to do so, and he resigned seven days later. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department and taxpayers approximately \$8,279 in salary and benefits.
- In a third case, an officer allegedly unnecessarily punched an inmate in the face while the inmate was on the ground in hand and leg restraints. The officer later lied about the incident, both in a report and to the Office of Internal Affairs. The hiring authority did not serve a disciplinary action on the officer until 38 days after policy required. Furthermore, the officer was placed on paid administrative leave during that 38-day time period. The officer eventually agreed to resign as part of a settlement. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department and taxpayers approximately \$12,008 in salary and benefits.
- In a fourth case, outside law enforcement arrested a parole agent for driving under the influence of alcohol. The parole agent also allegedly rammed the vehicle she was driving into a parked vehicle, threatened to falsely accuse an arresting

officer of rape, and lied to the outside law enforcement officers. The hiring authority decided to dismiss the parole agent, but did not serve the disciplinary action until more than two months later, 33 days after policy required. The parole agent filed an appeal with the State Personnel Board, which upheld the dismissal. The department's delay, after factoring in its prescribed 30-day time period to serve the disciplinary action, unnecessarily cost the department and taxpayers approximately \$13,661 in salary and benefits.

Therefore, for the cases we monitored and closed from January through June 2019, the department's performance in timely conducting the disciplinary process, particularly in serious cases (such as dismissal cases) continued to decline, whether it was in the total percentage of delays in conducting the investigative and disciplinary findings conferences or in serving the disciplinary actions. To reiterate: concerning all four critical steps outlined above for these cases, the department's unnecessary delays cost the department and taxpayers approximately \$313,941 in salary and benefits.

Table 6 below sets forth a summation of the costs associated with unnecessary delays in dismissal cases. On the next page, Table 7 presents a more detailed breakdown of the costs.

Table 6. Costs Associated with Unnecessary Delays in Dismissal Cases

Type of Delay in the Disciplinary Process	Number of Cases	Cumulative Days Late	Salary Cost	Benefits Cost	Total Costs
The Hiring Authority refers misconduct allegation to the Office of Internal Affairs	5	178	\$36,840	\$21,367	\$58,207
The Office of Internal Affairs processes the Hiring Authority's referral	1	21	4,200	2,436	6,636
The Hiring Authority conducts the investigative and disciplinary findings conference	13	296	62,908	35,838	98,746
The Hiring Authority serves disciplinary action on the employee	19	428	95,160	55,192	150,352
Totals		923	\$199,108	\$114,833	\$313,941

Source: The Office of the Inspector General Tracking and Reporting System and the California Department of Corrections and Rehabilitation.

Table 7. Detailed Information regarding Costs Associated with Unnecessary Delays in Dismissal Cases

OIG Case Number	Classification	Monthly Salary at Mid-step (\$)	Daily Rate (\$)	Total Delays							
				Critical Steps in the Investigative and Disciplinary Process							
				Referral*	OIA Processes Referral†	Hiring Authority Makes Findings‡	Hiring Authority Serves Action§	Total Days Late	Total Salary (\$)	Total Benefits (\$)	Total Cost (\$)
17-0022084	Parole Agent I	\$7,979	\$262	...	...	...	22	22	\$5,764	\$3,343	\$9,107
17-0022721	Correctional Officer	6,110	200	30	...	...	2	32	6,400	3,712	10,112
17-0022782	Correctional Officer	6,110	200	...	...	16	...	16	3,200	1,856	5,056
17-0023948	Parole Agent I	7,979	262	...	...	5	33	38	9,956	5,775	15,731
17-0024261	Correctional Officer	6,110	200	...	...	15	...	15	3,000	1,740	4,740
17-0024340	Lieutenant	8,777	288	...	...	...	11	11	3,168	1,837	5,005
17-0024353	Youth Correctional Officer	6,110	200	...	...	...	25	25	5,000	2,900	7,900
18-0025473	Correctional Officer	6,110	200	...	...	33	117	150	30,000	17,400	47,400
18-0025565	Correctional Officer	6,110	200	...	...	...	38	38	7,600	4,408	12,008
18-0025575	Warden	12,859	422	...	...	...	1	1	422	245	667
18-0025642	Correctional Officer	6,110	200	47	...	...	2	49	9,800	5,684	15,484
18-0025833	Parole Agent I	7,979	262	20	...	17	20	57	14,934	8,661	23,595
18-0026137	Special Agent	10,248	336	...	...	21	24	45	15,120	8,769	23,889
18-0026279	Correctional Officer	6,110	200	77	...	...	27	104	20,800	12,064	32,864
18-0026283	Youth Correctional Counselor	6,691	219	...	...	...	24	24	5,256	3,048	8,304
18-0026342	Correctional Officer	6,110	200	...	...	3	5	8	1,600	928	2,528
18-0026404	Correctional Officer	6,110	200	4	...	30	17	51	10,200	5,916	16,116
18-0026421	Correctional Officer	6,110	200	...	...	...	16	16	3,200	1,856	5,056
18-0027282	Correctional Officer	6,110	200	...	...	...	6	6	1,200	696	1,896
18-0027496	Correctional Officer	6,110	200	...	...	14	...	14	2,800	1,624	4,424
18-0027652	Correctional Officer	6,110	200	...	...	93	32	125	25,000	14,500	39,500
18-0028000	Carpenter III	5,603	184	...	...	32	...	32	5,888	2,767	8,655
18-0028185	Correctional Officer	6,110	200	...	...	15	...	15	3,000	1,740	4,740
19-0028269	Correctional Officer	6,110	200	...	...	...	6	6	1,200	696	1,896
19-0028339	Correctional Officer	6,110	200	...	21	...	...	21	4,200	2,436	6,636
19-0028590	Correctional Officer	6,110	200	...	...	2	...	2	400	232	632
Totals				178	21	296	428	923	\$199,108	\$114,833	\$313,941

* The Hiring Authority refers misconduct allegation to the Office of Internal Affairs.

† The Office of Internal Affairs processes the Hiring Authority's referral.

‡ The Hiring Authority conducts the investigative and disciplinary findings conference.

§ The Hiring Authority serves disciplinary action on the employee.

Notes: The **Office of Internal Affairs** is abbreviated **OIA**. **Action** refers to **Disciplinary Action**.

Source: The Office of the Inspector General Tracking and Reporting System and the California Department of Corrections and Rehabilitation.

The Office of Internal Affairs Continues to Needlessly Limit the Scope of Investigations and Should Conduct Interviews of All Employees Suspected of Committing Misconduct

In our report for the January through June 2018 reporting period, we identified concerns regarding the Office of Internal Affairs' handling of hiring authority referrals. Specifically, we expressed problems with the Office of Internal Affairs' process of predetermining allegations prior to the commencement of investigation and its practice of not approving and conducting interviews of employees suspected of misconduct in all cases. To address those problems, we recommended that the Office of Internal Affairs eliminate the practice of identifying allegations prior to beginning investigations and proposed a new paradigm in which hiring authorities would determine allegations upon the conclusions of investigations. We also recommended that the Office of Internal Affairs approve and conduct interviews of employees suspected of misconduct in all cases. The department, however, decided to not accept our recommendations.

Despite the department's rejection of the recommendations, the problems inherent in the Office of Internal Affairs' handling of hiring authority referrals persist. Foremost, the Office of Internal Affairs continues to predetermine allegations prior to the commencement of investigations. Upon receiving hiring authority referrals regarding alleged employee misconduct, the Office of Internal Affairs makes a determination regarding the referral. It is at this very preliminary stage that the Office of Internal Affairs predetermines the allegations for each case. This is before many of the facts regarding the alleged misconduct are available, before most of the available evidence is collected, and often before the subject of the alleged misconduct allegation has provided any evidence or information. And yet, the Office of Internal Affairs adds the predetermined allegations to its case management system, the electronic database in which the department maintains information regarding employee misconduct cases. The entries regarding the predetermined allegations are permanent, and although the information can be updated, once the entries are entered, they cannot be removed.

Such a process may also result in a negative impact on an otherwise good employee in the form of a permanent negative mark in the employee's records. For example, if an employee is accused of being dishonest, and a dishonesty allegation is entered into the case management system, but it is subsequently determined after an investigation that the alleged dishonesty never occurred, the allegation remains in the case management system, putting that employee under a

permanent cloud of suspicion that, at one time, he or she was accused of being dishonest. In addition, the department may be required to divulge the existence of a dishonesty allegation concerning a peace officer, even if the allegation is eventually not sustained, to a defendant in a subsequent unrelated criminal prosecution if ordered to do so by a court.²⁵

Moreover, often times hiring authorities are compelled to make a finding of *not sustained* for allegations merely because the Office of Internal Affairs did not properly draft the allegations at the beginning of the case because the predetermined allegations are based on incomplete information that had not been vetted and tested through a proper and thorough investigation.

As noted previously, the predetermining of allegations has a limiting effect on the special agents who are assigned to conduct the investigations. Some special agents have not only been reluctant to begin to stray from the predetermined allegations originally identified, but also refuse to do so, even when their investigations reveal additional information. When special agents strictly adhere to the allegations initially established, the investigations, at times, are limited, with the result that potential additional provable misconduct went undetected and unaddressed. Likewise, when special agents only adhered to the allegations as initially determined, at times, doing so resulted in situations whereby potentially exculpatory information was not investigated, discovered, or collected by the Office of Internal Affairs.

We also noted that the central intake process²⁶ can be inefficient when the Office of Internal Affairs' Central Intake Unit special agents prepare detailed allegations and assign a predetermined allegation category before an investigation. This process can sometimes result in lengthy debates among the Office of Internal Affairs, the department attorney, and the OIG based on a partial factual record before the beginning of an investigation, unnecessarily delaying and burdening the process.

We offered an alternative approach and recommended eliminating the requirement that the Office of Internal Affairs' Central Intake Unit specifically identify the allegations in each case prior to commencing an investigation and that it cease from identifying general conclusory

25. *Brady v. Maryland* (1963) 373 U.S. 83, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, and California Evidence Code sections 1043 to 1047 (all citations accessed 11-22-19).

26. We use the phrase *central intake process* to describe the process whereby the Office of Internal Affairs' Central Intake Unit receives referrals from hiring authorities regarding alleged employee misconduct, and the manner in which it addresses and makes decisions regarding those referrals, including the manner in which the Office of Internal Affairs consults with the OIG and department attorneys during the process.

misconduct allegations, such as dishonesty or neglect of duty. Under our proposal, hiring authorities would continue submitting matters involving alleged employee misconduct to the Office of Internal Affairs, and its special agents would continue to review and evaluate the hiring authority referrals. The Office of Internal Affairs' Central Intake Unit special agent would still be responsible for collecting all relevant documents, requesting additional information as needed, and asking the hiring authority to conduct additional inquiry as needed. However, the Office of Internal Affairs' Central Intake Unit special agent would no longer compose conclusory allegations that are sometimes poorly worded, limiting, and confusing. Based on the Office of Internal Affairs' Central Intake Unit special agent's summary, the special agent assigned to conduct the investigation would be free to thoroughly investigate the matter based on evidence obtained during the investigation. The Office of Internal Affairs should be investigating behavior, not allegations. The department responded to the OIG's recommendation as follows: "This recommendation will not be implemented at this time."

We also noted in the January through June 2018 report that the Office of Internal Affairs does not always interview the employee suspected of misconduct, which potentially violates departmental policy and results in hiring authorities making determinations without fully addressing possible mitigating and aggravating factors. Department Operations Manual, Section 33030.18, requires that the hiring authority "shall" consider mitigating and aggravating factors in determining whether to increase or decrease the penalty within the penalty range outlined in the employee disciplinary matrix.²⁷ Without the benefit of obtaining information directly from the employee regarding these critical elements, such as whether the employee accepts responsibility for his or her actions or whether the employee is remorseful, the hiring authority truly cannot determine and apply these factors, and potentially violates policy. Moreover, it is just to allow employees to provide their version of events and to address the allegations, including providing possible mitigating factors, before having discipline imposed on them. Without the benefit of such information, the hiring authority may impose either unduly harsh or lenient discipline that will remain in the case management system, even if the allegations or penalty are changed later through either a *Skelly* hearing or appeal process. By obtaining the employee's statement at the outset, the hiring authority may avoid unnecessary delay and litigation, as well as undue stress on the employee. Therefore, we recommended that the Office of Internal Affairs approve and conduct interviews of employees suspected of

27. DOM, Section 33030.19. The employee disciplinary matrix is the department's list, which is not all inclusive, of causes for discipline (such as dishonesty, code of silence, etc.) with applicable penalty levels. It includes a chart describing the range of disciplinary penalties from official reprimand to dismissal for each cause for disciplinary action.

misconduct in all cases. The department responded to the OIG's recommendation as follows: "This recommendation will not be implemented at this time."

For more analysis and explanation of these issues, we refer the reader to pages 33 through 46 of our report for the January through June 2018 reporting period titled *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation* published on November 8, 2018, and available on our website at www.oig.ca.gov.

The OIG Added Value in Its Monitoring of Cases

OIG attorneys contemporaneously monitored the performances of hiring authorities, Office of Internal Affairs' special agents, and department attorneys as these individuals conducted internal investigations and handled the department's employee disciplinary process. In so doing, we believe that we had a positive effect on the department's management of several cases we monitored and closed from January through June 2019, a few of which are noteworthy and described below:

- In one case, a lieutenant allegedly failed to interview sergeants and officers, and review their reports when investigating an inmate's complaint, and lied in a document regarding the interviews; allegedly created false interview notices and advisements of rights' forms for two sergeants and two officers; and submitted an investigative report that contained false statements and documents. The lieutenant also allegedly lied during an Office of Internal Affairs' interview. Based on the OIG's recommendation, the special agent conducted a computer forensics analysis, which produced documents proving that the lieutenant falsified multiple documents. The hiring authority dismissed the lieutenant, and the lieutenant filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board sustained the dismissal.
- In a second case, an officer allegedly directed a racially disparaging comment to an inmate, unnecessarily deployed pepper spray on the inmate's face, failed to report that he used force on the inmate, and submitted a false report regarding the incident. During the investigation, the OIG recommended the special agent conduct an additional witness interview, which provided credible exculpatory evidence that ultimately supported the hiring authority's finding there was insufficient evidence to sustain the allegations against the officer.
- In a third case, a sergeant allegedly composed and sent draft responses to two officers who were directed to provide clarifying information regarding their observations of an incident involving the sergeant and a visitor. The draft responses were allegedly inaccurate and included assertions pertaining to events not personally witnessed by the officers. The sergeant also allegedly told another employee that the sergeant could be disciplined due to a failure by one

of the officers to use the draft responses he had sent her. During the investigative and disciplinary conference, the department attorney advised the hiring authority there was insufficient evidence to sustain the allegations, to which the hiring authority agreed. The OIG recommended that the hiring authority sustain two allegations related to the sergeant sending the draft reports to the officers. After a lengthy discussion, the hiring authority adopted the OIG's recommendation, sustained the recommended allegations, and imposed a 5-percent salary reduction for three months. The sergeant filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board upheld the allegations and penalty.

- In a fourth case, a parole agent allegedly asked multiple employees to provide interview questions for a supervising parole agent position before interviewing for the position, lied to two parole administrators when he denied having asked anyone for the interview questions, and lied during his Office of Internal Affairs' interviews. The OIG recommended that the special agent retrieve relevant email messages from the parole agent and a parole administrator who was also a subject of the investigation. The special agent retrieved the messages, and they contained evidence of misconduct by both the parole agent and the parole administrator. The OIG also made recommendations that the special agent interview the parole agent and the parole administrator a second time, and add allegations against both for misconduct discovered during the investigation, which the special agent adopted. The hiring authority sustained the allegations and identified dismissal as the appropriate penalty for the parole agent. However, both the department attorney and the hiring authority decided they would wait to serve the parole agent with the disciplinary action until after the parole agent's proposed retirement date, 17 days later, and only serve him if he decided to not retire. The OIG recommended the department serve the disciplinary action immediately to stop paying wages to a parole agent whom the hiring authority intended to dismiss. The hiring authority adopted the OIG's recommendation and, three days later, served the parole agent, who subsequently advanced his retirement date by a week.
- In a fifth case, an associate warden allegedly conducted a second-level review of a use-of-force report before the first-level review had been conducted. Initially, the

hiring authority considered sustaining the allegation and providing training. However, in the OIG's opinion, there was insufficient evidence of misconduct. The OIG explained to the hiring authority that he did not need to sustain an allegation to provide the associate warden with training. The OIG recommended that the hiring authority not sustain the allegation, but still provide training to the associate warden if the hiring authority deemed training appropriate. The hiring authority adopted the OIG's recommendation.

- In a sixth case, outside law enforcement arrested an officer for an alleged domestic violence incident, and the officer allegedly failed to report his arrest to the department. The hiring authority found insufficient evidence to sustain allegations. The hiring authority initially was prepared to make a finding of *not sustained*. The OIG recommended that the hiring authority make a finding of *unfounded* concerning the allegation that the officer failed to report his arrest because the evidence conclusively proved that the officer had reported the arrest. The hiring authority accepted the OIG's recommendation and made a finding more favorable to the officer.

Recommendations

For the January to June 2019 reporting period, we offer the following recommendations to the department:

Nº 1. The OIG again recommends that the Office of Internal Affairs eliminate the current practice of special agents identifying allegations at the beginning of and during investigations, and instead allow the hiring authority to determine the appropriate allegations upon the conclusion of the Office of Internal Affairs' investigation and after the hiring authority has reviewed and considered all the evidence.

Nº 2. The OIG again recommends that the Office of Internal Affairs approve and conduct interviews of employees suspected of misconduct in all cases, even in cases in which a full investigation is not warranted, including those the Office of Internal Affairs approves for "direct action" by a hiring authority.

Nº 3. The OIG recommends that the Office of Internal Affairs develop a mechanism in its case management system to differentiate between hiring authority employee misconduct referrals it rejects because there is no reasonable belief of employee misconduct and those it rejects for the hiring authority to conduct further inquiry. The OIG also recommends that the department create a procedure to track referrals the Office of Internal Affairs returns to hiring authorities for further inquiry to ensure hiring authorities conduct the further inquiry and do so in a timely manner.

Nº 4. The OIG recommends that the department either clarify its current policy or develop a precise policy setting forth a specific time frame in which a hiring authority must conduct investigative and disciplinary findings conferences in employee discipline cases and a time frame in which a hiring authority must make findings regarding the sufficiency of an internal investigation, findings regarding employee misconduct allegations, and, if there are sustained allegations, the appropriate corrective action or disciplinary penalty. The OIG recommends the department develop a time frame reflecting the number of days the conference must be held after a hiring authority receives (1) an investigative report from the Office of Internal Affairs; (2) a report from the Office of Internal Affairs regarding its interview of an employee suspected of misconduct; or (3) a notice of approval from the Office of Internal Affairs to take direct action on employee misconduct allegations without an investigation or interview.

Nº 5. The OIG recommends that the department implement a policy requiring department attorneys or employee relations officers to provide all disciplinary actions to the hiring authority within a specific number of days after the investigative and disciplinary findings conference to ensure employees receive timely service of their disciplinary actions and to reduce unnecessary costs.

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

*Semiannual Report
January–June 2019*

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
November 2019

OIG