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OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

June 2020

Complaint Intake and Field Inquiries

*Addressing Complaints of Improper
Governmental Activities Within the California
Department of Corrections and Rehabilitation*

Initial Report

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 Sacramento
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June 2, 2020

 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 *Complaint Intake and Field Inquiries: Addressing Complaints of Improper Governmental Activities Within the California Department of Corrections and Rehabilitation*. This is our first report dedicated to the work we perform in response to complaints we receive from inmates, family members, interest groups, and other concerned individuals. As part of our statutory responsibilities, we maintain a statewide complaint intake process that provides concerned individuals a point of contact to raise allegations of improper activity within the California Department of Corrections and Rehabilitation (the department). This report summarizes the work we performed in response to 6,009 complaints we received in the two-year period between July 1, 2017, and June 30, 2019.

This report provides an overview of our processes for reviewing and analyzing the complaints we receive and examples of ways in which we have helped individuals resolve their disputes with the department. The report also summarizes the inquiries our field inspectors performed into 49 complaints that warranted additional scrutiny. Our field inspectors identified instances in which the department responded appropriately and commendably to the concerns we raised. But in other instances, our field inspectors found policies and practices that were both costly to the State and harmful to the inmates who were affected by the policies and practices.

Chief among the concerns we identified is the unintended impact of a regulation the department enacted in 2017, which restricted the department's ability to advance an inmate's release date after discovering staff erred in rescinding an inmate's sentence reduction credits. The regulation prohibits the department from releasing an inmate any sooner than 60 days after the error is corrected. After reviewing allegations that the department erroneously rescinded four inmates' sentence credits within 60 days of their estimated release dates, we determined that the department's policy of performing audits of inmates' release date calculations when an inmate is only 60 days from release imposes an undue hardship on inmates. Because the department cannot fully correct any mistakes staff make in the final 60 days of an inmate's incarceration, inmates are forced to forfeit these earned credits, with the only remedy being to initiate litigation against the department seeking damages for holding them beyond their release dates. In these four cases, the department's mistakes and administrative delays caused these inmates to spend a total of 122 additional days in prison, which directly cost the State approximately \$28,360 and exposed the department to additional liability for denying inmates of the liberty interests they earned that entitled them to an earlier release from prison.

We also reviewed the department's response to 36 complaints we forwarded to hiring authorities statewide that involved allegations of staff misconduct. We determined the department's hiring authorities performed inadequate inquiries into 21 of these complaints, finding concerns similar to those we raised in our January 2019 report titled *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*. We discovered that hiring authorities did not perform inquiries into four complaints and did not document the



inquiries performed into another three complaints. We also found inquiries that were untimely, incomplete, and lacking independence. On the other hand, we discovered that some hiring authorities performed excellent inquiries into several cases in which they conducted immediate inquiries that were thorough, complete, and well-documented.

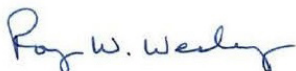
The report also raises concerns over the department's handling of various incidents that occurred at three adult institutions. Although we only examined the individual incidents brought to our attention through our complaint intake process, the issues we found may be indicative of harmful practices statewide. In the first case, the department punished an inmate with a disciplinary action that resulted in a 30-day restriction on the inmate's visiting privileges for violating the department's visiting policies and staff directives. Video footage of the incident, however, clearly showed that the inmate and his visitor complied with all staff directives and that the visiting officer's report describing the violations was inaccurate. Although the department implemented our recommendation to reduce the formal disciplinary action to written counseling and to rescind the 30-day visiting restriction 12 days early, it refused to investigate the visiting officer's dishonest report of the incident.

In another case, institutional staff held an inmate in administrative segregation for 81 days while the institution performed an investigation into allegations that the inmate threatened to harm a lieutenant. The institution completed its investigation in only four days, but staff failed to alert the institution's classification committee of the investigation's closure, which caused the inmate to languish in administrative segregation well beyond the time period necessary to investigate the threat against staff. Also of concern was the lieutenant's involvement in the investigation of the threat against him and in decisions to rehouse the inmate in administrative segregation, despite the clear conflict of interest stemming from the threat against his life. Although the department recently implemented a statewide policy for handling threats made against staff, the policy does not instruct the subjects of threats that they have a conflict of interest when it comes to investigating the threats and making decisions affecting the inmates who allegedly issued the threats. A conflict of interest provision in this policy would protect staff and inmates alike by reducing staff opportunities to retaliate against inmates and preventing inmates from making false claims of retaliation against staff.

In the final case we discuss, the department placed an inmate's safety at risk when it entered inaccurate information in his central file that indicated he was convicted of an offense involving the sexual abuse of a minor. Even though the department corrected the inaccurate entry in the inmate's file, rather than remove the inaccurate information in its entirety, it placed an inconspicuous notation in the file indicating the information had been revised. When we checked the inmate's file again months later, we found the department had again placed new information in his file identifying him as a child sex offender. After we raised this concern with the department, it only partially corrected the mistake; staff deleted some of the inaccurate information, but did not remove other information suggesting he had a prior conviction involving a minor. As long as this inaccurate information remains in the inmate's file, his safety is at risk from individuals who wish harm upon child sex offenders.

We conclude the report by identifying instances in which departmental managers made positive changes after reviewing three of the complaints we forwarded for their review, including closing a gap in one institution's use-of-force reporting policy, remedying another institution's family visiting procedures, and re-issuing a decision of the Board of Parole Hearings that contained inaccurate and incomplete information that reflected poorly on the inmate's suitability for parole.

Respectfully submitted,



Roy W. Wesley
Inspector General

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The Office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe an improper governmental activity, as that term is defined in subdivision (c) of Section 8547.2 of the Government Code. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(California Penal Code section 6128 (a))

In order to properly respond to any allegation of improper governmental activity, **the Inspector General** shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the Department of Corrections and Rehabilitation. This telephone number shall be posted by the department in clear view of all employees and the public. When requested pursuant to Section 6126, **the Inspector General** shall initiate a review of any alleged improper governmental activity.

(California Penal Code section 6128 (b))

— State of California
Excerpted from Penal Code sections

Terms Used in This Report	
Administrative Segregation	A housing unit for inmates who have been removed from general population because they allegedly present an immediate threat to the safety of the inmate or others, endanger institution security, or jeopardize the integrity of an investigation.
Appeal	An inmate may appeal (or challenge) any policy, decision, action, condition, or omission by the department that has a material adverse effect upon his or her health, safety, or welfare. Toward that end, an inmate may use the CDCR Form 602 (commonly referred to as a "602") to file his or her appeal.
Appeals Coordinator	A prison employee who is responsible for processing appeals (receiving, logging, routing, and monitoring disposition), monitoring the system, preparing the quarterly appeals report, recommending corrective action where indicated, and working with the in-service training officer to ensure that training on the appeals process is carried out. This employee runs the institution's Appeals Office.
Credits	Inmates can earn sentence reduction credits by engaging in positive behavior and for completing and progressing in various academic, vocational, and rehabilitative programs.
Form 22	The form inmates can complete to request informal assistance from department staff concerning issues related to their confinement or to request an interview with a staff member.
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.
Inquiry	The initial investigative process the department performs into allegations of staff misconduct. During an inquiry, staff conduct interviews with various individuals, gather and examine relevant documentary evidence, and draft a report.
Institution Classification Committee (ICC)	A group of staff at each institution that makes decisions affecting transfer, program participation, supervision, security, housing, and safety of persons.
Investigative Services Unit (ISU)	A unit staffed by prison employees who are trained to conduct administrative reviews and investigations.
Milestone Credits	A type of sentence reduction credit inmates receive for achieving a distinct objective within approved rehabilitative programs, including academic programs, substance abuse treatment programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, and other similar programs.
Office of Internal Affairs	The office within the department authorized to investigate allegations of staff misconduct. This office works independently of the prison chain of command.
Prop 57	In November 2016, California passed Proposition 57, the California Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative, requiring the department to adopt regulations implementing new parole and sentence credit provisions to enhance public safety, and authorizing the department to award sentence credits for rehabilitation, good behavior, or educational achievements.
Reviewer	A supervising prison employee who is responsible for conducting the staff complaint inquiry. Typically, the reviewer is a sergeant or a lieutenant, but the reviewer must hold at least one rank above that of the accused staff member.
Rules Violation Report (RVR)	Disciplinary action taken against an inmate for violating the law or departmental rules regulating inmate behavior. An RVR can result in various penalties, such as a loss of sentence reduction credits, a temporary loss of privileges, placement in segregated housing, and loss of work assignments.
Staff Complaint	An inmate appeal alleging facts that would constitute prison employee misconduct.

Summary

The Office of the Inspector General (OIG) maintains a statewide complaint intake process that provides concerned individuals a point of contact to report allegations of improper activity within the California Department of Corrections and Rehabilitation (the department). We receive allegations from inmates, parolees, families, departmental employees, and advocacy groups, among others. People submit complaints by sending us letters, calling our toll-free public phone line or our main telephone number, or filling out the complaint form on our website.

Between July 1, 2017, and June 30, 2019, we received 6,009 complaints of improper governmental activities. After we reviewed each complaint, we provided a written response to the complainant. Our office does not have the authority to conduct investigations into the complaints we receive; however, we perform *preliminary inquiries* by reviewing policies and procedures, accessing information stored in the department's electronic records systems, requesting relevant records from institutional staff, and speaking with institutional staff regarding the merits of the complaints and our recommendations on how to resolve them.

In the vast majority of cases, our work results in our office providing the complainant with advice on how to address his or her concerns with the department. However, when our examination of a complaint identifies potential violations of policy or procedure, we open a more detailed *field inquiry* to bring the matters to the attention of the department. In such cases, we typically visit the institutions to observe operations, meet with departmental administrators, make recommendations to prison administrators, and monitor the department's response.

In this reporting period, we performed 49 field inquiries. This report summarizes the results of these field inquiries, including the following highlights:

- We reviewed five complaints that inmates were being held beyond their correct release dates and determined the department mishandled four of the five situations.
 - For two inmates, staff improperly rescinded sentence credits that caused the release dates for these inmates to be incorrectly extended by a total of 111 days.
 - In a third inmate's case, staff appropriately rescinded 56 credits from an inmate because he did not meet the criteria required to earn the credits, but failed to apply a

loss of credits, which caused the department to release him 32 days early.

- In a fourth inmate's case, the department delayed restoring an inmate's credits, which caused the inmate to spend an additional 11 days in prison.
- In three of the release date calculation cases we reviewed, the department failed to appropriately address the inmates' appeals and requests for assistance, which prevented these three inmates from challenging the decision to rescind their credits.
- In the fifth inmate's case, the department reviewed the inmate's complaint, realized the inmate was entitled to credits that he had never received, and awarded the credits in time to facilitate the inmate's timely release from prison.
- In 36 complaints of staff misconduct we referred to the department, we determined 21 of the 36 complaints (58 percent) were handled inadequately.
 - Hiring authorities did not perform inquiries into four of the 36 complaints (11 percent).
 - Of the 32 staff complaint inquiries, we found hiring authorities completed their inquiries within the 30-business-day time limit prescribed by departmental policy in only 19 instances (59 percent).
 - In nine instances (28 percent), we found reviewers failed to conduct sufficient interviews or failed to consider all relevant information, or both.
 - In three complaint inquiries (9 percent), the reviewer either lacked independence or displayed bias in favor of departmental staff.
- An officer canceled an inmate's visit and suspended his visiting privileges for reasons that were not supported by video footage of the incident. When we raised this issue to the department's attention, the department reduced the disciplinary action it instituted against the inmate, but refused to investigate the officer's alleged dishonesty in writing a report that contained statements that contradicted the video footage we reviewed.
- A captain's failure to timely alert the institution's classification committee that an investigation had concluded caused an inmate to spend 81 days in

administrative segregation even though the investigation had concluded just four days after the inmate was placed in administrative segregation.

- We reviewed an inmate's allegation that departmental staff placed inaccurate information in his disciplinary records that indicated that he had been convicted of a sex offense involving a minor. After we brought this error to the department's attention, staff revised the inmate's disciplinary record, but failed to completely remove the incorrect information that labeled the inmate as a convicted child sex offender. This inaccurate information places the inmate at risk of harm by those who wish to harm child sex offenders.
- The department's hiring authorities made several positive changes after reviewing the complaints we referred and listening to our concerns, including:
 - An institution's Chief Executive Officer over health care revised policies and training materials to ensure health care staff are aware of their obligation to inform custody staff when a patient states that custody staff used excessive force.
 - A warden improved the institution's family visiting process by requiring staff to monitor the freshness of food that inmates and their families purchase in advance of the visits, instructing staff how to accommodate visitors who need dietary accommodations, and training involved staff regarding the importance of communicating positively with family members.
 - The Board of Parole Hearings revised an earlier decision it issued by removing incorrect information it received from the inmate's assigned institution, incorporating positive information regarding the inmate's rehabilitative programming, and deleting outdated conviction information it was not permitted to consider. Although the updated decision did not change the Board's ultimate decision to deny the inmate parole, the revisions ensured the inmate received his due process rights.

4 | Complaint Intake and Field Inquiries

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Background

Responsibility of the OIG

California Penal Code section 6128 requires the OIG to maintain a complaint intake process to address concerns from any individual regarding allegations of improper governmental activity within the department.

Although we review complaints filed by inmates, employees, and other stakeholders, we are not authorized to conduct investigations into these complaints. Rather, when we receive complaints, we evaluate the allegations and review departmental records to determine if the department complied with its policies. If this preliminary inquiry uncovers information that warrants further examination by the department, we notify departmental administrators of the issues raised by the complaint and recommend they evaluate the complainant's concerns. When our inquiry identifies violations of the department's policies, practices, and procedures, we refer the complaint to our regional field inspectors, who work directly with the hiring authority for resolution at the local level.

Before making a complaint to the OIG, inmates and parolees are encouraged to complete the department's appeals process. All other complainants are similarly requested to first attempt to resolve their concerns informally with the department by using the department contact information provided to them as listed in the text box on the next page.

Any inmate, parolee, or ward who is not satisfied with the department's response to an appeal or who believes an inquiry into staff misconduct was not conducted properly may request that we examine his or her concerns. In addition to utilizing our toll-free public telephone number or our main office number, individuals may also file a complaint by mail or electronically via our website as listed below.

The Office of the Inspector General maintains a toll-free public telephone number for inmates using the inmate phone system at adult institutions (916-555-0001), wards at juvenile facilities (959-958-0001), and members of the public (1-800-700-5952). We also provide a link for complainants to use in submitting complaints on our website: <https://www.oig.ca.gov/connect/report-misconduct/>. In addition, anyone can send correspondence to us using the following address:

The Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Source: California Office of the Inspector General.

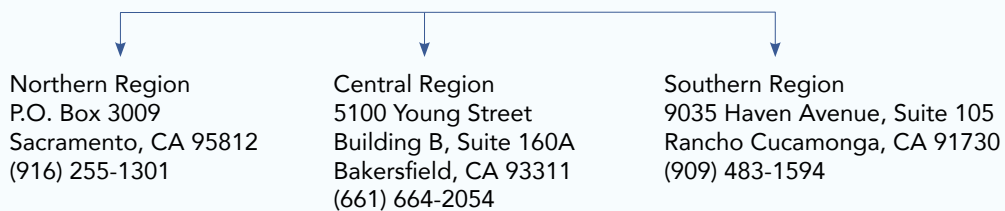
The Office of the Ombudsman can be contacted by calling (916) 445-1773, completing the online Ombudsman Contact Form available at <https://www.cdcr.ca.gov/ombuds/>, or by writing to the following address:

California Department of Corrections and Rehabilitation
Office of the Ombudsman
1515 S Street
Sacramento, CA 95811

Source: <https://www.cdcr.ca.gov/ombuds/>.

A Citizen's Complaint form (CDCR 2142) can be submitted to the California Department of Corrections and Rehabilitation to make a complaint of improper conduct against employees of the department. Complaints may be submitted to any supervisor or manager of the department, or may be addressed to the department's Office of Internal Affairs at any of the following regional offices:

Office of Internal Affairs



Source: <https://www.cdcr.ca.gov/ocr/contact-us/>.

Complaint Intake

Our office primarily receives complaints from inmates, parolees, families, departmental employees, and advocacy groups. OIG contact information is posted in all adult institutions, Division of Juvenile Justice facilities, and parole offices. Our informational posters are placed in each housing unit and provide resource information for both inmates and departmental employees explaining how to file a complaint with the OIG by telephone or through the mail.

Table 1, below, illustrates that between July 1, 2017, and June 30, 2019, our office received 6,009 complaints. Of these, 4,598 complaints (77 percent) were submitted via mail, 783 complaints (13 percent) were received directly from our toll-free public telephone number, and 545 complaints (9.1 percent) were submitted electronically via our website.

Table 1. Number of Complaints Received, by Method of Submission

Method of Submission	Fiscal Year 2017–18*	Fiscal Year 2018–19*	Total Complaints Received	Percentage of Total Complaints Received
Mail	2,249	2,349	4,598	76.5%
800 Number	378	405	783	13.0%
Web/Email	235	310	545	9.1%
Phone	24	31	55	0.9%
Fax	9	7	16	0.3%
In-Person	6	6	12	0.2%
Grand Total	2,901	3,108	6,009	100.0%

* Fiscal Year 2017–18 refers to the time period beginning July 1, 2017, and ending June 30, 2018. Fiscal Year 2018–19 refers to the time period beginning July 1, 2018, and ending June 30, 2019.

Source: The Office of the Inspector General Tracking and Reporting System, June 2017 through July 2019.

On the next page, Table 2 documents the sources of the complaints we received. Inmates filed the vast majority of them, submitting 4,864 of the total 6,009 complaints (81 percent) our office received, while all other complainant submissions combined resulted in 1,145 complaints (19 percent).

Table 2. Number of Complaints Received, by Complainant

Complainant	Received Fiscal Year 2017–18	Received Fiscal Year 2018–19	Grand Total	Percentage of Total [‡]
Inmate	2,377	2,487	4,864	80.9%
Family Member	236	345	581	9.7%
Advocate	90	135	225	3.7%
CDCR Employee*	74	46	120	2.0%
Other [†]	40	22	62	1.0%
Anonymous	30	26	56	0.9%
Parolee/ Ward	27	21	48	0.8%
Governor's Office	24	18	42	0.7%
Inspector General	3	8	11	0.2%
Grand Total	2,901	3,108	6,009	‡

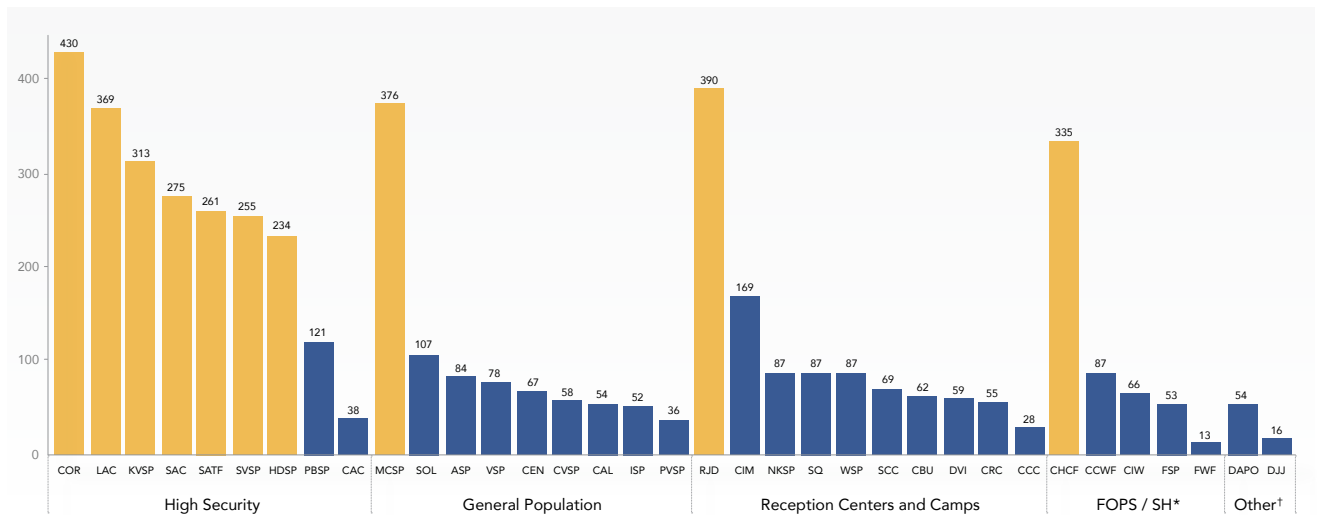
* CDCR Employee includes both current and former departmental employees.

[†] Other includes complaints received from the general public, the district attorneys, the California Rehabilitation Oversight Board, the State Auditor, the Legislature, and other entities.

[‡] Percentages do not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System, June 2017 through July 2019.

On the next page, Figure 1 displays the volume of complaints we received concerning each adult institution, the Division of Adult Parole Operations, and Division of Juvenile Justice facilities during fiscal years 2017–18 and 2018–19. The volume of complaints we received varied from institution to institution. Ten of the state's 35 institutions (29 percent) disproportionately accounted for 3,238 (54 percent) of the complaints we received. Of these 10 institutions with the highest volume of complaints, seven of them (California State Prison, Corcoran; California State Prison, Los Angeles County; Kern Valley State Prison; California State Prison, Sacramento; Substance Abuse Treatment Facility; Salinas Valley State Prison; and High Desert State Prison) are assigned to the department's high security mission classification. This category of institution houses male offenders whom the department considers to be the most violent and dangerous in the state. Historically, we have received the majority of our complaints concerning issues at institutions from this mission classification.

Figure 1. Number of Complaints Received, by Institution

* Female Offender Programs and Services / Special Housing.

† Other divisional entities.

Note: The 10 institutions about which we received the most complaints are shaded in yellow.

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

Staff in our Intake Unit review each complaint to identify the types of issues each complaint addresses. For allegations that fall outside of our jurisdiction, such as complaints regarding county jails, federal prisons, or local law enforcement, we refer the complainants to the most appropriate entity holding jurisdiction over the issues raised in the complaint. For allegations that fall within our jurisdiction, our staff conduct a preliminary inquiry and respond to the complainant.

We immediately act on the most critical allegations, such as life-threatening situations, or safety and security concerns that may affect departmental staff or inmates. For example, we make safety or mental health referrals when a complaint alleges potentially unsafe conditions, such as enemy concerns, threatening behavior, suicidal thoughts, or other indicators noting safety or security risks. All other allegations, such as those regarding due process violations, missing inmate property, dissatisfaction with living conditions, the visiting process, and appeal outcomes, are prioritized by urgency and severity, and assigned to an OIG staff member to perform a preliminary inquiry into the concerns presented.

We do not have the authority to conduct investigations into the complaints we receive. Instead, we perform what we refer to as *preliminary inquiries* by reviewing departmental records to verify the

ACCESS TO INMATES' APPEALS

During the reporting period July 1, 2017, through June 30, 2019, our office made approximately 1,480 requests* to the department's public information officers (PIOs) at the 35 institutions statewide, to request documents and other information, such as the Inmate Appeals Tracking System (IATS)* history report for an inmate. Although the department provides us with remote access to many of its electronic databases, we do not currently have direct access to IATS.

Because we encourage inmates and parolees to complete the department's administrative appeals process before making a complaint to our office, we first verify whether an inmate or parolee has demonstrated an attempt to resolve his or her issues by initiating a departmental appeal.

When the department's records indicate a related appeal exists, we contact the institution's PIO again and request the supporting documentation to assist our inquiry into the complainant's issues. Having direct access to IATS would streamline our inquiries and reduce the amount of time the department's PIOs spend responding to our requests for records.

* The OIG reviewed all intake staff requests made to the department during the third quarter of 2018; 185 requests for IATS and appeals-related information were made. Extrapolating this figure annually results in 740 requests, and over the two-year reporting period, accounts for approximately 1,480 requests.

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

complainant's allegations to the extent possible. During a preliminary inquiry, we locate an inmate's or parolee's records by directly accessing various departmental electronic records management systems. For access to records that cannot be retrieved electronically, we typically request relevant documentation directly from departmental staff¹ (text box, left). We also review departmental regulations, policies, and operational procedures to identify the standards applicable to the issues raised in each complaint.

Following our inquiry into the complaint, we provide a written response to the complainant that includes the outcome of our review and a description of our actions taken. In the majority of cases, our preliminary inquiry work results in our office providing complainants with advice on how to address their concerns with the department. For example, inmates frequently raise concerns to our office before either attempting to utilize the administrative appeals process or exhausting the appeals process in its entirety. In such cases, we provide complainants with instructions on how to use the department's grievance processes to resolve any issues before seeking outside assistance.

We notify the appropriate departmental administrators of allegations of serious staff misconduct and recommend they evaluate the complainant's concerns. We also notify the Prison Rape Elimination Act (PREA) compliance manager at the relevant institution and recommend its staff perform an investigation into complaints containing allegations of sexual harassment or sexual misconduct against departmental staff or inmates.

In other less serious matters, when our preliminary inquiry results are inconclusive, or when our office is unsure which departmental policy or procedure governs the issues raised in a complaint, we may refer the complainant's allegations to the department for an evaluation and potential inquiry to resolve the concerns.

1. The department maintains, at the institutional level, an inmate appeals history known as the "Inmate Appeals Tracking System" (IATS) database. Our staff review individual IATS reports obtained from the department to determine whether an inmate has access to the appeals process and whether he or she has exhausted administrative remedies. Inmates' attorneys may also request information from this database to determine if their clients have exhausted their administrative remedies prior to filing a lawsuit against the department.

We treat all personal information contained in a complaint as confidential in order to respect the complainant's privacy and protect him or her from retaliation. Therefore, for the majority of the complaints we refer beyond our agency, such as to a warden or the Office of Internal Affairs, we request that complainants sign and return a waiver consenting to the release of their name and correspondence. A complainant is not required to consent to the release of this information, but due to the nature of some allegations, it would be difficult to conduct an inquiry without the complainant doing so. When a complaint identifies an imminent threat to life, we proceed without obtaining a waiver.

Our intake staff also assist complainants by collaborating with our regional field inspectors who are assigned to monitor other departmental processes at each prison (text box, right). When our intake unit receives complaints regarding departmental matters that are actively being monitored by our office, intake staff alert our regional field inspectors to those issues. Our inspectors can immediately bring these matters to departmental representatives' attention and ensure the department receives the complainant's information and considers it during these processes.

Finally, our office may elevate a complaint to the level we refer to as a *field inquiry* if the complaint involves a potential policy violation by departmental staff that cannot be resolved through our standard monitoring responsibilities. Depending upon the nature of the matter, field inquiries can involve communication with departmental administrators located within various departmental offices and programs; however, most often, they involve a site visit to meet with the warden of the institution to which the complaint pertains. In such instances, our staff make recommendations to remedy identified issues varying from simple, informal fixes, such as the reversal of a previous departmental decision; the need for corrective actions, such as staff training; or the initiation of an inquiry into allegations of staff misconduct to determine whether to request a formal investigation. If the department performs a formal investigation, our field inspectors may monitor the case as part of our discipline monitoring activities.

OIG FIELD DUTIES

Deputy Inspectors General on our *Force Accountability and Compliance Team* monitor the department's review process for use-of-force incidents. Our inspectors review and analyze use-of-force incidents by reviewing written reports, photographs, and other records, and, when applicable, viewing video recordings of the incidents and inmate interviews. We independently determine whether staff actions before, during, and after the use of force were reasonable under the circumstances and within the bounds of departmental policy and training procedures. We then provide real-time feedback and make recommendations to the department's committees that review use-of-force incidents.

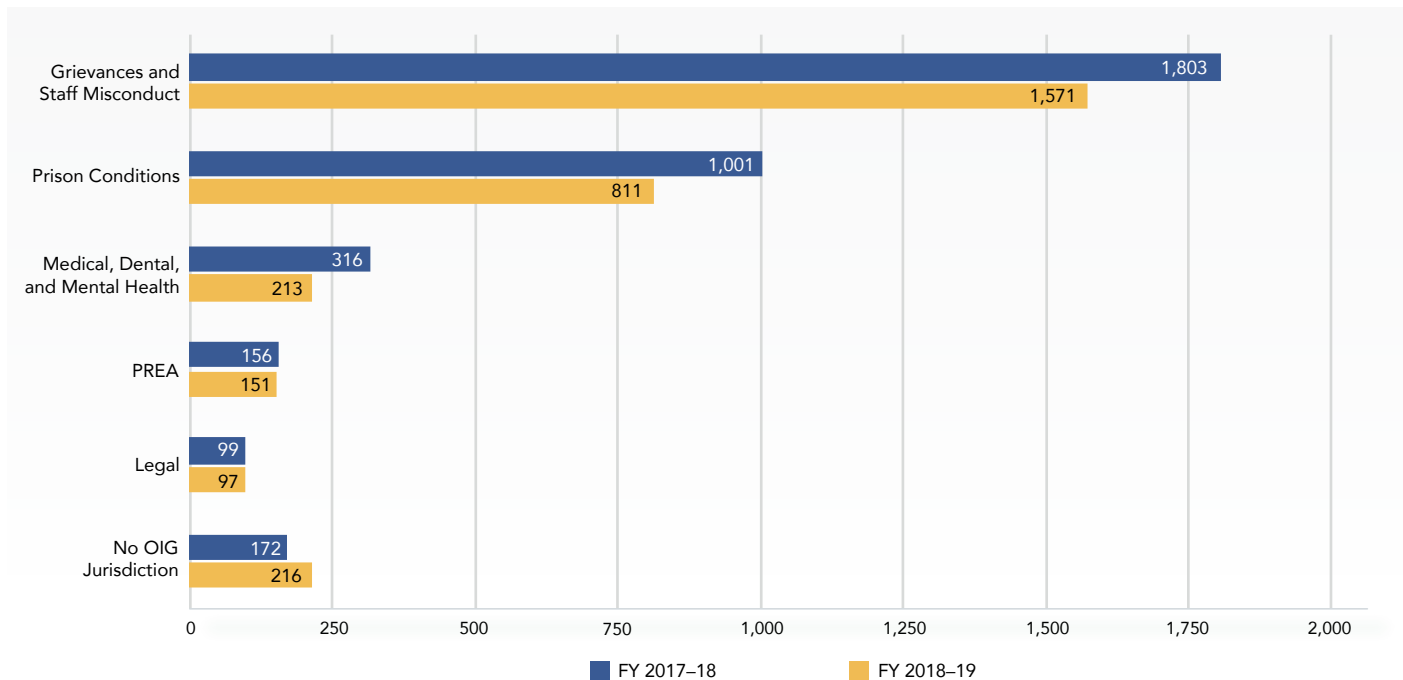
Attorneys in our *Discipline Monitoring Unit* provide contemporaneous oversight of the department's internal investigations and employee disciplinary processes, and oversee the department's response to critical incidents. Our attorneys communicate with investigators, attend interviews, and review investigative reports to assess the adequacy of the investigative work performed. If the department subsequently imposes discipline, we also monitor the performance of the department's hiring authorities and advocates during the disciplinary appeal process, including the department's attorneys and employee relations officers.

Board-certified physicians and registered nurses in our *Medical Inspection Unit* complete comprehensive reviews of, and report on, the ongoing medical care the department provides to inmates. To complete these assessments, we perform clinical case reviews and compliance testing based on both file reviews and on-site medical inspections. After the inspections, we issue a report summarizing our findings and recommendations. We send this report to the department, the Receiver, the *Plata* plaintiffs' counsel, and we also publish it on our website, allowing for public access.

Statistics Regarding Complaints Received From July 1, 2017, Through June 30, 2019

Between July 1, 2017, and June 30, 2019, the OIG received 6,009 complaints of improper governmental activities. In 388 of them, we determined that our office did not have jurisdiction because the allegations involved county jails, federal prisons, local law enforcement, or some other outside entity. In these cases, we referred the complainant to the most appropriate entity. For the remaining 5,635 complaints, we conducted either a preliminary inquiry or a field inquiry into 6,218 allegations² to assist the complainant or to examine the alleged improper activity (Figure 2, below).

Figure 2. Allegations Received in Fiscal Years 2017–18 and 2018–19



Note: Allegation volume was determined by assessing the volume of allegation types within each complaint.

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

In the vast majority of the 5,635 preliminary inquiries we performed, our inquiry work resulted in our office advising the complainants how to address their concerns with the department. Common examples of such advice involved how to request services or navigate through

2. Complainants often submit multiple, distinct allegations in each complaint. For each allegation we receive, our office assigns a category/subcategory from a standardized list of issues to identify the alleged topic, location, and parties involved. There were 14 complaints that contained one allegation within OIG jurisdiction and one allegation that was not within OIG jurisdiction.

Figure 3. Categories of Allegations We Receive

<p><i>Grievances and Staff Misconduct</i></p> <p>Complaints that involve concerns with access to or processing of inmate appeals and allegations of staff misconduct by departmental staff.</p>	<p><i>Prison Rape Elimination Act (PREA)</i></p> <p>Allegations that inmates were subjected to sexual misconduct by inmates or staff, or made complaints of sexual harassment that were not handled appropriately.</p>
<p><i>Prison Conditions</i></p> <p>Complaints that involve concerns with prison conditions, such as incorrect release date calculations, missing inmate property, access to rehabilitative programs, or the visiting process.</p>	<p><i>Legal</i></p> <p>Requests for various types of legal assistance, including access to public records, and allegations of retaliation by departmental staff.</p>
<p><i>Medical, Dental, and Mental Health</i></p> <p>Complaints that involve concerns with access to medical, dental, or mental health services or objection to a decision that has a material adverse effect on an inmate's physical or mental well-being.</p>	<p><i>No OIG Jurisdiction</i></p> <p>Allegations that fall outside of OIG jurisdiction, such as complaints involving county jails, federal prisons, or local law enforcement.</p>

the department's various processes for appeals, sentence calculations, disciplinary violations, and visiting, or how to contact specific departmental divisions and offices for services or additional help. On other occasions, after we conducted a preliminary inquiry, we worked with departmental staff to facilitate resolution of the complainant's issues. Below, we provide a sampling of four preliminary inquiries as examples of assistance we provided to complainants who were unsuccessful in their initial attempts to resolve their concerns with departmental staff.

- An inmate's brother alleged staff at the inmate's institution restricted the inmate's ability to receive visits from family members despite the inmate's request to receive visits. We reviewed institutional records and found the inmate's brother was on the list of approved visitors and no other restrictions appeared to be preventing the inmate from receiving visits. After we raised this concern with the institution, its public information officer requested the institution's visiting sergeant contact the inmate's brother to coordinate a visit. The inmate received a visit from his family members three days after we contacted the institution.
- We received an allegation that an inmate mailed an appeal to the third level of review before the applicable deadline,

but the department's Office of Appeals rejected the appeal as untimely. After reviewing the inmate's appeal history and mail logs, we determined the inmate had mailed his appeal three days prior to the due date, but delays in the institution's processing of his mail caused his appeal to reach the Office of Appeals three days late. After we contacted the department with our findings, the Office of Appeals agreed to rescind its prior decision and accept the inmate's appeal as timely filed.

- An inmate alleged the department denied him access to its administrative appeal process by failing to respond to his missing property appeal. The inmate claimed that while at one institution, staff issued him a property receipt that failed to account for all the property that was in his cell before being rehoused in administrative segregation. The inmate refused to sign the property receipt because it was inaccurate, but did not file an appeal until after the department transferred him to another institution.

We reviewed the institution's records, which indicated the inmate's appeal had been forwarded to his prior institution for processing; however, the former institution had no record that it received the appeal. After we contacted the inmate's current institution, its staff agreed to resend the appeal to the inmate's previous institution for processing as an original, thereby allowing the appeal to be accepted as timely filed.

- In a final complaint, a family member alleged that an inmate was not receiving adequate dental treatment despite multiple attempts to request assistance from the department and California Correctional Health Care Services over the past year. The family member alleged the inmate suffered substantial tooth loss and bone deterioration due to the delay in receiving these services.

We reviewed the inmate's extensive dental history from 2017 through 2018, including dental progress notes and health care requests the inmate had submitted, among which was a June 2018 order for the inmate to receive partial dentures. However, the department transferred the inmate to another institution in October 2018 without having received his needed dental services. We contacted the institution in October 2018 with our concerns about the delay. One week later, the inmate received his denture.

Field Inquiries

Between July 1, 2017, and June 30, 2019, we performed 49 field inquiries regarding selected complaints that involved a potential policy violation by departmental staff that could not be resolved through our standard monitoring responsibilities. Our staff brought potential policy violations to the attention of specific hiring authorities, made recommendations, and monitored the department's response at the local level. We then followed up with the hiring authorities to determine what actions they took in response to receiving the complaints and assessed the adequacy of the hiring authorities' responses. Our assessment of the hiring authorities' responses did not consider whether the underlying complaint or allegation was substantiated. Rather, we assessed whether the department took appropriate action to investigate the complaint and address the complainant's concerns.

Throughout the remainder of this report, we discuss a sampling of the 49 field inquiries we completed between July 1, 2017, and June 30, 2019, identifying areas in which the department performed well and areas in which the department can improve its policies, practices, and performance.

16 | Complaint Intake and Field Inquiries

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Field Inquiry Review Results

The Department's Proposition 57 Regulations and Related Policies Restrict Inmates' Abilities to Challenge Decisions to Rescind Their Sentence Reduction Credits and Can Cause Inmates to Forfeit Their Earned Credits

We performed field inquiries into five complaints we received alleging the department erroneously rescinded inmates' sentence reduction credits and detained them beyond their true release dates. These complaints provided us an opportunity to examine the department's process for rescinding sentence reduction credits inmates earn by completing various rehabilitative programs and for following the department's behavioral rules and regulations. In two of the five cases, departmental staff made incorrect decisions to rescind sentence credits from inmates who were fewer than two months away from their scheduled release dates. When the department attempted to reverse these decisions and restore the credits, departmental rules coupled with administrative delays prevented the inmates from having their credits fully restored. In a third case, departmental staff delayed restoring an inmate's credits at the earliest possible opportunity, causing him to spend 11 extra days in prison. These errors and administrative delays caused these three inmates to spend a total of 122 additional days in prison, which directly cost the department approximately \$28,360 to incarcerate these inmates.³ Staff errors in a fourth inmate's case caused the department to release him 32 days early. In the final case, the department was able to correct its initial mistake 105 days before the inmate's anticipated release date and released him on time.

Even more concerning than the outcomes of these individual cases was our discovery that the interplay among various departmental regulations, policies, and practices causes institutional staff to rescind inmates' credits within the final 60 to 120 days of their incarceration. This practice often prevents inmates from challenging the department's actions before any incorrect decisions can be undone and causes some inmates to be detained beyond their true release dates.

3. The Department of Finance estimates that it costs approximately \$84,848 per year to incarcerate an adult inmate in California; http://www.ebudget.ca.gov/2019-20/pdf/Enacted/GovernorsBudget/5210/5225_fig1f.pdf (website accessed September 5, 2019).

Background: Sentence Reduction Credits

For more than 100 years, offenders sentenced into the department's custody have had the ability to earn credits that reduce the length of their incarceration. With the implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Prop 57), offenders can now earn more credits for good behavior and for approved rehabilitative or educational achievements than ever before (text box, left). Credits can advance the release date of an inmate sentenced to a determinate term,⁴ or advance the initial parole hearing date of an inmate sentenced to an indeterminate term⁵ with the possibility of parole. Credit earning opportunities are available to all inmates excluding condemned inmates and those serving sentences of life without the possibility of parole.

PROPOSITION 57

On November 8, 2016, California voters approved Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Prop 57). Prop 57 gave the department "authority to award credits earned for good behavior and approved rehabilitative or educational achievements."^{*}

As a result of Prop 57's passage, inmates can now earn additional good conduct credits for complying with the department's policies governing inmate behavior; milestone completion credits for accomplishing objectives in certain rehabilitative programs, including academic, vocational, and therapeutic programs; rehabilitative achievement credits for participating in self-help and volunteer public service activities; and education merit credits for earning high school diplomas, high school equivalencies, or higher education degrees.

* Cal. Const., art. I, sec. 32, subd. (a), par (2).

Source: CDCR—Proposition 57 Revised Regulations, Milestone Completion Credit Schedule, as of July 2018. From <https://www.cdcr.ca.gov/wp-content/uploads/sites/171/2019/06/adopted-regulations-ncr-18-09.pdf> (URL accessed on August 2, 2019).

Following the passage of Prop 57, the department was tasked with enacting regulations to implement the new law; the regulations took effect on April 13, 2017. Among the regulations was a new rule restricting the department from awarding credits or restoring previously rescinded credits for determinately sentenced inmates if doing so would advance these inmates' release dates any sooner than 60 days after the award or restoration occurred.⁶ In other words, once an inmate is within 60 days of his or her department-calculated release date, the department cannot expedite the inmate's release even if it determines he or she is legally entitled to be released on an earlier date. The regulations do not allow for any exceptions to this 60-day restriction.

When the department imposed this new restriction upon itself, it did not immediately adjust its other policies and practices that can cause adjustments to inmates' release dates. The most impactful of these policies sets forth time frames in which institutional staff perform prerelease audits of inmates' central

4. Under the Determinate Sentencing Law, offenders are sentenced to California State prison for a set amount of time. Once the offender serves the specific time, the offender is released either to parole or to probation for supervision. Offenders serving determinate sentences may become eligible for a parole suitability hearing before their release date if they meet certain criteria.

5. Under the Indeterminate Sentencing Law, offenders serve a term of life with possibility of parole. Offenders sentenced to a life term with the possibility of parole cannot be released on parole until the Board of Parole Hearings determines that they are ready to be returned to society.

6. *California Code of Regulations*, Title 15, Article 3.5, Section 3043, subdivision (c).

files to determine whether their release dates have been calculated correctly. The audits are primarily intended to confirm that an inmate's credit gains, losses, and restorations have all been accounted for and that the inmate was eligible to receive the credits which were previously awarded. When the Prop 57 regulations went into effect on April 13, 2017, the department's policy required institutional staff to perform these audits at the following times:

- Upon an inmate's initial intake at a receiving facility after being sentenced to prison.
- Sixty days prior to an inmate's scheduled parole/release date.
- Ten days prior to an inmate's scheduled parole/release date.
- Upon receipt of an additional commitment following initial intake.
- Upon transfer to facilitate federal deportation.
- Every 30 days beginning nine months before release regarding notorious or special interest cases.⁷

This means that for many inmates, other than their initial intake audit, the first time a staff member audited their release date calculation was 60 days before their scheduled release. As we discovered during the field inquiries we performed, this 60-day prerelease audit policy, combined with the recently enacted 60-day restriction, imposed an undue hardship on inmates whose release dates were extended as a result of a change made during a prerelease audit. Because the release date restriction prevents the advancement of inmates' release dates during the final 60 days of their incarceration, an inmate's release date could be extended after a prerelease audit, but it could not be expedited if the audit revealed that an inmate should be released sooner.

Staff Failure to Recognize the Urgency of Inmate Appeals Challenging the Department's Decisions to Rescind Credits Within the Final 60 Days of an Inmate's Incarceration Prevented Inmates from Contesting Decisions to Rescind their Credits

The department's regulations contain a process by which inmates can appeal departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on them. At the time of our review, departmental staff typically had 30 business days from

7. Department Operations Manual, 73010.4.1, Audit Schedule Revised June 16, 1995.

FILING A FORM 602

To file an appeal, an inmate must complete an Inmate/Parolee Appeal form (known as a Form 602) and describe the specific issue under appeal and the relief requested, stating all facts known regarding the issue being appealed, the names of all staff member(s) involved, and a description of each staff member's involvement in the issue. The inmate must also attach all supporting documents necessary to clarify the issues under appeal.

Appeals can be screened out for many reasons, including failure to attach necessary supporting documents, failure to submit the appeal on the appropriate form, failure to exhaust other informal processes, failure to appeal the action within 30 days, inclusion of multiple unrelated issues in a single appeal, and filing more than one nonemergency appeal in any 14-day period, among others.

If inmates are not satisfied with an initial response to an appeal, they can elevate the appeal for at least one more level of review.

Source: *California Code of Regulations*, Title 15, Article 8, Sections 3084–3085.

receipt of an appeal to issue a response to the inmate who filed the appeal (text box, left).⁸

The department also had a process for prioritizing “emergency appeals” for circumstances in which the regular appeal time limits “would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm.” Staff had only five business days to respond to an emergency appeal. Although the department’s regulation defining emergency appeals did not specifically include release date calculations, the regulation broadly applied to all situations that pose a substantial risk of irreparable harm to the inmate. The regulation provided the following guidance for staff to determine which appeals qualify for the emergency appeals process:

- (1) When circumstances are such that the regular appeal time limits would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm, the appeal shall be processed as an emergency appeal. Emergency circumstances include, but are not limited to:
 - (A) Threat of death or injury due to enemies or other placement concerns.
 - (B) Serious and imminent threat to health or safety.

The regulation did not define the term irreparable harm; however, the term is often used in the legal field, where it is defined as “an injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction.”⁹ The term injury is itself defined as “the violation of another’s legal right, for which the law provides a remedy; a wrong or injustice.” An injury is not limited to physical harm.¹⁰ In our opinion, the forfeiture of credits, to which the inmate has accrued a

8. *California Code of Regulations*, Title 15, Article 8, Section 3084.9. The department is repealing this regulation on June 1, 2020, as part of a package of emergency regulations that overhaul the department’s grievance and appeal process. The revised regulations no longer contain a separate emergency appeal process for circumstances in which regular processing time limits would subject an inmate to a substantial risk of serious and irreparable harm. Instead, the new grievance and appeal procedure only provides an expedited review of grievances that implicate personal safety, institutional security, or sexual misconduct. Notice of Approval of Emergency Regulatory Action, OAL Matter Number 2020-0309-01, https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf.

9. *Black’s Law Dictionary*, ed. B. Garner, 11th ed. (Thomson Reuters, 2019), “Injury.”

10. *Ibid.*

vested legal right, would subject the inmate to irreparable harm and qualify for the emergency appeal process.

In three of the five release date calculation complaints that we internally elevated to field inquiries, the affected inmates filed appeals and other requests for assistance seeking a reversal of the decisions that postponed their release dates. The department did not treat any of the appeals as emergency appeals even though the appeals indicated the inmates were within 60 days of release and were challenging the revocation of their credits. These credits would be forfeited once the 60-day release date restriction became applicable if the appeals were not acted upon immediately. Nor did the department treat any of the appeals with any sort of urgency, in one case rejecting the appeal altogether and, in another case, failing to respond to the inmate's request for assistance.

An inmate lost 97 credits because institutional staff incorrectly reclassified him as a sex offender 61 days before his scheduled release and refused to consider his appeal.

As shown in Figure 4 on the following page, 61 days before an inmate's original release date, institutional staff rescinded 197 days of credits, extending his release date from March 4, 2018, to September 16, 2018. Although the inmate filed an emergency appeal challenging the decision, the department did not release him until June 9, 2018, causing him to lose 97 of the 197 days he earned by complying with the department's credit-earning regulations.

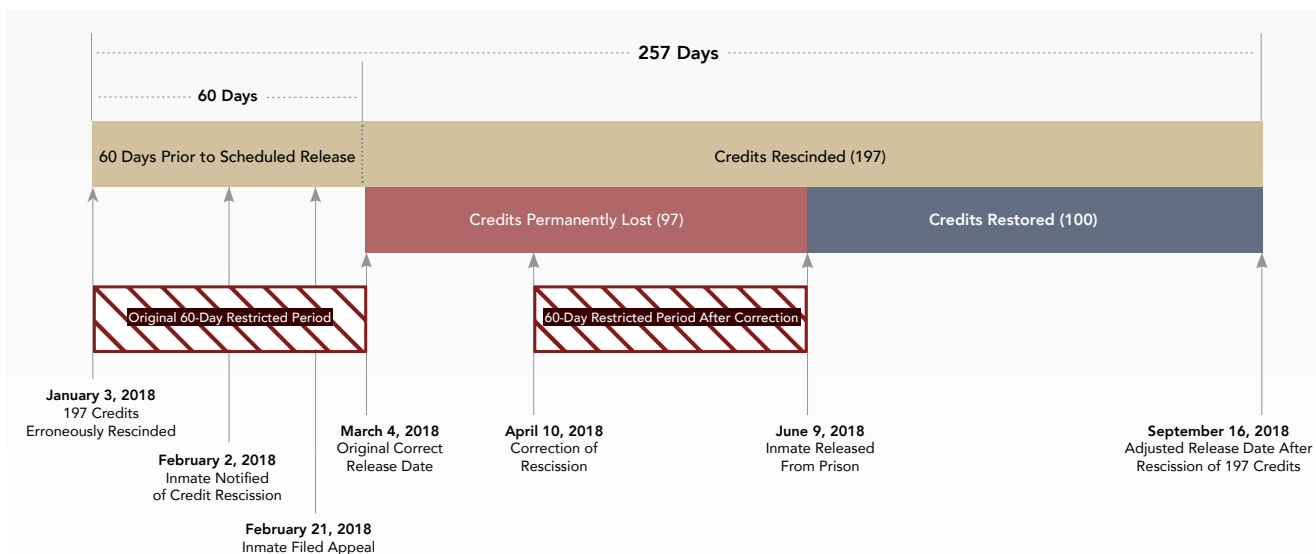
In accordance with the department's policy requiring staff to perform audits of inmates' files when an inmate is 60 days from release, institutional staff audited the inmate's central file and determined a prior conviction from 2003 required him to register as a sex offender under Penal Code section 290. The inmate had completed his sentence for the 2003 conviction in 2006, had been in and out of prison several times since then, and had never previously been required to register as a sex offender. This sudden change in the inmate's classification status caused him to earn credits at a reduced rate of 20 percent (one credit for every four days served) instead of at his previous rate of 33 percent (one credit for every two days served).

DELAYS

In the discussion that follows, we note that there were significant delays between the time the department made the decision to rescind an inmate's credits and the time the department notified the inmate of the rescission. Because the department does not keep records of the dates on which inmates receive notice, we could not independently confirm the dates on which any individual inmate received actual notice of the rescission. However, in their communications with us, each of the inmates included the dates on which they received notice of the rescission.

We were able to independently confirm the dates on which the inmates challenged these rescissions, which often occurred soon after the date they claim to have received actual notice. Considering the great incentive inmates have to immediately challenge decisions that postpone their impending release from prison, we credited the inmates' statements regarding the dates they received actual notice, particularly in the absence of departmental records. Accordingly, we calculated the time between rescission and notice by using the dates the department made the decision to rescind the inmate's credits and the date the inmates stated they received actual notice.

Figure 4. Time Line of the Department's Actions That Impacted an Inmate Whom the Department Incorrectly Classified as a Sex Offender



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

On February 21, 2018, the inmate filed an appeal challenging the institution's decision to reclassify him as a sex offender under Penal Code section 290 and requested that the institution's Appeals Coordinator treat his appeal as an emergency appeal. The inmate alleged that prior to the decision to reclassify him, he was scheduled to be released on March 4, 2018, just 11 days later. As seen in the box below, upon receiving the appeal, the Appeals Coordinator first determined the appeal did not meet the criteria for an emergency appeal and then rejected the appeal outright, informing the inmate:

Your appeal has been rejected pursuant to the California Code of Regulations, Title 15, Section (CCR) 3084.6(b)(8). Your appeal involves multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact. You may resubmit the unrelated issues separately using separate appeals. Be advised that you are still subject to the submission of one non-emergency appeal every 14 calendar days.

Upon review of your appeal, it has been determined that it does not meet the criteria for an emergency appeal. It is also noted that you are attempting to appeal multiple issues. You are appealing your release date and you are appealing your PC290 Registration requirement.

Source: The California Department of Corrections and Rehabilitation.

Because the Appeals Coordinator did not timely or adequately address the inmate's appeal of the decision to reclassify him as a sex offender registrant (text box, right), he contacted us regarding his concerns. On March 1, 2018, we contacted institutional staff and questioned the propriety of their decision to classify the inmate as a sex offender. We explained that the institution was conflating convictions under Penal Code section 647a, which require registration as a sex offender, with convictions under Penal Code section 647, subdivision (a), which do not require registration. On March 2, 2018, and again on March 6, 2018, the institution refused to reverse its decision to classify the inmate as a sex offender and indicated that it had also sought approval from the department's headquarters, which agreed with its decision. The institution provided the inmate with a Computation Review Hearing on March 21, 2018, but did not reverse its decision after the hearing.

On April 4, 2018, after performing additional legal research and drafting a written analysis to provide to the department in support of our position that the inmate should not have been required to register as a sex offender, we elevated our concerns to the department's Office of Legal Affairs. On April 10, 2018, the Office of Legal Affairs concluded its review, agreeing that institutional staff erred in reclassifying him as a sex offender. The department immediately restored the inmate's credits and changed his release date to June 9, 2018, the earliest date possible after accounting for the 60-day restriction. As a result, the inmate spent an additional 97 days in prison.

While the department eventually agreed with our position, it missed earlier opportunities to treat the inmate's appeal with urgency. The inmate filed his appeal on February 20, 2018, with the notation "EMERGENCY APPEAL" at the top of each page of his appeal, clearly alerting the institution's Appeals Coordinator that he believed his appeal qualified for treatment under the emergency appeal process. He then explained his concern that his release date of March 4, 2018, which was only 11 days away, had just been extended to September 16, 2018. From this information alone, the Appeals Coordinator should have recognized that the inmate's appeal posed a situation of serious and irreparable harm. The longer it took the department to address the inmate's appeal, the longer the inmate would be required to spend in prison. Had the Appeals Coordinator treated the inmate's appeal as an emergency appeal and realized the decision to reclassify him as a sex offender was improper within five days of receiving his appeal, the

IMPROPER REASONS FOR REJECTING THE INMATE'S APPEAL

The institution also erred when it rejected the appeal outright based on the assertion that it involved "multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact."

The institution did not assess two unrelated issues when it reclassified the inmate as a sex offender and rescinded his credits. Rather, when the institution reclassified him as a sex offender and noted this change in its computer system that calculates release dates, the system automatically recalculated his release date.

To address the merits of the inmate's appeal, the department needed only review its earlier decision to reclassify the inmate as a sex offender. The rescission of credits was based solely on this reclassification; the credits would have to be restored as a matter of course if the department reversed its classification decision.

institution could have released the inmate on April 27, 2018, 43 days sooner, causing a forfeiture of only 54 credits instead of 97 credits.

In addition, had institutional staff recognized their error when we first raised our concerns on March 1, 2018, or at least sought an expedited legal opinion from the department's Office of Legal Affairs staff regarding this issue of law, the inmate could have been released as early as April 30, 2018, 40 days sooner.

Staff indifference prevented an inmate from challenging the department's decision to rescind his milestone credits just 46 days before his scheduled release date.

INFORMAL REQUEST FOR ASSISTANCE

The department utilizes an "Inmate/Parolee Request for Interview, Item, or Service" (Form 22) that does not act as a formal appeal, but rather a request to resolve an issue informally.

This form can be provided to any staff member who is able to address the inmate's request. If dissatisfied with the initial response to the Form 22 request, the inmate may request a supervisor review the response. If still dissatisfied with the response, the inmate may proceed to the next level of the process, which is to submit an "Inmate/Parolee Appeal" (Form 602) to the prison's appeals office.

Exhaustion of the Form 22 process is required before an inmate can appeal various issues, but is not required for staff complaints, disciplinary appeals, classification appeals, or other appeal areas that already document a final departmental decision.

As of June 1, 2020, the department will no longer require inmates to exhaust this informal process. Inmates will be permitted to file grievances directly with the institution's Office of Grievances.

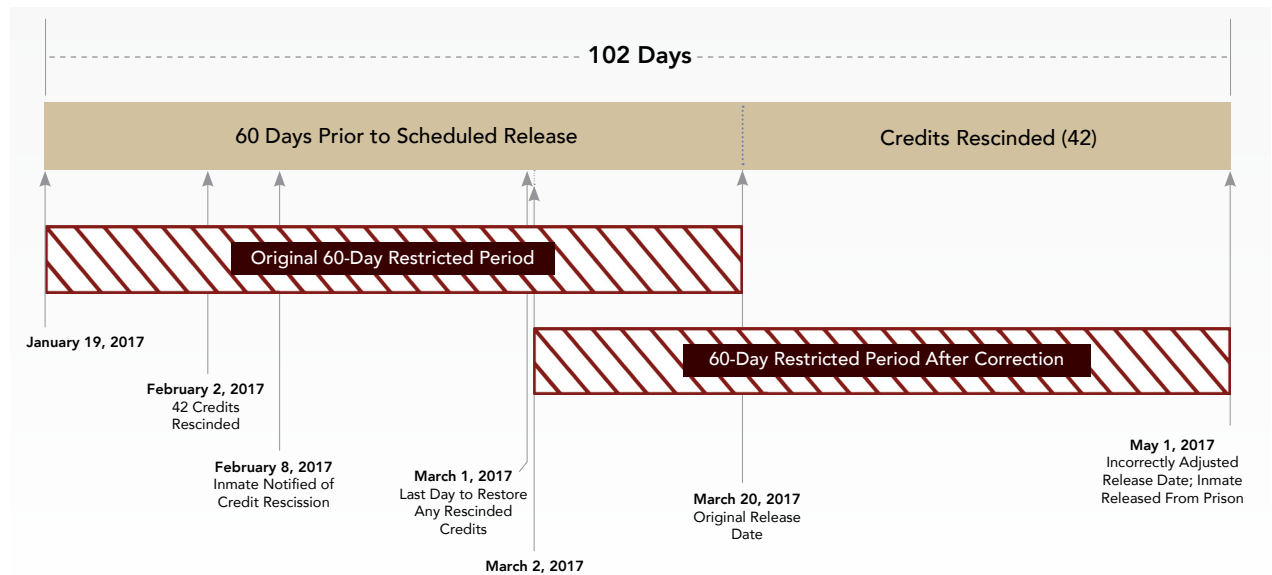
Sources: *California Code of Regulations*, Title 15, Article 8.5, Section 3086; Department Operations Manual, Section 54100.8, California Department of Corrections and Rehabilitation.

As shown in Figure 5 on the next page, an inmate learned that institutional staff rescinded 42 of his previously awarded milestone credits on February 8, 2017, which caused his original release date of March 20, 2017, to be extended to May 1, 2017. The next day, the inmate filed Requests for Assistance, referred to as Form 22s (text box, left) with both the institution's Case Records Office and Education Office seeking assistance in having his credits restored. By the time the inmate exhausted this informal process and filed a formal appeal of the decision to rescind his milestone credits, he was already within the 60-day restricted period, which prevented any adjustment to his release date. As a result, the inmate was unable to effectively challenge the decision to rescind his milestone credits, 14 of which should not have been rescinded.

Because institutional staff did not rescind the inmate's credits until February 2, 2017, 46 days prior to the inmate's original release date, and did not notify him of the rescission until six more days had passed, by the time the inmate became aware that his milestone credits had been rescinded, the inmate had very little time to challenge the institution's decision (see text box, page 21, titled "Delays" for further explanation). Only 40 days remained before his original release date and only 82 days remained before his adjusted release date.

Due to the 60-day restriction, any attempt to challenge the institution's decision could only have resulted in a partial restoration of the inmate's credits. Even if the institution had reversed its decision to rescind the inmate's credits on the day the inmate received the notice, only 22 of the 42 credits could have been restored. If the institution had attempted to restore all 42 credits on February 8, 2017, the soonest it could release him would have been April 9, 2017, 20 days after his original release date. By March 2, 2017,

Figure 5. Time Line of the Department's Actions in Rescinding 42 of an Inmate's Milestone Credits



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

60 days before his adjusted release date, the institution would not have been able to accelerate the inmate's release at all.

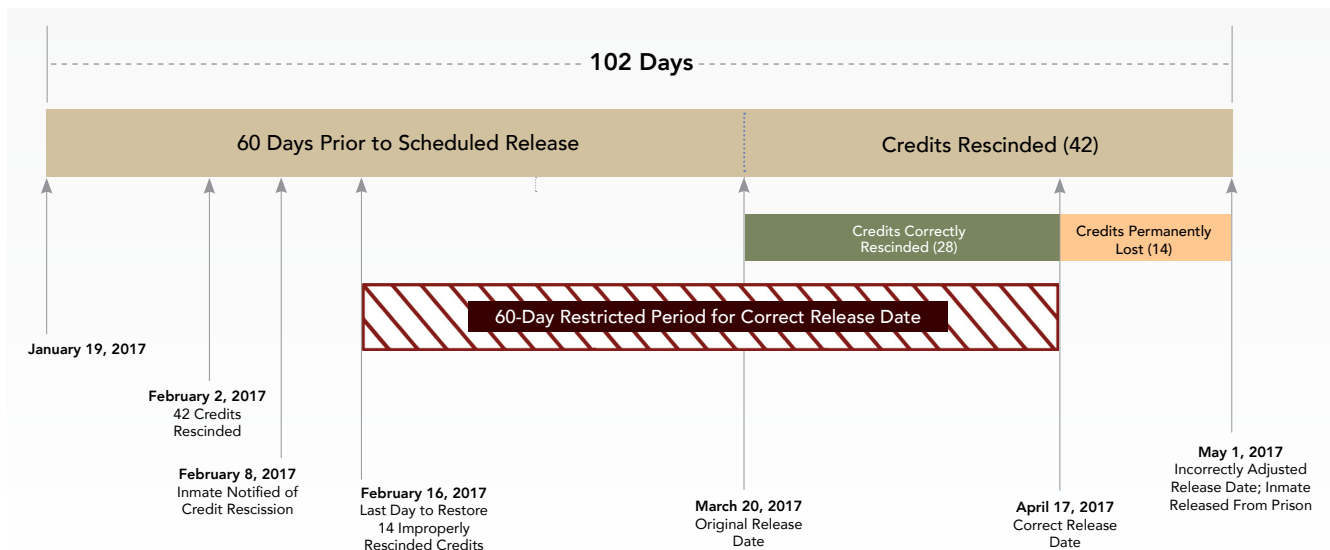
Due to this abbreviated time frame, institutional staff would have had to act expeditiously in order to restore any of the inmate's credits. Although the inmate immediately filed a Form 22 Request for Assistance indicating that he was scheduled to be released in 39 days and was seeking a restoration of 42 days of credits, institutional staff failed to recognize the urgency of his situation. The institution's Education Office failed to address his complaint until February 28, 2017 (19 days later), indicating it had no authority to alter his release date, and the Case Records Office failed to respond to his request at all. By the time he filed his appeal on March 3, 2017, the 60-day restriction precluded him from obtaining any relief whatsoever. Because institutional staff did not address the inmate's requests for assistance in a timely manner, the inmate was denied the opportunity to challenge the loss of the 42 milestone credits the institution previously awarded him.

During our review of this inmate's records, we asked the department to reassess the inmate's entitlement to the 42 credits that had been rescinded. Among the credits rescinded were three separate awards of 14 credits each, which the inmate received after achieving scores on reading and literacy exams that met three separate educational milestones. At the time, the institution rescinded all 42 credits because it believed the inmate possessed a high school diploma (text box, page 27) and was therefore ineligible to earn credits for the progress he

made in his high school course. After the inmate's release from prison, the department confirmed the inmate did not have a high school diploma and was therefore not prohibited from earning the milestone credits on that basis.

However, upon further review, the inmate was only entitled to earn milestone credits for one of the three test scores, which entitled him to 14 days of credits. A departmental memorandum governing eligibility to earn milestone credits in January 2017 required that inmates spend a minimum of 40 hours of classroom time between tests in order to be eligible to earn milestone credits. Because he met this requirement for one of the tests, he was entitled to 14 of the 42 credits the department rescinded. Therefore, as shown in Figure 6 below, had institutional staff processed the inmate's Requests for Assistance expeditiously in light of the clear urgency of the matter, the department could have restored these 14 credits and adjusted his release date to April 17, 2017, instead of May 1, 2017.

Figure 6. Time Line of the Restrictions Placed on an Inmate's Ability to Effectively Challenge the Department's Decision to Rescind 42 of His Milestone Credits



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

The institution's justification for denying the inmate's appeal in this case raises an additional concern regarding the department's process for addressing appeals that challenge an inmate's release date. At the top of the following page is the explanation the institution's appeals office provided to the inmate for rejecting his appeal:

Inmate [REDACTED] the Appeals Office is in receipt of your appeal; however, your appeal is rejected because you failed to resolve this issue at the lowest level possible via CDCR Form 22. The full completion of the form, including the Supervisor's Review, must be completed before the appeal can be considered for possible acceptance. You will need to resubmit the CDCR Form 22 to [REDACTED] Classification & Parole Representative, for response in person or via institutional mail. If dissatisfied with the response you receive from the supervisor, you may resubmit this appeal. Make sure to attach the completed CDCR Form 22 so the Appeals Coordinator can note you have attempted to resolve this matter at the lowest level possible. Additionally, you will need to include a copy of CDC 128B, Rescinding of Milestones.

Source: The California Department of Corrections and Rehabilitation.

Although the inmate exhausted the Form 22 process, the institution's appeals office rejected his appeal because he did not submit sufficient supporting documentation with his appeal. Because time was of the essence to this inmate's appeal, he should not have been required to exhaust this informal process before having the right to file an appeal.

Because he attempted to utilize the Form 22 process before filing his appeal, by the time he exhausted this process and filed his appeal on March 3, 2017, his original release date had passed, and he was already within 60 days of the adjusted release date.

Even if staff immediately granted his appeal, they would not have been able to advance his release date any sooner. However, if the inmate had been able to immediately appeal the decision to rescind his credits on February 9, 2017, the institution would have had seven days to process the appeal and award the inmate the 14 credits he earned before the 60-day restriction precluded the inmate's timely release.

Staff delays prevented an inmate from challenging the department's decision to rescind his milestone credits 58 days before his anticipated release.

On December 21, 2017, the department notified an inmate that it had rescinded 56 days of milestone credits it previously awarded him and extended his original release date from January 28, 2018,

STAFF DELAYS CREATED UNCERTAINTY AS TO THE INMATE'S ENTITLEMENT TO CREDITS

A lack of diligence in obtaining the inmate's high school records earlier in the inmate's incarceration created uncertainty regarding the inmate's education status, and ultimately caused institutional staff to rescind his milestone credits.

When the inmate entered the department's custody in August 2015 after being sentenced to prison, he told staff that he already possessed a high school degree. Departmental policy requires institutional staff to verify all information inmates provide regarding their educational status by requesting high school transcripts from schools that inmates have attended. The department generally receives transcripts within one to eight weeks after making a request. Despite learning of the need to obtain the inmate's high school transcripts in August 2015, the institution did not request the records until October 2016, and again in April 2017 after the first attempt was unsuccessful.

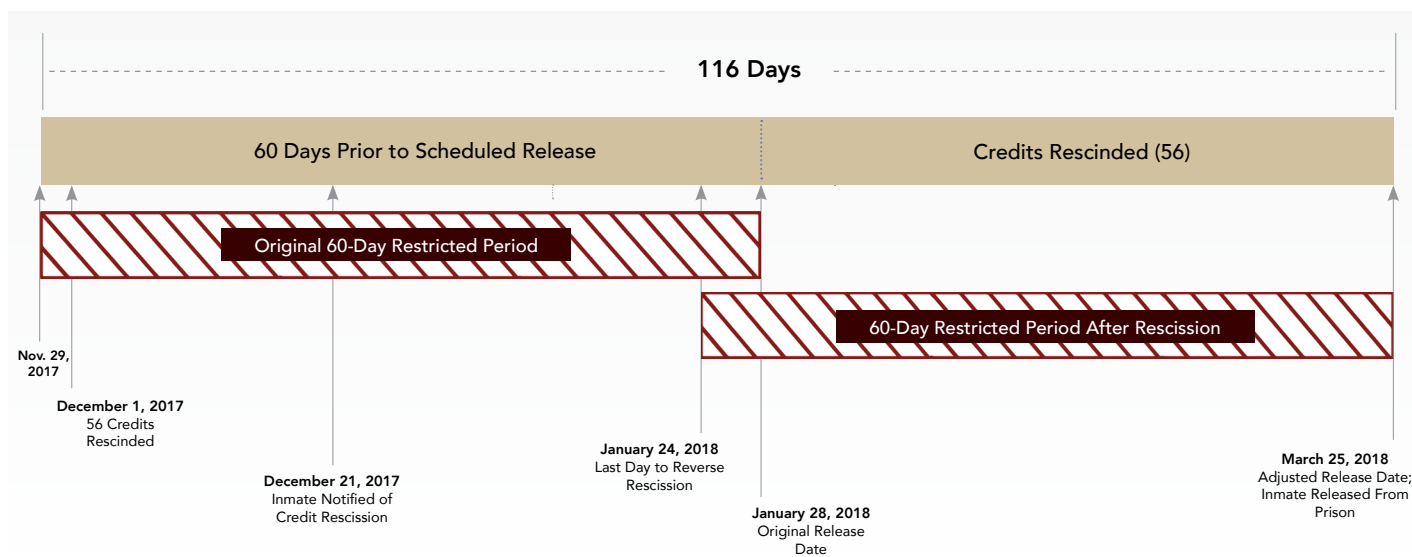
Because the department permits inmates to work toward earning their high school degrees while staff verify their educational status, the institution permitted the inmate to enroll in a high school course in December 2015 and begin earning milestone credits for demonstrating progress in the course. In February 2017, while conducting a 60-day audit of the inmate's central file, institutional staff rescinded all the milestone credits it previously awarded him for his progress in the course because the institution still did not have a copy of the inmate's transcripts.

The department finally received the high school records on May 2, 2017, the day after the department released him from prison.

Source: The Office of the Inspector General's analysis of records provided by the California Department of Corrections and Rehabilitation.

to March 25, 2018 (see text box, page 21, titled “Delays” for further explanation). The inmate submitted an appeal of the decision the next day. Ultimately, we determined the department was correct to rescind the credits. However, the institution’s failure to address this inmate’s appeal until January 24, 2018, 60 days from his adjusted release date, prevented the inmate from challenging the decision to rescind his milestone credits (Figure 7).

Figure 7. Time Line of the Department’s Actions in Rescinding 56 of an Inmate’s Milestone Credits



Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

During our review of this inmate’s records, we asked the department’s Office of Research and Office of Correctional Education to reassess the inmate’s entitlement to the 56 credits the institution rescinded in December 2017. After reviewing the department’s responses, we concurred with the warden’s determination; the inmate should not have been awarded the 56 credits in question because he did not meet the minimum classroom hours required to earn the credits. However, we also discovered the department failed to ensure that 32 days of good conduct credits the inmate lost as a result of time spent in administrative segregation in 2016 were added to the inmate’s release date calculation. As a result, the department should not have released this inmate until April 26, 2018, 32 days later.

Although the department correctly determined the inmate was ineligible to receive the 56 credits in question, this inmate’s appeal serves as another example of how the practice of auditing inmates’ release dates with only months left before their anticipated release

dates deprives them of the opportunity to challenge the department's decisions to rescind credits.

On the face of his appeal, the inmate requested that the institution's Appeals Coordinator treat his appeal as an emergency appeal because his original release date of January 28, 2018, was only 37 days away, and he was seeking to reverse the decision to rescind 56 of his milestone credits. From this information alone, the Appeals Coordinator should have recognized the serious and irreparable harm the inmate could suffer as a result of further delay and treated the inmate's appeal as an emergency appeal. The Appeals Coordinator, however, did not process the appeal until six days after receiving it, at which point he failed to comply with regulations that require the Appeals Coordinator to decide whether the complaint qualifies as an emergency appeal and notify the inmate of this decision. Instead, the Appeals Coordinator assigned the appeal to a staff member to provide the inmate with a first-level response by February 7, 2018 (nine days after the inmate's original release date).

On January 24, 2018, staff in the institution's Education Office interviewed the inmate, determined that the credits should not have been rescinded, and submitted a request to departmental headquarters seeking restoration of all 56 of the inmate's milestone completion credits. On February 2, 2018, institutional staff informed the inmate that his adjusted March 25, 2018, release date would not change after all; he then elevated his appeal to the second level of review. On February 27, 2018, the warden responded to the inmate's second-level appeal, informing him that after further investigation and consultation with the department's Office of Correctional Education, he did not meet the minimum classroom hours required to qualify for the milestone credits. The institution released the inmate from prison on March 25, 2018.

Because the institution did not rescind the inmate's credits until December 1, 2018, 58 days prior to the inmate's original release date, and did not notify him of the rescission until 20 more days had passed, by the time the inmate became aware that his milestone credits had

A FOURTH INMATE COULD HAVE BEEN RELEASED 11 DAYS SOONER

In a fourth case involving a 60-day audit that occurred in February 2018, the department discovered an inmate had been found guilty of a rules violation in March 2016 that was never factored into the inmate's release date calculation. The rules violation carried with it a penalty of a 90-day loss of credits, which, once discovered and applied to his sentence, caused the inmate's release date to be extended from March 21, 2018 to June 19, 2018.

The inmate was also eligible to have 90 days of credits restored by the institutional classification committee (ICC; see page 57 for a description of the ICC's functions) if he remained discipline-free for a 60-day time period, which ended on January 11, 2018. The inmate remained discipline-free for that 60-day period, but he did not receive an ICC hearing until January 31, 2018, 20 days later.

Had the department scheduled the inmate to receive an ICC hearing on January 11, 2018—the first day he became eligible to have his 90 days of credits restored—he could have been released on his original release date of March 21, 2018.

Instead, because the department did not restore the inmate's credits until January 31, 2018, the 60-day restriction precluded the inmate from being released before April 1, 2018, causing him to spend an additional 11 days in prison.

Source: The Office of the Inspector General's analysis of records provided by the California Department of Corrections and Rehabilitation.

been rescinded, he had very little time to contest the institution's decision. Only 38 days remained before his original release date and only 94 days remained before his adjusted release date. If the inmate's claim to the credits had been meritorious, by the time the inmate received notice of the decision and filed an appeal, the institution could only have restored 34 of the 56 credits. By the time institutional staff interviewed the inmate about his appeal on January 24, 2018, only four days remained before his original release date and only 60 days remained before the adjusted release date. By this time, the inmate's release date could no longer be adjusted.

To Avoid Further Due Process Violations, the Department Should Amend its Policies to Provide a Predeprivation Process for Inmates to Challenge Credit Rescissions Before They Become Final

The process we reviewed whereby the department finalizes its decisions to rescind credits within the last 60 days of an inmate's incarceration denies affected inmates a meaningful opportunity to challenge the department's decisions. Because the decisions are rendered nearly unchallengeable, this practice has not afforded inmates adequate due process safeguards to prevent against the wrongful deprivation of the constitutionally protected interests they possess in a timely release from prison. When institutional staff discover errors during a prerelease audit, they must complete a credit rescission request form and submit it for supervisory approval. Once approved by a supervisor, staff enter the rescission into the department's computer system that automatically calculates the inmate's release date; the rescission then becomes final. The affected inmate is not notified of the rescission until after it has been finalized and must file a formal appeal to challenge the decision. However, inmates are not typically notified of the rescission in a timely manner. In three of the five cases we reviewed, inmates were notified of staff decisions to rescind credits after the 60-day restricted time period had already begun, which led to an immediate, irreversible loss of credits in each case (Table 3, next page). Two of the five decisions were incorrect and caused the inmates to spend an additional 111 days in prison.

Changes to departmental processes for conducting prerelease audits and processing inmates' appeals of release date changes.

On May 23, 2018, the department changed its practice of performing prerelease audits 60 days before an inmate's release, and now performs audits when an inmate is between 105 and 120 days from release. This change in practice was formalized in a July 2019 memorandum, which was circulated to all institutions.

Table 3. Summary of the Department’s Delays in Notifying Inmates of Decisions to Rescind Their Credits

	Number of Credits Rescinded at Audit	Number of Days Until Original Release Date	Number of Days Between Rescission and Notice*	Number of Credits Permanently Lost by the Time the Inmate Received Notice
Case 1	197	61	18	17
Case 2	42	46	6	20
Case 3	56	58	20	22

* See text box, page 21, titled “Delays.”

Sources: The Strategic Offender Management System and the Office of the Inspector General Tracking and Reporting System.

The department also softened some of the impact of the 60-day restriction by amending its Prop 57 regulations. The amended rule, which took effect on May 1, 2019, now delineates three tiers of release date restrictions for awarding credits or restoring previously rescinded credits—a 60-day restriction for inmates serving a term for a violent felony conviction,¹¹ a 45-day restriction for inmates convicted of child abuse or a sex offense involving a minor, and a 15-day restriction for all other inmates.¹² This change will reduce the frequency and degree of credit forfeitures inmates suffer if mistakes staff make during prerelease audits are discovered and corrected in a timely manner.

The department is also implementing a new grievance and appeal process, which goes into effect on June 1, 2020. The new process eliminates the special process previously applicable to appeals related to sentence calculations and release date changes. These claims will all proceed through the normal grievance and appeal process. Under this new process, after receiving a grievance, institutional staff have 60 days to mail inmates an initial response. Inmates may then appeal the institution’s grievance response to the Office of Appeals at departmental headquarters, which has 60 days to mail its response back to the inmate.¹³ Without a method of expediting their appeals, it could take inmates more than 120 days to exhaust the new grievance appeal process.

Therefore, as of June 1, 2020, when an institution performs a prerelease audit of an inmate who is 120 days from his or her anticipated release

11. California Penal Code section 667.5 (c) identifies 23 unique offenses that qualify as violent felonies, including, but not limited to, murder, voluntary manslaughter, mayhem, robbery, attempted murder, and kidnapping.

12. *California Code of Regulations*, Title 15, Article 3.5, Section 3043, subdivision (c).

13. Notice of Approval of Emergency Regulatory Action, OAL Matter Number 2020-0309-01, https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf.

and determines the inmate's release date should be extended, there will not be enough time for the affected inmate to exhaust the department's process for challenging these decisions before they become irreversible. For example, with 120 days left before his anticipated release, John Doe receives a notice that his release date is being extended by 30 days because of errors identified during a prerelease audit. If John Doe files a grievance challenging the decision to extend his release date, institutional staff have 60 days to consider his grievance and mail him a response. If dissatisfied with the institution's response, John Doe may then mail a grievance to the Office of Appeals in Sacramento, which has 60 days to consider his appeal and mail him a response. Without factoring in any delays that are inherent in this process (i.e., delays in notifying John Doe of the results of the prerelease audit and the delays in processing incoming and outgoing mail at the institution), by the time John Doe has exhausted the administrative appeal process, his anticipated release date has already passed. He can no longer be released on time and will have to spend as many as 30 additional days in prison.

Due process considerations.

The due process clauses of both the United States Constitution and the California Constitution provide that the government cannot deprive any person of life, liberty, or property, without due process of law. Exactly what safeguards are required and when those safeguards must be provided in any given situation varies based on the nature of the interest involved, the risk that the existing process will result in an erroneous deprivation, the value of additional procedures or safeguards, and the burden additional safeguards would place on the government's interests.

The constitutionally protected liberty interest inmates possess in the sentence reduction credits they earn is well-established. The United States Supreme Court has declared that when a state creates a right to earn credits that shorten an inmate's prison sentence, inmates obtain a constitutionally protected liberty interest in the credits they earn.¹⁴ The department's regulation governing the award of credits expressly states: "The award of these credits . . . shall advance an inmate's release date if sentenced to a determinate term."¹⁵ The regulation guarantees inmates will receive sentence reduction credits once they complete a credit-earning program or milestone, as long as they comply with prison rules and regulations, and are eligible to earn the particular type of credit in question. Once these conditions are fulfilled, the inmate earns the legal right to have his or her release date advanced by

14. *Wolff v. McDonnell* (1974) 418 U.S. 539, 557.

15. *California Code of Regulations*, Title 15, Article 3.5, Section 3043.

the number of credit-days earned and is entitled to “those minimum procedures appropriate under the circumstances and required by the due process clause to insure that the state-created right is not arbitrarily abrogated.”¹⁶

The question then becomes whether due process safeguards must be provided before the state deprives inmates of these liberty interests, or afterward, often referred to as predeprivation due process and postdeprivation due process. As the United States Court of Appeals for the Ninth Circuit explained: “Process which precedes a loss of liberty obviously prevents a constitutional violation. Process which follows the loss of liberty can only provide a substitute remedy, usually money damages.”¹⁷

The department does not currently offer inmates a predeprivation appeal process; inmates do not receive advance notice that their credits are being rescinded or an opportunity to challenge the rescission before it becomes final. The department does provide inmates with a form of postdeprivation due process by permitting inmates to file a grievance challenging their release date calculations and credit rescissions. However, as explained on pages 31 and 32, inmates are not likely to be able to exhaust this process in time for the department to fully correct any incorrect release date changes.

A predeprivation appeal process would provide the state with several benefits that the current postdeprivation process does not. First and foremost, the opportunity to challenge decisions to rescind credits before the credits are rescinded furthers the state’s interest in ensuring its processes are not causing individuals to be deprived of their constitutional rights. By providing inmates with predeprivation safeguards, the state also ensures it is not wasting taxpayer money by incarcerating inmates beyond their lawful release dates. In the small sample of cases we reviewed, we determined the department’s current postdeprivation process caused two inmates to spend a combined total of 111 additional days in prison. By allowing inmates to challenge credit losses before they are finalized, the state would also save the money it would otherwise spend defending against lawsuits inmates file challenging their unlawful incarceration and paying any damages associated with the unsuccessful defense or settlement of those claims.

A predeprivation appeal process would also reinforce the underlying purpose of Prop 57, which was intended to encourage inmates to participate in educational and rehabilitative programs by providing them with credits that shorten their period of incarceration. By ensuring inmates actually receive the benefit of the credits they earn,

16. *Wolff v. McDonnell* (1974) 418 U.S. 539, 557.

17. *Haygood v. Younger* (9th Cir. 1985) 769 F.2d 1350, 1357.

predeprivation safeguards reassure inmates that their completion of qualifying programs will lead to their early release.

To provide a predeprivation process, the department would only need to adjust a pair of its policies and procedures that are causing inmates to suffer irreparable credit losses. First, the department would need to adjust its practice of conducting audits of inmates' release date calculations so that audits occur earlier in an inmate's incarceration, such as 180 days before an inmate's estimated release, rather than 105 to 120 days before release. These 60 to 75 additional days would provide the department adequate time to notify inmates of its intent to extend their release dates and provide the inmates an opportunity to challenge the proposed decision before the applicable 15-, 45-, or 60-day restricted period begins. This change would also provide the department additional time to obtain any records or information it needs to verify an inmate's qualification to earn the credits in question.

Second, the department would need to adjust its appeals process to expedite the processing of appeals that challenge proposed decisions to rescind credits and provide for multiple levels of review before the rescission becomes final. In each of the five field inquiries we performed, departmental headquarters staff determined institutional staff had made some sort of error in calculating the inmate's release date. This change would guarantee that appeals are processed sufficiently in advance of the release date restriction and ensure that multiple levels of departmental staff have reviewed decisions to rescind the credits before they become final.

Because of the issues we discovered during the field inquiries we performed into five complaints alleging the department erroneously rescinded inmates' credits, we believe the department's current postdeprivation process is insufficient to protect against the arbitrary deprivation of the liberty interests inmates possess in their sentence reduction credits. The department's practice of finalizing credit rescissions without providing inmates with advance notice and an opportunity to respond fails to provide inmates with adequate due process protection. When inmates do not receive timely notice sufficiently in advance of their scheduled release dates, they cannot challenge the decisions to rescind credits, even when the decisions are later determined to be incorrect.

When departmental staff identify mistakes well before an inmate's anticipated release date and evaluate the inmate's claims in a timely manner, the department can prevent the erroneous forfeiture of credits.

The fifth field inquiry we performed highlights that when inmates learn of departmental decisions to deny an inmate's award of credits well in

advance of the inmate's estimated release date, any incorrect decisions can be fixed before the release date restriction causes a forfeiture of credits the inmate rightfully earned.

In this final case, an inmate's mother wrote to us claiming her son was improperly denied milestone credits for completing a college course after the department's Prop 57 regulations went into effect. On March 5, 2018, after reviewing the inmate's records, we contacted the department's Contract Beds Unit regarding the inmate's entitlement to the credits and requested it review its previous decision to not award him milestone credits for completing the course. The same day, the Contract Beds Unit reviewed the inmate's records, determined he was entitled to academic milestone credits for completing the course, and sent a request to the school's principal to have the credits applied. On March 15, 2018, the department corrected its error, awarded the inmate 14 days of milestone credits, and advanced his release date from July 12, 2018, to June 28, 2018. Because the department promptly evaluated the inmate's claim, it was able to discover the error and correct the mistake 45 days before the 60-day rule prevented the department from adjusting his release date.

The Department's Hiring Authorities Took Inconsistent and Often Inadequate Action in Response to Complaints of Staff Misconduct We Referred for Their Review

The vast majority of complaints we receive through our complaint intake process contains allegations of staff misconduct. When we receive an allegation that contains sufficient information to suggest potential misconduct by departmental staff, we refer the complaints to the appropriate hiring authority with our recommendation that the hiring authority perform an inquiry into the complaints. We then follow up with the hiring authority to determine what actions the hiring authority took in response to receiving the allegations and review any records the department generated in the process. From these records, we assess the adequacy of each inquiry.

During our special review of the staff complaint process at Salinas Valley State Prison in 2018, we devised a set of criteria by which we now assess the procedural adequacy of all staff complaint inquiries we review. For an inquiry to be deemed adequate, all of the following conditions must be met: the inquiry must have been completed within 45 business days;¹⁸ the inquiry must be documented and summarized; the inquiry must have included interviews of all reasonably identifiable witnesses and a collection of all documentation that are likely to provide relevant information; and the inquiry must be free from signs of bias.

We reviewed the department's response to each of the 36 complaints involving allegations of staff misconduct that we elevated to a field inquiry. Following our initial review, we referred 35 of the 36 complaints to various hiring authorities.¹⁹ Hiring authorities ordered their staff to inquire into the allegations for 19 of the 35 complaints (54 percent). In 14 of those 36 complaints, we learned the department had already initiated inquiries into the allegations of staff misconduct after receiving the complaints through a separate process. Two complaints contained multiple allegations, some of which the department had already initiated an inquiry into, and

18. Departmental policy generally requires that inquiries into inmate allegations of staff misconduct are completed within 30 business days of receipt. Accordingly, we deemed all inquiries completed within 30 business days to be timely. In our opinion, a slight delay beyond 30 business days should not cause an inquiry that was otherwise thorough and complete to be deemed inadequate overall. Inquiries that were not completed within 45 business days (which is approximately 60 calendar days) resulted in an automatic inadequate overall rating.

19. We did not refer one of the 36 complaints to a hiring authority because our initial research located the pertinent institution's inquiry report that had already been completed. Our review of that report determined the hiring authority thoroughly and appropriately examined the inmate's allegations.

others it had not. Nevertheless, we assessed the response taken by the hiring authorities in each of the 36 complaints. We assessed whether complaint responses were timely, thorough, and complete based on the documentation generated during the inquiry and other information the hiring authorities and their staff conveyed to our field inspectors.

In 32 of the 36 complaints we reviewed, the hiring authorities ordered their staff to perform an inquiry into the allegations. In three of the 32 inquiries ordered by hiring authorities, our ability to review the department's handling of the complaint was limited because the staff who performed the inquiries did not draft an inquiry report or otherwise document their investigative efforts. Table 4, below, summarizes the department's performance in each aspect of the inquiry process that we assessed.

Table 4. Assessment of the Department's Performance in Addressing the 36 Complaints of Staff Misconduct We Referred for Their Review

	Inquiry Performed	Inquiry Documented	Timely Inquiry	Adequate Interviews*	Adequate Document Review*	Adequate Overall
Yes	32	29	20	20	24	15
No	4	3	12	8	6	21

* The OIG was not able to assess adequacy of the interview and review of evidence in cases with limited documentation or in cases in which the OIG found the category was not applicable.

Source: The Office of the Inspector General.

Although the 36 field inquiries we performed involving allegations of staff misconduct represent a much smaller sample size than the 188 we assessed during our special review of Salinas Valley State Prison's handling of staff misconduct allegations in 2018, we noticed some similarities between the two samples. During that special review, we found 104 of the 188 staff complaint inquiry reviews (55 percent) inadequate, whereas in this period, we determined the department performed inadequate inquiries into 21 of the 36 complaints (58 percent). We also found a number of similar issues in the inquiries the department performed into complaints of staff misconduct, such as incomplete investigative work, outward signs of bias, and a lack of independence. Appendix C presents a summary detailing the various reasons why each inquiry was not adequately conducted.

Four Wardens Failed to Take Any Investigative Steps into Complaints of Staff Misconduct We Brought to Their Attention

An essential component of an adequate inquiry is that an inquiry is actually performed. In four of the 36 complaints we reviewed

(11 percent), the hiring authority did not perform an inquiry into allegations that its staff engaged in misconduct. The primary reason we refer allegations of staff misconduct to the department is because we lack the authority to perform investigations into allegations of staff misconduct ourselves. That authority was removed in July 2011 as part of the 2011–12 Budget Act.²⁰ As has been our practice since July 2011, when we receive complaints alleging staff misconduct, we can only refer the complaint to the department, and request information and documentation reflecting the actions it took in response to receiving the complaint. As a result of the 2011 changes, if the hiring authority does not perform an inquiry, the allegation of staff misconduct goes unaddressed.

In one instance, we provided a warden with a complaint we received from an inmate alleging institutional staff never responded to a complaint he filed. In that complaint, the inmate alleged a correctional officer retaliated against him because he previously filed a complaint against the officer. In the initial complaint, the inmate alleged the officer required him to share a cell with an inmate whom he believed posed a risk to his safety. The inmate warned the officer that his new cellmate was a member of a gang whose members had tried to murder him before he came to prison and that neither he nor his cellmate were safe if they were forced to live together. The inmate alleged that despite being made aware of these safety concerns, the officer still required the inmates to share a cell. Ten days after the inmates were housed together, they were involved in an in-cell altercation in which each inmate claimed to have been the victim of an assault initiated by the other.

CITIZEN'S COMPLAINT PROCESS

Any noninmate may register a complaint against any departmental employee for improper conduct by completing and submitting a CDCR Form 2142, "Citizens' Complaint Against Employees of CDCR."

The department reviews all complaints of misconduct received and may initiate an investigation based upon the nature and seriousness of the allegation(s). If an investigation is initiated, the complainant is notified when the investigation is complete.

Source: *California Code of Regulations*, Title 15, Article 2, Section 3391; the California Department of Corrections and Rehabilitation, Office of Internal Affairs, Frequently Asked Questions, <http://cdcr.ca.gov/oia/faqs/> (URL accessed on February 5, 2020.)

After we discussed the complaint with the warden, the warden sent the inmate a letter explaining that the institution had not responded to his complaint because it was filed on a Citizen's Complaint form (Form 2142) rather than on the required Inmate Appeal form (Form 602) (text box, page 20). When we followed up with the warden two months after providing him a copy of the complaint, we learned that because the inmate never refiled his allegations on the proper form, the institution did not perform an inquiry or investigation into his allegations.

Although a departmental regulation required the inmate to submit this complaint on a Form 602, the department should have recognized the seriousness of the allegations, processed the inmate's complaint as a staff complaint, and assigned a staff member to perform an inquiry into the allegations. Instead, the warden opted to ignore the inmate's allegations

20. Senate Bills 78, 87, and 92 of the 2011–12 legislative session.

that a correctional officer engaged in serious misconduct that resulted in an in-cell assault because the complaint was not written on the correct form. Regardless of the form on which an allegation of staff misconduct is made, the department has an obligation to inquire into such allegations, especially when the allegations involve serious misconduct suggesting staff intentionally placed the safety of two inmates at risk.

Hiring authorities also failed to perform inquiries into the following three complaints of staff misconduct we forwarded to them:

- The former spouse of a correctional officer alleged the officer sent harassing text messages to her and to their two children, threatened to kill her and commit suicide, and made false allegations about her that could jeopardize her employment and harm her reputation. She also alleged the officer verbally abused her and her children and threatened to assault her new boyfriend.²¹
- The mother of an inmate alleged a lieutenant was mistreating her son because his commitment offense involved an assault on a peace officer and because she had previously complained about the lieutenant's treatment of her son. She alleged her son was accused of writing a "kite" (inmate note) that threatened to harm the lieutenant, and was handcuffed and escorted to the lieutenant's office, where the lieutenant questioned him about the threat. The lieutenant then allegedly placed the inmate in a holding cell for five-and-one-half hours, where he allegedly interrogated the inmate and told him, "Where did this get your family writing complaints against me? Tell your family to back off."
- An inmate's wife alleged the correctional officer responsible for coordinating family visits at an institution required her husband to pre-order food up to two months in advance of the visit, causing the food to grow moldy or expire by the time the visit occurred. The wife also alleged the officer refused to accommodate the dietary restrictions her doctor ordered and would not allow her to bring her own food into the institution with her during family visits, even though the institution did not provide her an option to purchase food that met her doctor's orders. The inmate's wife also alleged the officer confronted her after she called the department's

21. The hiring authority opened an inquiry into similar allegations the spouse submitted directly to the institution seven months later, which included additional allegations of misconduct that occurred after she submitted her initial complaint to our office. However, the hiring authority took no action in the seven preceding months despite being made aware of the spouse's initial complaint.

Office of the Ombudsman regarding her complaints and told the inmate, “We’re going to have some problems” if his wife kept filing complaints. The officer also allegedly refused to answer the wife’s calls regarding her visits.

Hiring Authorities Performed Timely Inquiries Into Only 63 Percent of the Staff Misconduct Inquiries We Reviewed

Although the department’s regulations establish time frames within which it must conduct inquiries into complaints of staff misconduct it receives from inmates, there are no time frames for the department to inquire into allegations of staff misconduct that the department receives in other manners, such as through the citizen complaint process; informally, such as by email or phone call; or after a referral from our office or another entity. Timely inquiries are an essential component of an effective system of internal review. Complaints must be investigated in a timely manner to ensure that the most reliable information and memories are collected and preserved. Inmates and staff have dozens of interactions with one another on a daily basis. As time passes, it becomes more and more difficult to separate any one of those interactions from the others. Because most of these allegations involve the actions of peace officers, to whom a one-year statute of limitations applies, any delay in investigation shortens the amount of time the hiring authority has to perform an investigation and institute discipline, where appropriate.

Considering the majority of the complaints we refer to the department come from inmates, we assessed the timeliness of the department’s inquiries by the same standards applicable to complaints of staff misconduct raised via the inmate appeal process, which requires the hiring authority to complete its inquiry within 30 business days of receipt, but also provides a process for requesting an extension of time in extenuating circumstances.

During our review period, we determined 20 of the 32 inquiries (63 percent) the department performed were either completed within 30 business days or beyond 30 business days, but with a reasonable justification for the delay. As set forth in the cases below, several hiring authorities deserve recognition for performing immediate inquiries into allegations of staff misconduct:

- On September 21, 2018, we notified an institution’s public information officer that we had received a complaint from an inmate alleging he overheard multiple correctional officers make statements about a captain suggesting they would not come to the captain’s aid if he were being attacked. Immediately upon receipt of our request, the institution deployed a team of investigators to assess the validity of

the allegations. By October 8, 2018, just 17 days later, the department had completed its inquiry, which included interviewing approximately 135 inmates living on the captain's assigned yard, the inmate who made the allegations, an inmate who allegedly overheard the statements, and the officers alleged to have made the statements.

- On February 7, 2018, we referred a complaint that identified 28 allegations of misconduct to the hiring authority and recommended an inquiry into the allegations contained in the complaint. By February 20, 2018, just 13 days later, the institution's investigative services' lieutenant had completed his inquiry after either interviewing or collecting statements from more than 13 staff members, reviewing a voluminous amount of documentation related to the allegations, and summarizing the results of his inquiry into a report. Based on the inquiry report and the warden's request, the department's Office of Internal Affairs opened an investigation into two of the allegations contained in the complaint.
- On July 25, 2018, we notified the department's Office of Internal Affairs that we received a report that a departmental employee had been recently seen riding in a car with a parolee, suggesting the employee was engaged in an overly familiar relationship with the parolee. Within three business days, the Office of Internal Affairs determined the employee had ended her employment with the department 10 months earlier and was able to close its inquiry because former employees are not prohibited from associating with inmates or parolees.

However, in 12 of the 32 inquiries the department performed (38 percent), the department failed to perform the inquiries within 30 business days. In the following examples, the hiring authority performed inquiries into allegations of staff misconduct that were so untimely that we question the reliability of the information gathered during the inquiry:

- In one case, a warden's 161-day delay in interviewing three staff members precluded the warden from referring a case to the department's Office of Internal Affairs for further investigation. In his complaint, the inmate alleged he was attacked by a group of inmates on March 8, 2018, 16 days after voicing safety concerns to institutional staff, who did not take any action to address his concerns.

The inmate initially notified the institution of these allegations when he filed a staff misconduct complaint with

the institution's appeals office on March 23, 2018. During the department's initial inquiry into the complaint, the department interviewed the inmate and three staff members regarding the allegations. This initial inquiry did not include interviews of two officers and two mental health staff to whom the inmate claimed to have raised his safety concerns.

We met with the warden to discuss the complaint on July 31, 2018, who stated he would look into the matter. On August 14, 2018, the warden informed us that his staff had already performed an inquiry into the complaint, which determined the allegations were unsubstantiated. On September 7, 2018, after a change in leadership at the institution, we recommended the new warden review the inmate's complaint. On September 27, 2018, the warden agreed to interview the mental health staff and officers who were not interviewed during the initial inquiry and to re-interview the inmate who filed the complaint. We followed up with the warden again on November 8, 2018, December 27, 2018, and January 8, 2019; during each conversation, the warden told us he had not yet performed these three additional interviews.

On January 11, 2019, 164 days after we first met with the former warden about this complaint, and 126 days after we first raised the complaint to the new warden, the institution sent us the report summarizing the new information it discovered after performing additional interviews. The report noted that one of the mental health workers located notes she compiled during her assessment of the inmate's mental health status on February 21, 2018, just 15 days before he was attacked. During the assessment, she noted the inmate was referred to her due to claims that he was suicidal. When she met with the inmate, he explained that he was not actually suicidal, which led her to believe that he was trying to get placed in a mental health crisis bed because he feared for his safety. She noted that custody staff had refused to send him to administrative segregation the day before, even though he had informed them of his safety concerns. Her notes indicated the inmate was planning to discuss his safety concerns with staff again following the assessment. This information directly supported the inmate's allegation that he reported safety concerns to custody staff 16 days before the attack.

Despite the discovery of this corroborating information, because the department first learned of the inmate's allegations of staff misconduct on March 23, 2018, 10 months

earlier, only two months remained in the one-year limitations period for the department's Office of Internal Affairs to review the case and perform an investigation. Because two months was too little time to refer the case to the Office of Internal Affairs, which often takes 30 days to open an investigation, the hiring authority told us he would handle the matter internally and interview additional staff regarding the allegations. However, when we followed up with the hiring authority a few months later, after the one-year limitations period expired, he told us he had not taken any further steps to address the new information provided by the mental health worker.

- On September 7, 2018, we met with a warden to inform him of a complaint we received from an inmate alleging multiple custody staff and mental health staff failed to take any action during two separate incidents in which an inmate was being attacked by a group of several other inmates. The warden did not have staff initiate an inquiry into these allegations until January 28, 2019, 143 days later. As discussed in greater detail on pages 49–50, when the warden's investigative staff finally interviewed the inmate, he could not remember important details about the incident.
- On November 7, 2017, we sent the department's Office of Internal Affairs a complaint from an employee alleging that officers had filed false rules violation reports against inmates and that a lieutenant was involved in an intimate relationship with a subordinate employee. The employee further alleged that when she spoke to an investigative services unit sergeant about these allegations of staff misconduct, the sergeant threatened her that she would be placed under investigation if she continued reporting these allegations and that the sergeant improperly disclosed her confidential communications with him to the lieutenant and other officers working on her yard. Although the Office of Internal Affairs began its inquiry in a timely manner, it did not complete the inquiry until February 2, 2018 (87 days later) and did not send the inquiry report to the hiring authority until March 6, 2018 (33 days after completing the report).

Hiring Authorities Performed Thorough, Complete, and Independent Inquiries Into Only 53 Percent of the Complaints We Reviewed

In 19 of the 36 complaints we examined (53 percent), the department performed inquiries that appeared to be both thorough and complete.

We assessed the adequacy of the inquiries from the contents of the inquiry reports compiled after the completion of the fact-finding process. Below, we describe three cases in which we determined the reviewers performed commendably:

- In one case in particular, the warden and the staff member who performed the inquiry demonstrated a thorough understanding and appreciation for the many different issues any single complaint can raise. In that case, a family member of an inmate alleged officers assaulted the inmate, threw him in a holding cell for more than three hours, ripped off his clothes, and refused his requests to use the restroom, causing him to defecate in his holding cell. We discovered the inmate had already filed a complaint against the officers alleging they used unreasonable force and engaged in sexual misconduct. The institution had already referred the complaint to the institution executive review committee (IERC) to review the use of force, assigned a locally designated investigator to perform an immediate review of the sexual misconduct allegations, and assigned a reviewer to perform an inquiry into the allegations of staff misconduct.

USE-OF-FORCE REVIEW

The Institution Executive Review Committee (IERC) is the primary level of review for use-of-force incidents occurring at adult institutions. For each adult institution, an institution's executive review committee examines every use of force, except those involving deadly force, which are reviewed separately by the department's Deadly Force Review Board. Each institution's IERC is chaired by the warden (or his or her designee, such as a chief deputy warden) and includes an institution's associate wardens, captains, and health care representatives. Committees at each institution meet regularly, depending on the volume of use-of-force incidents, to discuss the merits of the force used, and to determine whether staff followed policies and procedures when using force. Departmental policy generally requires the committees to review each incident within 30 days of occurrence.

Source: Department Operations Manual, Section 51020.19.5.

After reviewing all the records the institution compiled during these processes, we determined the institution properly handled the inmate's complaints, recognizing that the complaint raised three different concerns that required compliance with three different processes—an immediate interview of the inmate as required by PREA, an inquiry into the allegations of staff misconduct, and a thorough review of the use-of-force allegations by the IERC (text box, left). Institutional staff completed all three processes in a timely and thorough manner, and reached reasonable conclusions in light of the evidence collected.

The PREA interview resulted in a determination that the inmate's allegations of sexual misconduct by staff were not substantiated based on the inmate's statements that he was not touched in a sexual manner, and staff did not make sexual comments during the incident. The lieutenant assigned to perform the inquiry into the inmate's allegations of staff misconduct performed an inquiry within 30 days and provided the inquiry report to the IERC for its consideration. The IERC reviewed staff reports regarding the incident and the inquiry report, and determined that additional inmate witnesses should

have been interviewed during the inquiry to provide a complete account of the incident and that one officer's account of the incident needed clarification. As a result, the reviewer conducted interviews of two additional inmates who may have seen the incident, conducted a follow-up interview with the officer, supplemented the inquiry report, and provided the supplemented report to the IERC for further review.

Upon further review, the IERC determined staff complied with policy during the incident; we agreed with that determination. As a result of the three distinct processes, the institution discovered minor policy violations that did not appear to affect the quality of the institution's processes. Nonetheless, the warden appropriately trained and counseled staff regarding their mistakes. We also observed that the institution's staff were extremely cooperative and transparent during the course of our review of this incident, which enabled us to provide effective oversight of the institution's processes in this case.

- We received a complaint alleging an officer was smuggling weapons into an institution, providing inmates with contraband, permitting inmates to possess inmate-manufactured weapons and to store stolen goods in their lockers, threatening inmates, and disclosing confidential information regarding inmates' commitment offenses to other inmates. The assigned investigator examined access logs to determine whether the subject officer accessed confidential inmate information and interviewed 11 inmates, the complainant, and the subject regarding the allegations. The investigator also searched the lockers and bunk areas of two inmates whom the officer allegedly allowed to store weapons and contraband. The inquiry report thoroughly summarized the information the reviewer collected and arrived at reasonable conclusions that factored in all the information summarized in the inquiry report.
- We received a complaint from an inmate alleging that when he arrived at his current institution, he was improperly housed in general population housing, despite being classified as a maximum-security inmate based on his status as a gang drop-out. The inmate alleged he told staff, upon arrival, that his life would be in danger if he were placed with the general population. The inmate further alleged that three days after he was placed in general population housing, the inmate was assaulted by four other inmates and suffered serious injuries, including the loss of an eye.

We reviewed the institution's inquiry report, which indicated the institution promptly and thoroughly investigated the inmate's complaint of staff misconduct. The assigned investigator interviewed the pertinent witnesses and summarized the witnesses' statements. In his report, the investigator considered all the information gathered during the inquiry and arrived at a reasonable conclusion that staff violated policy when assigning the inmate to general population housing. Prior to the inmate's arrival at the institution, he had been placed in administrative segregation by the action of the former institution's institutional classification committee (ICC) (box, page 57, for an explanation of the ICC). Departmental policy states that the inmate could only be removed from administrative segregation by the actions of an ICC; individual staff cannot override the order of the ICC. The involved staff member also admitted to having seen the inmate's designation as a maximum-security inmate, but explained that he was persuaded by the inmate's request to live in the institution's general population housing and his assurances that he would be safe there.

Insufficient Investigative Steps

In nine of the 32 complaints (28 percent) of staff misconduct we reviewed in which an inquiry report was compiled, we determined the inquiries were not thorough and complete because the reviewer failed to interview all relevant witnesses or failed to ask the witnesses critical questions, failed to collect or review departmental records that contained pertinent information, and in some cases failed in both respects. In eight of the 32 complaints (25 percent), the reviewer failed to perform interviews of individuals who were likely to have information that would support or refute the allegations. In six of the 32 complaints (19 percent), the reviewer failed to collect or review departmental records that contained pertinent information. Five of the 32 inquiries (16 percent) suffered from both defects. We describe two of these complaints below:

- In the first of these two cases, an inmate alleged a correctional officer asked him to attack other inmates who filed complaints against the officer and convince them to withdraw their complaints, and showed him confidential information on his work computer that included newly arriving inmates' conviction offenses. The inmate alleged the officer expected the inmate to attack convicted sex offenders in the institution, and rewarded him with canteen items

the officer took from other inmates. The inmate named two staff members who were either involved in the misconduct or witnessed the misconduct, and 75 inmates who either witnessed the misconduct or were victims of his attacks. We provided a copy of the inmate's complaint to the institution's investigative services unit, which conducted an inquiry into the staff complaint.

Although the inmate named 46 inmates who might have relevant information, the reviewer interviewed only three of the named inmates, noting that he attempted to interview several others who refused to speak with him. Of these three inmates, one did not support the complaining inmate's allegations at all. The second inmate interviewed stated that although he did not know the complaining inmate, he did know that the subject officer ordered another inmate to attack others. The final inmate interviewed indicated he had never witnessed any inmates attacking others at the officer's request, but noted the subject officer confiscated canteen items from inmates' cells and provided them to other inmates.

Although the complaining inmate's credibility was appropriately called into question after he was unable to identify the names of any of the 30 to 40 inmates he allegedly attacked, two of the three inmates interviewed provided corroborating information that the officer used inmates to attack others, and improperly confiscated and redistributed inmates' canteen items. The reviewer did not interview either of the two relevant staff members identified by name during the inquiry, nor did he collect any documentation that could have corroborated or refuted the complaining inmate's allegations, such as the number of appeals filed against the subject officer, how many of those appeals were withdrawn, and the number of inmate-on-inmate assaults that occurred in the complaining inmate's housing unit.

- In the second case, discussed earlier (pages 41–43), the inquiry into an inmate's complaint that staff failed to protect him from harm did not include an interview of mental health staff to whom an inmate alleged he reported safety concerns. After we notified the hiring authority of its failure to interview these staff, the hiring authority interviewed the mental health staff. One of the staff members corroborated the inmate's allegations that he notified staff of his safety concerns. The inquiry also did not include an interview of

the inmate's cellmate who was allegedly with him at the time of the attack. It also did not include a review of records that would have identified other staff and inmates to be interviewed, such as time-sheet records identifying staff who were on duty when the incidents occurred, medical records from the attack, records generated by the mental health staff member to whom the inmate raised his safety concerns, or a memorandum authored by a captain who interviewed the inmate regarding his safety concerns more than two weeks before the attack.

Departmental hiring authorities also failed to perform essential investigative steps that could have led to evidence corroborating the allegations of staff misconduct. Below are two examples in which the department failed to perform essential investigative steps:

- In response to a complaint of excessive force, a sergeant interviewed the complaining inmate and five officers, and reviewed one medical report that was generated on the date of the incident. The sergeant concluded the inmate's allegations could not be substantiated. Two weeks later, at the request of an inmate advocacy group, a lieutenant reviewed the sergeant's inquiry and performed additional investigative steps, re-interviewing the inmate and reviewing multiple records, including staff sign-in sheets and staff rosters; the use-of-force incident package, which included incident reports from involved staff and witnesses, and medical records for the inmate and staff injured during the incident; the inmate's appeal history; and the rules violation report the inmate received as a result of the incident. During this review, the lieutenant discovered the existence of a medical report generated on the date of the incident indicating the inmate suffered injuries inconsistent with the use of force reported by staff. The lieutenant also obtained additional information from staff that appeared to support the inmate's version of the events. The lieutenant concluded, and the warden agreed, there were sufficient inconsistencies in the records he reviewed to warrant making a request that the department's Office of Internal Affairs open an investigation into the matter.
- An inmate alleged that officers were disclosing to inmates the names of other inmates who were convicted sex offenders and child molesters. Although the hiring authority did not document the steps it took during its inquiry into this

complaint, the investigating officer informed us that he spoke to two inmates in the housing unit who were alleged to have learned other inmates' commitment offenses from officers in the housing unit. They denied learning of the commitment offenses from the officers and claimed the information was common knowledge. They also denied any knowledge of officers asking inmates to harm other inmates. After performing these two interviews, the investigator concluded that the allegations could not be substantiated. We believe a thorough inquiry into this matter would have included interviews of other inmates and staff in the housing unit to determine if anyone else witnessed the alleged conduct and how inmates' commitment offenses became common knowledge.

Lack of Independence

During the field inquiries we performed during this reporting period, we also found that inquiries were sometimes flawed due to bias or a lack of independence by the reviewer. In one complaint, the reviewer showed outward signs of bias in his report. And, in two other complaints, hiring authorities assigned potential subjects of the complaints to perform investigations into the allegations against them.

In one case, the reviewer displayed bias in his inquiry report when he concluded that the inmate who filed the complaint was "misleading" because he could not provide physical descriptions of inmates involved in an assault or the officers who allegedly failed to intervene to stop the attack. During the course of his inquiry, the reviewer received information indicating that on the day of the alleged attack, strong winds were blowing dust and dirt around, which limited visibility on the yard where the attack occurred. The reviewer used this information to justify officers' failure to come to the aid of an inmate who was being attacked, surmising that they probably could not have seen the attack. However, the reviewer ignored the same environmental conditions when assessing the inmate's credibility. As shown in the excerpt on the following page, the reviewer concluded the inmate was "misleading" because he could not provide physical descriptions of the involved individuals even though the limited visibility on the day of the attack provided a reasonable explanation for the inmate's inability to provide this information.

Inmate [REDACTED] provided information that could be proven to be partially factual but was misleading in providing the information. Inmate [REDACTED] alleged that custody staff observed and failed to respond to an inmate on inmate assault. Inmate [REDACTED] was unable to provide this investigator with factual evidence to substantiate his allegation of staff misconduct. Inmate [REDACTED] was unable to identify reasonable identifying traits such as gender, ethnicity, and or facial features of the staff which he reports to have failed to respond. Inmate [REDACTED] was not able to describe any identifying features of the alleged victim and/or suspects of the alleged assault. These inconsistencies leads this investigator to conclude that inmate [REDACTED] may have some knowledge of an incident which occurred on Facility C but lacks credibility in his allegation of staff misconduct.

Source: The California Department of Corrections and Rehabilitation.

The reviewer also failed to consider that the inmate's memory of the incident was not fresh, considering the incident he was investigating had occurred in June 2018. We informed the warden of the allegation in September 2018. But the interview did not occur until January 28, 2019—seven months after the incident occurred and nearly five months after we brought the complaint to the warden's attention. The investigator chose to conclude that the inmate was misleading, even though it was at least equally likely that the inmate's memory was not as clear at the time of the interview as it had been seven months earlier.

In the following two cases, the department assigned the subjects of misconduct allegations to perform the official inquiries into the complaints against them:

- In one case, we received a complaint alleging a chief and a deputy chief at departmental headquarters permitted two of their subordinate employees to operate their personal businesses on State time. The department assigned one of the subjects—the chief who was accused of allowing his subordinate to engage in personal business on State time—to perform the inquiry. We believe that given the chief's alleged involvement in the wrongdoing, he should not have been assigned to perform the inquiry. The department cannot guarantee an independent and unbiased investigation when a subject of alleged misconduct is asked to perform an inquiry into the allegations against himself or herself. This conflict should have been apparent to both the headquarters executive who assigned the inquiry to the chief and to the chief as well, especially since the report begins by acknowledging the clear conflict:

ALLEGATION INQUIRY

In December 2017 you requested that I conduct an allegation inquiry in response to an anonymous complaint (Exhibit 1) filed with the Office of the Inspector General. The complaint listed several allegations of misconduct against [REDACTED] and [REDACTED]. The complaint also alleged that [REDACTED] Deputy Chief [REDACTED] and I were aware of the alleged misconduct.

Based on your analysis of the complaint you deemed it appropriate that I conduct the fact-finding inquiry on your behalf.

Source: The California Department of Corrections and Rehabilitation.

The report also incorporated as evidence personal observations and personal knowledge the reviewer obtained over the previous few years while managing and supervising the subject employee. The report included the following statements:

During casual conversations with [REDACTED] I recall learning that he purchased an engraving machine one to two years ago. I recall him taking at least a week of vacation time after he bought the machine so he could set the machine up at his house and familiarize himself with its operation.

Following that I have, on occasion, witnessed [REDACTED] deliver items he has made to people in the office. Usually this would occur first thing upon his arrival to the office then he would go about his normal CDCR duties.

Based on my personal observations, [REDACTED] has printed/embroidered clothing for CDCR employees, [REDACTED] members, sporting teams, private businesses etc. for several years. Similar to my observations for [REDACTED], I have witnessed [REDACTED] deliver items he has made to people in the office. Usually this occurred first thing upon his arrival to the office then he would go about his normal CDCR duties.

Source: The California Department of Corrections and Rehabilitation.

Given the reviewer's degree of alleged involvement in and personal knowledge of the activity that formed the basis of the allegations of staff misconduct, the reviewer should have been interviewed as part of the inquiry.

- In another case, we received a complaint from an employee at a prison alleging she informed her supervisor that officers had filed false rules violation reports against inmates and that a lieutenant was involved in an intimate relationship with a subordinate employee. The employee further alleged that

when she spoke to a sergeant assigned to the institution's investigative services unit (ISU) about these allegations of staff misconduct, the ISU sergeant threatened her by stating that she would be placed under investigation and that he later improperly disclosed her confidential communications with him to the lieutenant and other officers working in her area, who subjected her to ridicule.

We provided the complaint to the Office of Internal Affairs, which assigned a special agent to perform an inquiry into the allegations. However, during the course of the inquiry, rather than perform all the interviews himself, the special agent only performed the interview of the complaining employee. The warden tasked the ISU sergeant, who was one of the subjects of the alleged misconduct, to perform interviews of one inmate and three correctional officers. The special agent then incorporated the sergeant's interviews into the investigative report. The warden should have recognized the clear conflict of interest posed by having the subject of an allegation of misconduct perform interviews in connection with the investigation and should have assigned a different staff member to perform the interviews.

Departmental Staff Improperly Punished an Inmate and His Spouse for Violating Visiting Rules, Despite the Existence of Video Footage Demonstrating They Complied with Visiting Policies and Staff Directives

We received a complaint that an officer terminated an inmate's visit with his spouse because the inmate allegedly disobeyed the officer's orders to comply with proper departmental seating positions and contact procedures with his visitor (his spouse). The officer also issued the inmate a rules violation report, causing him to lose visitation privileges for 30 days, which the prison rescinded 12 days early after receiving a complaint from the inmate's spouse. We reviewed the complaint and the surveillance video from the date of the visit, and believe the officer's termination of the visit and issuance of a rules violation to the inmate were not warranted. We also had concerns that the officer dishonestly reported the events he witnessed during the inmate's visit.

The visit, which occurred in June 2018, was one of approximately **720 visits** in which the inmate and his spouse engaged between 2006 and 2018. During their previous visits, they had never been punished for violating the department's visitation policies. However, approximately 30 minutes into this June 2018 visit, the officer warned the inmate and his spouse that their seating position violated policy and that they needed to adjust their seating position (Photo 1, below). The surveillance video confirmed that the inmate's spouse adjusted her chair and seating position in response to the officer's directive (Photo 2, below) and rested her hands on her stomach (Photo 3, below). She maintained this position for the next eight minutes, when the inmate left the table to obtain his medications from a nurse.



Photo 1. Correctional officer issues verbal command for visitor to adjust seating position.



Photo 2. Visitor stands and relocates further away from her spouse.

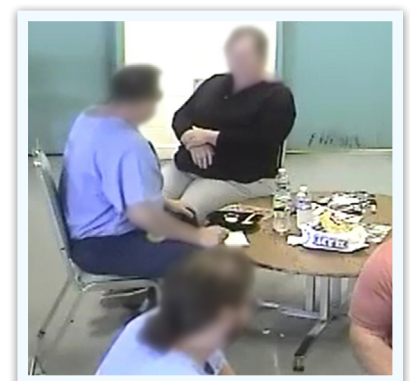


Photo 3. Visitor primarily has both hands folded over her stomach during visit and is facing the inmate.

Source for photographs: The California Department of Corrections and Rehabilitation.

The officer again notified the inmate at the officer's podium, as the inmate was leaving to pick up his medication, that he would terminate the visit if the inmate and his visitor did not comply with orders to adjust their seating positions. As the inmate returned to the visiting area, the officer repeated his warning to the inmate. Two minutes later, approximately 50 minutes into the visit, the officer notified the inmate and his spouse that he was terminating the visit. After the visit, the officer issued the inmate a rules violation that resulted in a 30-day suspension of visitation privileges.

The inmate's spouse submitted complaints to the institution, the department's Office of the Ombudsman, and the OIG regarding the terminated visit, the rules violation, and the decision to suspend the inmate's visiting privileges for 30 days. According to the inmate's spouse, the officer told her that the visit was being terminated because she was sitting sideways, and the officer could not see her hands because they were positioned between her legs. However, upon review of the surveillance video (Photos 1-3, previous page), the inmate's spouse had clearly adjusted her hands and seating position, as instructed. Furthermore, the video shows the visitor's hands were primarily folded over her stomach.

According to the department's visiting policy, when a verbal warning or a restriction fails to achieve compliance, or fails to correct the conduct by a visitor, the visit shall be terminated for the day.²² The institution's visiting policy states, in part:

Inmates shall sit at the tables facing the correctional officer at the Visiting Podium. All visitors shall sit facing the inmate. Sitting side-by-side shall be prohibited. Inmates and visitors shall not intertwine any portion of their body (legs, arms, or feet).²³

We reviewed the officer's report and the corresponding rules violation report he wrote to understand the reasons the officer articulated for terminating the visit and issuing the inmate a rules violation. The officer's report indicated the inmate and his spouse did not adjust their seating positions, and they only feigned adjusting their seating positions. The officer's report also stated that the spouse's hands were obstructed from view, which contradicts what the surveillance video showed. After receiving the spouse's complaints, the department

22. Department Operations Manual, Section 54020.29.1.

23. The institution's Department Operations Manual Supplement, Section 54020.7.

rescinded the rules violation, reducing it to a counseling chrono,²⁴ and re-instated the inmate's visitation privileges, but not until 23 days after the initial rules violation report was issued. The counseling chrono stated the officer terminated the visit due to excessive contact with the visitor, but did not clearly describe the nature of the excessive contact. Although the department reduced the rules violation to a counseling chrono and withdrew the penalties that remained from the initial imposition of the rules violation, we believe the more appropriate response would have been to rescind all records of the incident from the inmate's file, considering the video footage demonstrated the inmate and his spouse did not violate any policy or directive. Even though the associated rule violation was rescinded, because a counseling chrono documents an inmate's actions the department considers misconduct, it can still reflect poorly on the inmate's suitability for parole during future parole hearings.

Visits from friends, family, and loved ones are an important part of the rehabilitation process for many inmates, and maintaining ties to family and loved ones can have a positive effect on an inmate's time in prison. In the case of this inmate, he lost his visitation privileges even though he and his visitor clearly followed the officer's orders to maintain proper sitting positions. Perhaps even more troubling is the officer's dishonesty in describing the series of events in the reports he wrote after the visit. We believe the video footage of the incident clearly demonstrates the officer's account of the visit is inaccurate.

The Inspector General met with the department's executive staff to discuss his concerns with this inmate losing visiting privileges for a period of time as a result of the officer's inaccurate reporting of events from the visit and requested the department refer this matter to its Office of Internal Affairs. The department declined the Inspector General's recommendation, stating that while it found discrepancies in the officer's report, it would not be referring the matter to the Office of Internal Affairs because it did not believe the officer was "blatantly dishonest" when reporting the facts of the visit. Instead, the department provided the officer remedial training for report writing. We believe the department failed to comply with its policy, which requires it to refer allegations of dishonesty for an internal investigation for the purpose of confirming or clearing the officer of misconduct.

24. A *counseling chrono* refers to a Counseling Only Rules Violation Report, which is a form of discipline the department issues to inmates "when similar minor misconduct reoccurs after verbal counseling or if documentation of minor misconduct is needed." The report is intended to document an event or misconduct for an inmate and contains a description of the misconduct and counseling provided. Source: Title 15, *California Code of Regulations*, Section 3312, subdivision (a)(2).

Staff Inactions and Indifference Caused an Inmate to Languish in Administrative Segregation for Two-and-One-Half Months

“Release from administrative segregation shall occur at the earliest possible time in keeping with the inmate’s case factors and reasons for the inmate’s placement in administrative segregation.”

Source: Title 15, *California Code of Regulations*, Section 3339, subdivision (a).

We received a complaint from the mother of an inmate, alleging a lieutenant was mistreating her son because her son had been convicted of an offense involving an assault on a peace officer and because she had previously complained about the lieutenant’s treatment of her son. She alleged her son was falsely accused of writing a *kite* (an inmate-written note, below) that contained a threat of harm to the lieutenant, and was handcuffed and escorted to the lieutenant’s office where the lieutenant questioned him about the kite. The lieutenant then allegedly placed the inmate in a holding cell for five-and-one-half hours, where he interrogated the inmate and told him, “Where did this get your family writing complaints against me? Tell your family to back off.” The inmate’s mother had submitted two other complaints in the two months prior regarding her son’s treatment by the lieutenant, and the treatment she and her son experienced during a recent visit to see him at the institution.

Lt. [redacted]
 Watch your BACK [redacted]
 Dorm #30 put a hit on you
 BECAUSE YOU KEEP Fucker
 with him!

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

We reviewed the records that staff generated related to the discovery of the kite, which confirmed that on August 12, 2017, the lieutenant ordered staff to place the inmate in a holding cell, where he remained for four hours—the maximum amount of time permitted without obtaining approval from a manager. The inmate was then placed in administrative segregation due to the suspicion that the inmate wrote the threatening note. On August 14, 2017, the lieutenant wrote a report about his discovery of the kite and the steps he took after reading it, including having the inmate placed in a holding cell and rehoused in administrative segregation. At the conclusion of the memo, the lieutenant wrote:

Due to the allegations made by Inmate [REDACTED] and the note containing the possible threats, It is recommended Inmate [REDACTED] be rehoused in an alternate institution that meets his programming and custody needs.

Attached is a copy of the note along with written sample of Inmate [REDACTED]'s hand writing. Cross-referencing the handwriting revealed multiple similarities with various letters, indicating the he may have been the author of the note.

Source: The California Department of Corrections and Rehabilitation.

The lieutenant's captain reviewed the memo and approved its placement in the inmate's central file. On August 15, 2017, the institution's investigative services unit (ISU) completed its investigation into the threat. The ISU investigator issued a written report on August 16, 2017, determining the handwriting samples "revealed multiple similarities, indicating that [the inmate] may have been the author of the note" and then concluding, without further analysis or evidence that he "discovered circumstantial evidence to believe [the inmate] is the author of the inmate note threatening [the lieutenant]. Therefore, the [Investigative Services Unit] no longer has any interest in [the inmate] and recommends [he] be referred to the Institutional Classification Committee where his case factors can be reviewed by the committee members for appropriate housing and program needs" (text box, right).

On August 16, 2017, not knowing the ISU had already completed its investigation into the threat against staff, the ICC reviewed the inmate's placement into administrative segregation, electing to retain the inmate in administrative segregation pending closure of the investigation into the threat against staff. The committee decided to hold the inmate in administrative segregation for 45 days to

INSTITUTIONAL CLASSIFICATION COMMITTEE (ICC)

The Institutional Classification Committee at each institution makes decisions affecting transfer, program participation, supervision, security, housing, and safety of persons. Among the members of the committee are the institution's warden or chief deputy warden, an associate warden, a psychiatrist or physician, a captain, a correctional counselor, a lieutenant, and a representative of educational or vocational programs.

Source: Department Operations Manual, Sections 62010.8., 62020.8.2.

allow staff to complete the investigation, setting his next committee hearing for September 30, 2017. On August 22, 2017, six days after the ICC hearing, the institution approved the inmate's transfer to another institution. On August 23, 2017, the inmate arrived at the new institution, where he was placed in administrative segregation housing pursuant to the former institution's decision and the new institution's lack of appropriate housing for the inmate, who was designated as requiring housing for a sensitive needs yard.

On September 11, 2017, a staff member in the new institution's administrative segregation housing unit contacted the lieutenant and captain at the former institution asking whether the investigation into the inmate's threat against staff had been completed and informing them that there was no information in the inmate's central file indicating whether he had received a rule violation for the threat or whether a staff separation notice²⁵ had been issued. On September 18, 2017, after getting an incomplete response from the captain and the lieutenant, the staff member sent a request to his counterpart at the former institution, requesting formal documentation setting forth the results of the investigation and whether a staff separation alert would be issued.

On October 2, 2017, we received a phone call from the inmate's mother informing us that the inmate was still in administrative segregation, had not received a decision regarding the results of the investigation, had not been issued a rules violation report, and had not had an ICC hearing. He appeared to be languishing in administrative segregation with no end in sight. We contacted the new institution the same day, at which point the lieutenant's captain immediately issued a closure memorandum indicating the inmate would not receive a rules violation report and that a staff separation order would not be placed in the inmate's file. On October 5, 2017, the new institution held an ICC hearing, during which it approved the inmate's transfer to another prison that had appropriate housing for sensitive needs inmates. On November 1, 2017, the inmate was finally released from administrative segregation and housed on a sensitive needs yard at another institution.

As a result of the discovery of the kite containing the threat against staff, the inmate spent 81 days in administrative segregation, despite the investigation into the threat lasting less than five days. In line with the department's policy regarding placement in administrative segregation, which notes that "release from segregation status shall occur at the

25. A separation alert is a record placed in an inmate's central file that identifies an inmate's enemy concerns. These alerts typically restrict an inmate from being housed at the same institution as any of the individuals identified in the record. In this inmate's case, the staff separation alert would have precluded the inmate from being housed at the institution where the lieutenant worked.

earliest possible time in keeping with the circumstances and reasons for the inmate's initial placement in administrative segregation,"²⁶ we believe the duration of the inmate's stay was unnecessarily prolonged by staff inaction at the original institution.

Although we could not determine from our limited review of the records generated what time of day on August 16, 2017, that ISU completed its investigative report and delivered it to the captain, it is reasonable to presume that the captain had not yet received the report before the ICC hearing at 10:19 a.m. that day. At that hearing, the committee decided to extend the inmate's assignment to administrative segregation housing for 45 days pending the completion of the ISU investigation. However, the lieutenant's captain was identified as a recipient of the ISU investigative memorandum and presumably received it within a few days of the hearing. The same captain was identified as having been present at the ICC hearing during which the inmate was assigned to an additional 45 days in administrative segregation. When the captain received the ISU report after the hearing, he should have acted on it promptly and requested that the inmate's housing status be reconsidered, since the investigation had been completed. Instead, the captain did nothing with the results for 47 days, after being asked four times²⁷ to create an official record that would permit the new institution to consider releasing the inmate from administrative segregation.

At the time of this incident, the department did not have a formal policy regarding the investigation of threats against staff. However, the department's Secretary previously disseminated a memorandum setting forth its initial policy in this area as required by legislation enacted in 2015, requiring the department to create such a policy. The memorandum required, among other things, that upon becoming aware of a threat made against staff by an inmate:

- The subject of the threat immediately report the threat to his or her supervisor;
- The supervisor report the threat to the hiring authority;
- The hiring authority assign a staff member to investigate the threat;
- The hiring authority create a threat assessment response team (TART);

26. Title 15, *California Code of Regulations*, Section 3339, subdivision (a).

27. The captain received email messages on September 11, 2017, September 18, 2017, September 22, 2017, and October 2, 2017, requesting creation of an investigative closure notice.

- The TART assess the validity of the threat, determine whether any further investigative steps are warranted, and make recommendations to ensure the threat is adequately addressed; and
- The hiring authority ensure all appropriate documentation is placed in the inmate's central file.

PRIVILEGE RESTRICTIONS IN SEGREGATED HOUSING

While in administrative segregation, inmates also have restrictions placed on their ability to participate in the general contact visiting process, purchase items from the canteen, possess reading materials and appliances, make telephone calls, communicate with other inmates, participate in programs, classes, and services, and receive packages.

Inmates in administrative segregation are also required to spend their one hour of daily exercise time in a cage measuring approximately 10 feet by 15 feet rather than in the general exercise yard. Inmates who have a cellmate exercise together, whereas inmates in single cells exercise alone.

Had staff complied with the Secretary's directives, there would have been numerous opportunities for institutional staff to realize that the investigation into the threat had been completed and that the inmate remained in administrative segregation at another prison because no one placed a record in the inmate's file indicating the investigation had been closed.

The prolonged stay in administrative segregation had several negative impacts on this inmate (text box, left), who has been a consistent participant in the department's family visiting process (text box, page 68) and had been engaging in family visits every three months before the August 2017 incident. The inmate's prolonged stay in administrative segregation appeared to have prevented him from participating in the family visiting program between August 2017 and February 2018. Since March 2018, he has had family visits every other month.

Our review of the institution's handling of the threat against staff also revealed another area of concern regarding the involvement of staff who have threats made against them.

In this case, the lieutenant who was the subject of the threat—the same lieutenant about whom the inmate's mother complained—was heavily involved in the processing of the threat and the inmate's housing decisions. This lieutenant authorized the inmate's four-hour placement in the temporary holding cell, personally interrogated the inmate about the note, authorized the inmate's placement in administrative segregation, performed a handwriting analysis of the note using the inmate's prior appeals as writing samples, and authored a memorandum that was placed in the inmate's central file that concluded the inmate "may have been the author of the note" and recommended the inmate's transfer to another institution.

We believe the involvement of the lieutenant, who had a personal conflict in making decisions with regard to an inmate who was suspected of making a threat against him, unnecessarily subjected staff and inmates to harm. This situation provided the inmate with an

opportunity to carry out the threatened violence against the lieutenant. It also gave the lieutenant the opportunity to retaliate against the inmate for making the threat, and at the very least, provided the inmate with an opportunity to allege retaliation, even if staff acted in complete accordance with policy.

Although the department formalized its policy governing the assessment of threats against staff in its January 2018 Department Operations Manual, the policy does not include an instruction that staff members who are the targets of threats by inmates remove themselves from the investigation process and refrain from making or influencing decisions that impact the inmate suspected of issuing the threat. We believe the lack of a conflict-of-interest provision constitutes a critical gap in the department's policy governing threats against staff. As long as staff who are the targets of threats continue to involve themselves in investigating the threats and in decisions regarding the inmate's housing assignments and privileges, the department unnecessarily exposes inmates to retaliation by the targeted staff and subjects staff to claims of retaliation.

The Department Placed an Inmate's Safety at Risk by Entering Inaccurate Information in His Disciplinary Records Indicating He Was Convicted of a Sex Offense Involving a Minor

We received complaints from an inmate, as well as from the inmate's mother and grandfather, alleging staff placed inaccurate information in the inmate's records indicating he had been convicted of a sex offense involving a minor under Penal Code section 288. The inmate had not been convicted of such an offense, but had been convicted of an offense under Penal Code section 314, for indecent exposure. Earlier in the inmate's incarceration, inmates at another institution stole a box of confidential documents, which contained inaccurate information stating the inmate had been convicted of an offense under Penal Code section 288. Because other inmates had learned of this false information, the inmate believed his safety was in danger due to a belief held by some inmates that they have an obligation to attack other inmates who have been convicted of sex offenses, particularly when those offenses involve minors. The inmate told staff that "other inmates are putting out hits on me because they think I'm a child molester due to false documents that inmates got a hold of." After the department discovered which inmates stole the records, staff placed a separation alert in the inmate's central file identifying them as enemies and precluding them from being housed at the same institution.

I been receiving threats on my life due to custody staff creating documents/rumors claiming I have prior convictions of child molestation. Not only am I met a child molester but I have no convictions of the above. This have been a ongoing issue for nearly two years & my life is in danger. I'm being told by other inmates that I had 30 days to stab a officer & if I didn't I would get stabbed.

Source: The California Department of Corrections and Rehabilitation.

The inmate alleged in his complaint that his records still contained inaccurate information indicating he had been convicted of a sex offense involving a minor under Penal Code section 288. When we reviewed the inmate’s disciplinary history, we discovered his records contained the following information (Table 5, below):

Table 5. Entries in an Inmate’s Rules Violation Report History When We First Reviewed the Inmate’s Records on February 9, 2018

Date	Log Number	Rules Violation Description	Finding
02/06/2018	00000000533626 (R2)	Indecent Exposure Without Prior Convictions for PC 314	—
10/03/2017	000000003490626	Indecent Exposure With Prior Convictions for PC 314	—
05/11/2017	000000002751324	Indecent Exposure Without Prior Convictions for PC 314	Guilty as Charged
04/11/2017	00000000533626 (R1)	Indecent Exposure With Prior Convictions for PC 288	Guilty as Charged
01/22/2017	000000002068326	Indecent Exposure Without Prior Convictions for PC 314	Guilty as Charged
12/22/2016	000000001778628	Indecent Exposure With Prior Convictions for PC 314	Guilty as Charged
11/13/2016	000000001450424	Indecent Exposure Without Prior Convictions for PC 314	Guilty as Charged
07/22/2016	00000000533626	Indecent Exposure Without Prior Convictions for PC 288	Guilty as Charged
07/01/2016	00000000437135	Indecent Exposure Without Prior Convictions for PC 288	Guilty as Charged

Source: The California Department of Corrections and Rehabilitation’s Strategic Offender Management System.

Although the inmate’s conviction history is clear—he had a prior conviction under Penal Code section 314 and did not have a prior conviction under Penal Code section 288—institutional staff identified the same type of rule violation in four different manners in his disciplinary history, as color-coded in Tables 5, 6, and 7 (pages 62, 63, and 64, respectively):

1. as an indecent exposure with a prior conviction under Penal Code section 288,
2. as an indecent exposure without a prior conviction under Penal Code section 288,
3. as an indecent exposure with a prior conviction under Penal Code section 314, and
4. as an indecent exposure without a prior conviction under Penal Code section 314.

With regard to one rule violation in particular (Log Number 000000000533626, Table 6, below), institutional staff changed the identification of that violation on two different occasions. However, each time the department attempted to correct its description of the rule violation, it left the inaccurate records in the inmate's disciplinary history, albeit with a suffix of "(R1)" (Revision 1) after the first correction and a suffix of "(R2)" (Revision 2) after the second correction.

Table 6. Three Different Descriptions the Department Entered in an Inmate's Rules Violation Report History Attempting to Classify a Single Disciplinary Action for Indecent Exposure

Date	Log Number	Rules Violation Description	Finding
02/06/2018	000000000533626 (R2)	Indecent Exposure Without Prior Convictions for PC 314	—
04/11/2017	000000000533626 (R1)	Indecent Exposure With Prior Convictions for PC 288	Guilty as Charged
07/22/2016	000000000533626	Indecent Exposure Without Prior Convictions for PC 288	Guilty as Charged

Source: The California Department of Corrections and Rehabilitation's Strategic Offender Management System.

We found these measures to be ineffective considering the (R1) and (R2) notations do not stand out when reviewing all of the information contained in the disciplinary history records, which are reproduced in the exhibit on page 66. The entries are made even more confusing by the fact that the incorrect charge issued on April 11, 2017, with a notation of (R1) still indicates the inmate was found to be guilty as charged. Anyone reading this record would be given the impression that the inmate had been found guilty of an indecent exposure and had a prior conviction under Penal Code 288. This practice of leaving the prior incorrect rules violation information in the inmate's disciplinary history is particularly troublesome if the information falls into the wrong hands or is improperly disclosed to other inmates. Sex offenders are a particularly vulnerable subset of the inmate population and are frequently targeted by other inmates. Months after we first sent this information to the warden, we reviewed the inmate's disciplinary history to determine whether the department had made any changes to the inaccurate records. During this follow-up review, we discovered the department had not corrected any of the prior records and that the inmate had the following new rules violations added to his record (Table 7, next page):

Table 7. Additional Rules Violations the Department Entered Into the Inmate's Rules Violation Report History Between March 2018 and October 2018 for Additional Indecent Exposures

Date	Log Number	Rules Violation Description
10/16/2018	000000005890546	Indecent Exposure With Prior Convictions for PC 288
08/13/2018	000000005475652	Indecent Exposure Without Prior Convictions for PC 288
08/13/2018	000000005474760	Indecent Exposure Without Prior Convictions for PC 288
07/14/2018	000000005288144	Indecent Exposure With Prior Convictions for PC 314
04/21/2018	000000004906762	Indecent Exposure With Prior Convictions for PC 314
04/16/2018	000000004887930	Indecent Exposure With Prior Convictions for PC 314
03/31/2018	000000004792531	Indecent Exposure Without Prior Convictions for PC 314

Source: The California Department of Corrections and Rehabilitation.

After discovering that the department had again placed an incorrect entry in his disciplinary history on October 16, 2018, which stated the inmate had a prior conviction under Penal Code section 288 (Log Number 000000005890546, Table 7, above), we contacted the inmate's assigned institution and requested it correct the information to protect the inmate from further harm, which the false information could cause. This time, the new institution created a new entry and deleted the prior entry, leaving only one entry related to this rule violation. The entry now states: "Indecent Exposure Without Prior Convictions for PC 314."

Although the information is still incorrect, as the inmate does have a prior conviction under Penal Code 314, this particular entry no longer places the inmate at risk of harm. However, the inmate's complete disciplinary record still contains one reference to a conviction under Penal Code section 288 from April 11, 2017 (Log Number 000000000533626 (R1), seen in the exhibit on the next page) that indicates the inmate was found guilty of "Indecent Exposure With Prior Conviction for PC 288." As long as this entry remains in the inmate's disciplinary records, the inmate remains at risk of harm.

Exhibit. Summary Reproduction of the Inmate's Rules Violation Report History Related to Indecent Exposure Incidents

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(1 - 17 of 34)

<u>Date</u>	<u>Time</u>	<u>Facility</u>	<u>Log #</u>	<u>Rules Violation #</u>	<u>Classification Number</u>	<u>Inmate Found</u>	<u>Status</u>
08/24/19	18:04:00	SAC-Facility B	00000006894964	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious		Awaiting Additional Information
05/10/19	15:05:00	LAC-Facility D	00000006844105	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
01/25/19	13:55:00	LAC-Facility D	00000006393954	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious		Postponed Hearing
08/13/18	12:55:00	CHCF-Facility A	00000005475652	3007-[04]-Indecent Exposure Without Prior Convictions for PC 288	Serious	Guilty as Charged	Final/Concluded
07/14/18	13:00:00	CHCF-Facility E	00000005288144	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
04/21/18	07:23:00	CHCF-Facility A	00000004906762	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
04/16/18	06:30:00	CHCF-Facility A	00000004887930	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
03/31/18	07:24:00	LAC-Facility D	00000004792531	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
02/06/18	10:00:00	LAC-Central Service	00000000533626(R 2)	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
10/03/17	18:45:00	LAC-Facility D	00000003490626	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
05/11/17	17:15:00	CHCF-Facility B	00000002751324	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
04/11/17	08:25:00	LAC-Central Service	00000000533626(R 1)	3007-[02]-Indecent Exposure With Prior Convictions for PC 288	Serious	Guilty as Charged	Final/Concluded
01/22/17	17:05:00	CHCF-Facility B	00000002068326	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
12/22/16	22:30:00	LAC-Facility D	00000001778628	3007-[03]-Indecent Exposure With Prior Convictions for PC 314	Serious	Guilty of Included Charge	Final/Concluded
11/13/16	18:20:00	LAC-Facility D	00000001450424	3007-[05]-Indecent Exposure Without Prior Convictions for PC 314	Serious	Guilty as Charged	Final/Concluded
07/22/16	15:55:00	LAC-Central Service	00000000533626	3007-[04]-Indecent Exposure Without Prior Convictions for PC 288	Serious	Guilty as Charged	Final/Concluded
07/01/16	11:15:00	SVSP-Facility I	00000000437135	3007-[04]-Indecent Exposure Without Prior Convictions for PC 288	Serious	Guilty as Charged	Final/Concluded

Source: The California Department of Corrections and Rehabilitation's Strategic Offender Management System.

The Department's Hiring Authorities Made Policy Changes, Rescinded Earlier Actions, and Provided Training to Staff as a Result of Complaints We Forwarded for Their Review

During this reporting period, the department made several changes after reviewing three of the complaints we forwarded to its hiring authorities. In two cases, hiring authorities amended local policies and procedures, and in another case, the Board of Parole Hearings reconsidered a prior decision and issued an amended decision. We believe the department should be commended for identifying problem areas and implementing sound measures to prevent future recurrences.

An Institution's Chief Executive Officer Revised the Institution's Policies and Training Modules to Ensure Medical Staff Inform Custody Staff When Inmates Allege That Excessive Force Caused Their Injuries

In a case described earlier in this report, on page 48, although we criticized the hiring authority for performing an inadequate inquiry into the complaint we referred, the institution's review of the complaint ultimately led to positive changes at the institution. The inmate's complaint in this case alerted the institution's warden and chief executive officer (CEO) in charge of health care to a gap in the institution's policies and practices when inmates inform medical staff that custody staff used excessive force.

After being escorted to the institution's medical facility, an inmate notified medical staff that he sustained the injuries they were evaluating after being assaulted by custody staff. However, medical staff never informed custody staff of these allegations. Because custody staff were not made aware of the inmate's allegations, they did not perform an immediate inquiry into the allegations. The institution did not perform its inquiry until we alerted the hiring authority of the inmate's allegations four months after the incident. Medical staff also failed to inform custody staff that physicians at the outside hospital diagnosed the inmate with a concussion. Had this notification been made, custody staff would have been under an obligation to notify us of this significant bodily injury, and we would have monitored the department's investigation into how the inmate suffered a concussion. Furthermore, because custody staff were unaware of the inmate's concussion and his allegations of excessive force, the institution's executive review committee, which reviews every use-of-force incident that occurs at the institution, did not have this information available to

it when it reviewed the officers' use of force to determine compliance with departmental policy.

After the institution considered the inmate's allegations and completed these internal review processes, the warden ordered custody staff to receive additional training regarding incidents that require notification to the OIG. The institution's CEO also developed new training materials that instructed medical staff that they must inform custody staff when an inmate reports excessive force. The CEO subsequently trained health care staff regarding these revised use-of-force reporting policies. This new training should lead to timely inquiries into allegations of excessive force inmates raise during their interactions with medical staff, who are often the first ones to ask inmates how they received their injuries after they are involved in an altercation.

A Warden Revised the Institution's Family Visiting Process to Ensure Appropriate Food Options Were Available to Inmates and Their Families

FAMILY VISITING

Some inmates are eligible for family visits with immediate family members. These visits occur in private quarters on institutional grounds, usually in a small trailer, and last approximately 30 to 40 hours. At most institutions, inmates can apply for a family visit every three to five months. The inmate and the visitors are responsible for purchasing food they would like to eat during family visits by ordering from a list of items the institution provides for purchase from a vendor.

Source: <https://www.cdcr.ca.gov/visitors/visitors/inmate-visiting-guidelines/> (URL accessed September 6, 2019).

We received a complaint from the wife of an inmate alleging she was having difficulties communicating with the correctional officer responsible for coordinating the family visiting process at one of the department's adult institutions. She also alleged the officer required her husband to pre-order food up to two months in advance of the visit, causing some food to grow moldy or expire by the time of the visit. The wife also alleged the staff member refused to accommodate the dietary restrictions her doctor ordered and would not allow her to bring her own food with her into the institution during her family visits, even though the institution did not provide her the option to purchase food that met her doctor's orders. The inmate's wife also alleged the officer confronted her after she called the department's Office of the Ombudsman regarding her complaints and told the inmate, "We're going to have some problems" if his wife kept complaining about her. The correctional officer also allegedly refused to answer the wife's calls regarding her visits.

In response to the complaint, the warden amended the institution's family visiting policy to allow inmates to schedule visits before food is ordered, as long as the food is received at the institution two weeks prior to the visit. The warden also tasked the family visiting officer with the responsibility to monitor the food for signs of spoilage after it is delivered to the institution. To bring the institution

into compliance with departmental policy,²⁸ the warden added a new section to the institution's family visiting policy instructing staff to allow visitors to bring in special food items if they provide medical certification of a dietary restriction, as long as the food is purchased from a vendor and is sealed in its original packaging. To remedy the communication problems the inmate's wife was experiencing, the officer received training related to communicating with inmates' families, which stressed the importance of returning families' phone calls.

The Board of Parole Hearings Revised a Previously Issued Decision Based on Inaccurate Information the Institution Had Provided to the Board

In the third case, we received a complaint from the wife of an inmate alleging the Board of Parole Hearings had recently denied her husband's parole during his recent Prop 57 Nonviolent Parole Review hearing, based on inaccurate information provided by his assigned institution. She alleged departmental staff provided the Board with inaccurate information regarding her husband's in-prison behavior, including rules violations that were not sustained and omitting rehabilitative programs he had completed, both of which could have caused the Board to look more favorably at her husband's suitability for parole if the information had been accurately represented.

We reviewed the inmate's records and determined both departmental staff and the Board made several errors that affected the inmate's suitability for parole. Among those errors, the Board improperly considered the inmate's 1986 conviction for robbery, which should not have been considered as an aggravating factor under State regulations prohibiting consideration of a violent felony conviction as an aggravating factor if it occurred more than 15 years earlier. The Board also improperly considered as an aggravating factor (based on inaccurate information the institution provided) two rules violations that were not sustained and a third rules violation that was reduced to an administrative charge, and failed to consider as mitigating factors the inmate's completion of a substance use disorder treatment program and a transition program the inmate completed before his parole review (because the institution did not provide this information to the Board).

We notified the Board's Executive Director of the concerns we identified during our inquiry. Within seven weeks, the Board issued an updated

28. Department Operations Manual, Section 54020.33.16.

decision that factored in the corrected information, removed the inmate's 1986 conviction from its analysis, and considered the inmate's in-prison behavior as a mitigating factor, rather than an aggravating factor. Although the Board did not alter its ultimate decision to deny the inmate parole, it ensured the inmate received his due process rights by considering information pertinent to the inmate's suitability for parole that was both complete and accurate.

Recommendations

Between July 1, 2017, and June 30, 2019, we processed 6,009 complaints, 5,612 of which raised allegations of improper activity within the department. While in many instances we assisted complainants by providing advice on how to address their concerns with the department, in other cases, we resolved the complainants' issues informally. Additionally, we elevated 49 complaints to field inquiries in which our regional inspectors contacted departmental administrators, such as a warden, to bring the matters to their attention. In many cases, the department was receptive and took appropriate action. However, our inquiries highlighted several areas in which the department can improve its processes. Below, we offer the following recommendations for consideration at the departmental level:

To address the issues that cause inmates to forfeit sentence reduction credits and ensure inmates are released appropriately, the department should:

- Amend its policies to require that case records staff perform prerelease audits of inmates' files at least 180 days prior to an inmate's estimated release.
- Amend its policies to ensure inmates receive immediate notice of any changes to their release dates and to provide a system for documenting the date on which inmates receive notice.
- Treat all decisions to rescind credits as proposed decisions rather than as final decisions. Specifically, we recommend the department provide inmates with notice of all proposed decisions to rescind credits and adequate time to challenge the rescission of credits before the rescission becomes final.
- Amend its regulations to create a separate process that allows inmates to challenge release date calculations and credit rescissions according to expedited time frames.
- Consider setting classification committee hearings to occur on the first date inmates become eligible to have credits restored by an institutional classification committee, at least with respect to inmates who are within 180 days of their earliest possible release date.

To ensure the department takes consistent and adequate action in response to allegations of staff misconduct, the department should:

- Amend its regulations to require that all allegations of staff misconduct, regardless of their source, be subjected to the

same process the department provides for inmate allegations of staff misconduct. The process should set forth deadlines for inquiries to be performed, require the inquiries involve a thorough review of all relevant records and interviews of all staff likely to have information related to the allegations, and ensure that the steps the reviewer took during the inquiry are documented in a report.

To address the conflicts of interest we identified, the department should:

- Amend its policy to prohibit staff who are the subject of inmate threats from participating in any processes or decisions taken in response to discovering an inmate threat against staff.
- Review its policies to determine whether there are adequate policies in place that instruct staff how to recognize and handle conflicts of interest.
- Review its training curriculum to determine whether it provides sufficient ongoing training regarding conflicts of interest.

To ensure that inmates' disciplinary records contain only accurate information, the department should:

- Consider amending its regulations and policies regarding records of disciplinary matters to include a requirement that any inaccurate entries that are later corrected be removed from the inmate's record.
- Perform an audit of its rules violation records to locate rules violations that have been revised and determine whether there is an operational need to maintain those records in the inmate's disciplinary history.

To streamline our access to inmate appeals information and reduce the amount of time the department's public information officers spend responding to our requests for records, the department should:

- Provide our office with direct, electronic access to its Inmate Appeals Tracking System.

Appendices

Appendix A. Number of Complaints Received, by Institution

Institution	Fiscal Year 2017–18	Fiscal Year 2018–19	Total Complaints Received
High Security	1,195	1,302	2,497
CAC	21	17	38
CCI	97	104	201
COR	175	255	430
HDSP	99	135	234
KVSP	143	170	313
LAC	191	178	369
PBSP	69	52	121
SAC	119	156	275
SATF	143	118	261
SVSP	138	117	255
General Population	559	557	1,116
ASP	47	37	84
CAL	27	27	54
CEN	30	37	67
CTF	81	123	204
CVSP	23	35	58
ISP	36	16	52
MCSP	171	205	376
PVSP	17	19	36
SOL	68	39	107
VSP	59	19	78

Continued next column.

Institution	Fiscal Year 2017–18	Fiscal Year 2018–19	Total Complaints Received
Reception Center	646	608	1,254
CBU	41	21	62
CCC	8	20	28
CIM	76	93	169
CMC	84	77	161
CRC	31	24	55
DVI	40	19	59
NKSP	54	33	87
RJD	195	195	390
SCC	24	45	69
SQ	46	41	87
WSP	47	40	87
Female Offender Programs and Services and Special Housing	302	415	717
CCWF	35	52	87
CHCF	137	198	335
CIW	37	29	66
CMF	70	93	163
FSP	19	34	53
FWF	4	9	13
Other Entities	199	226	425
DAPO	25	29	54
DJJ	4	12	16
Other	170	185	355
Total	2,901	3,108	6,009

Appendix B. Summary of Field Inquiry Outcomes for Cases Containing Allegations of Staff Misconduct, as Determined by the OIG

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG

Case	Overall Rating	Investigation Ordered by HA	Adequate Report	Sufficient Interviews	Sufficient/ Relevant Evidence	Timely	Free From Bias
1	Inadequate	Yes	Yes	No	No	Yes	Yes
2	Inadequate	Yes	Yes	Yes	No	No	Yes
3	Inadequate	No	N/A	N/A	N/A	N/A	N/A
4	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
5	Adequate	Yes	Yes	Yes	Yes	No	Yes
6	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
7	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
8	Inadequate	Yes	No	No	No	No	Yes
9	Adequate	Yes	Yes	Yes	Yes	No	Yes
10	Inadequate	No	N/A	N/A	N/A	N/A	N/A
11	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
12	Inadequate	Yes	No	Unknown	Unknown	Yes	Unknown
13	Inadequate	Yes	Yes	Yes	Yes	No	No
14	Inadequate	Yes	Yes	No	Yes	Yes	Yes
15	Inadequate	Yes	Yes	Yes	Yes	No	No
16	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
17	Inadequate	No	N/A	N/A	N/A	N/A	N/A
18	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
19	Inadequate	Yes	No	Unknown	Unknown	Yes	Unknown
20	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
21	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
22	Inadequate	Yes	Yes	Yes	Yes	No	Yes
23	Inadequate	Yes	Yes	Yes	Yes	No	Yes
24	Adequate	Yes	Yes	N/A	Yes	Yes	Yes
25	Inadequate	Yes	Yes	No	No	No	Yes
26	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
27	Inadequate	Yes	Yes	Yes	Yes	No	No
28	Inadequate	Yes	Yes	No	Yes	No	Yes
29	Inadequate	Yes	Yes	Yes	Yes	No	Yes
30	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
31	Inadequate	Yes	Yes	No	No	Yes	Yes
32	Adequate	Yes	Yes	Yes	Yes	Yes	Yes
33	Inadequate	Yes	Yes	No	No	Yes	Yes
34	Inadequate	No	N/A	N/A	N/A	N/A	N/A
35	Inadequate	Yes	Yes	No	Yes	No	Yes
36	Adequate	Yes	Yes	Yes	Yes	Yes	Yes

Note: This appendix only identifies complaints that involved allegations of staff misconduct that could be assessed based on a standard set of objective criteria. The remaining 13 complaints, which are summarized in Appendix D, pertained to various issues that could not be assessed using these same criteria.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG			Incident Summary	Overall Rating
				Adequate = ✓ Inadequate = ✗
Case 1	Investigation Ordered by HA Documented	Yes	On September 12, 2016, an inmate submitted a complaint to the OIG alleging two officers forced inmates to pay them to access the exercise yard and telephones, sold mobile phones to inmates, and threatened to have gang members remove the inmate from the exercise yard if he complained.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	No		
	Timely	Yes		
	Free from Bias	Yes		
Case 2	Investigation Ordered by HA Documented	Yes	On March 24, 2017, an inmate submitted a complaint to the OIG alleging officers used unreasonable physical force on him after he requested medical attention.	✗
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	No		
	Timely	No		
	Free from Bias	Yes		
Case 3	Investigation Ordered by HA Documented	No	On April 10, 2017, an inmate submitted a complaint to the OIG alleging the department did not investigate his complaint that an officer retaliated against him for filing a prior complaint against the officer.	✗
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	N/A		
	Timely	N/A		
	Free from Bias	N/A		
Case 4	Investigation Ordered by HA Documented	Yes	On May 9, 2017, an anonymous departmental employee submitted a complaint to the OIG alleging another officer engaged in sexual acts with inmates in the kitchen. On June 20, 2017, the anonymous departmental employee submitted a second complaint to the OIG alleging continued misconduct by the other officer.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 5	Investigation Ordered by HA Documented	Yes	On May 15, 2017, a disability rights advocate submitted a complaint to the OIG on behalf of an inmate alleging that an officer choked the inmate, and a lieutenant threatened to punish the inmate during a video-recorded interview if he pursued a complaint against the officer.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 6	Investigation Ordered by HA Documented	Yes	On May 17, 2017, a former departmental employee submitted a complaint to the OIG alleging officers were sleeping on duty while assigned to shifts guarding inmates who were receiving treatment at an outside hospital.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		

Continued on next page.

Note: For complaints received by mail, we consider the date we received the complaint as the date the complaint was submitted.

Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG			Incident Summary	Overall Rating Adequate = ✓ Inadequate = ✗
Case 7	Investigation Ordered by HA Documented	Yes	On June 2, 2017, an inmate submitted a complaint to the OIG alleging he was the victim of sexual harassment when a departmental contract employee allowed another inmate to draw sexually offensive pictures, make sexually offensive comments, engage in inappropriate physical contacts, and expose himself during group counseling sessions. The inmate also alleged the departmental contract employee and a director for the third-party vendor failed to take appropriate corrective action.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 8	Investigation Ordered by HA Documented	Yes	On June 28, 2017, an inmate submitted a complaint to the OIG alleging two officers revealed that an inmate was a convicted child molester and asked other inmates to attack the inmate.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	No		
	Timely	Unknown		
	Free from Bias	Yes		
Case 9	Investigation Ordered by HA Documented	Yes	On July 21, 2017, an inmate submitted a complaint to the OIG alleging an officer provided other inmates with preferential treatment, confidential inmate information, and materials that inmates could use as weapons.	✗
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 10	Investigation Ordered by HA Documented	No	On June 16, 2017, an inmate's mother submitted a complaint to the OIG alleging departmental staff unjustly accused her son of threatening a lieutenant and harassed him when they aggressively questioned him about the threat.	✗
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	N/A		
	Timely	N/A		
	Free from Bias	N/A		
Case 11	Investigation Ordered by HA Documented	Yes	On August 21, 2017, an inmate submitted a complaint to the OIG alleging his cellmate sexually assaulted and beat him, and three officers were aware of the attacks, but failed to stop them.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 12	Investigation Ordered by HA Documented	Yes	On September 20, 2017, an inmate submitted a complaint to the OIG alleging a counselor had an overly familiar relationship with an inmate and was providing contraband to that inmate.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	Unknown		
	Timely	Unknown		
	Free from Bias	Yes		
		Unknown		

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Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG			Incident Summary	Overall Rating Adequate = ✓ Inadequate = ✗
Case 13	Investigation Ordered by HA	Yes	On October 31, 2017, a departmental employee submitted a complaint to the OIG alleging that, based on information from inmates, two officers falsified rules violation reports against inmates regarding alcohol possession, that a lieutenant was involved in an inappropriate relationship with a subordinate officer and they were caught engaging in sexual activity on institutional grounds, and that an investigative services unit sergeant threatened her with being placed under investigation after reporting the lieutenant's and the officers' alleged misconduct.	✗
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	No		
Case 14	Investigation Ordered by HA	Yes	On November 7, 2017, an inmate's fiancée submitted a complaint to the OIG alleging that during a visit with her fiancée, officers detained her against her will, forced her to submit to an unclothed body search, and repeatedly denied her requests for a complaint form.	✗
	Documented	Yes		
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 15	Investigation Ordered by HA	Yes	On September 22, 2017, the OIG received an anonymous complaint alleging a chief and a deputy chief allowed a special agent-in-charge and a senior information systems analyst to conduct personal business on state time.	✗
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	No		
Case 16	Investigation Ordered by HA	Yes	On January 3, 2018, an attorney submitted a complaint to the OIG on behalf of three inmates regarding a July 17, 2017, incident alleging that officers used unreasonable force on the three inmates, which a fourth inmate video-recorded on a mobile phone.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 17	Investigation Ordered by HA	No	On January 29, 2018, a private citizen submitted a complaint to the OIG alleging her ex-husband, an officer, sent harassing text messages to her and to their two children, threatened to kill her and commit suicide, and made false allegations about her. She also alleged the officer verbally abused her and her children and threatened to assault her boyfriend.	✗
	Documented	N/A		
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	N/A		
	Timely	N/A		
	Free from Bias	N/A		
Case 18	Investigation Ordered by HA	Yes	On February 2, 2018, and May 10, 2018, an anonymous departmental employee submitted a complaint to the OIG alleging a principal committed misconduct, including discrimination, preferential treatment, misuse of state funds, and falsification of documents.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		

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Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG			Incident Summary	Overall Rating Adequate = ✓ Inadequate = ✗
Case 19	Investigation Ordered by HA	Yes	On May 11, 2018, a departmental employee submitted a complaint to the OIG alleging an officer used his position to influence the transfer of the officer's son, an inmate, from one institution to another and that unidentified managers potentially circumvented policy to influence the inmate's transfer.	✗
	Documented	No		
	Sufficient Interviews	Unknown		
	Sufficient/Relevant Evidence	Unknown		
	Timely	Yes		
	Free from Bias	Unknown		
Case 20	Investigation Ordered by HA	Yes	On May 29, 2018, an inmate submitted a complaint to the OIG alleging that on January 5, 2018, when he arrived at the institution, the department refused to place him in the administrative segregation unit and, instead, placed him in nonmaximum-security housing, although the department classified him as a maximum-custody inmate. On January 8, 2018, three other inmates attacked the inmate, causing the inmate to lose an eye.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 21	Investigation Ordered by HA	Yes	On June 6, 2018, an inmate's fiancée submitted a complaint to the OIG alleging that on May 24, 2018, three officers attacked the inmate while he was in handcuffs, injured his back while they tore off his clothing, placed him in a holding cell for more than three hours, and refused his requests to use the restroom during that period.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 22	Investigation Ordered by HA	Yes	On June 16, 2018, a third party submitted a complaint to the OIG alleging the department improperly hired an employee who did not meet the minimum qualifications for the position.	✓
	Documented	Yes		
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 23	Investigation Ordered by HA	Yes	On July 16, 2018, an inmate submitted a complaint to the OIG alleging that three parole agents intentionally falsified his parole revocation report and manipulated information in the parole violation decision tool in order to ensure that his parole was revoked.	✗
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 24	Investigation Ordered by HA	Yes	On July 24, 2018, a departmental employee submitted a complaint to the OIG alleging a former inmate who was on probation was involved in an overly familiar relationship with a departmental psychologist.	✓
	Documented	Yes		
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		

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Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG		Incident Summary	Overall Rating Adequate = ✓ Inadequate = ✗	
Case 25	Investigation Ordered by HA	Yes	On July 30, 2018, an inmate advocacy group submitted a complaint to the OIG on behalf of an inmate alleging custody staff failed to prevent the inmate from being attacked by other inmates.	✗
	Documented	Yes		
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	No		
	Timely	No		
	Free from Bias	Yes		
Case 26	Investigation Ordered by HA	Yes	On August 27, 2018, an inmate submitted a complaint to the OIG alleging he heard officers tell inmates they would not do anything if inmates attacked a captain.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 27	Investigation Ordered by HA	Yes	On September 5, 2018, an inmate advocacy group submitted a complaint to the OIG on behalf of an inmate alleging that officers and mental health staff took no action to stop an assault on an inmate on two occasions.	✗
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	No		
Case 28	Investigation Ordered by HA	Yes	On September 21, 2018, a departmental employee submitted a complaint to the OIG alleging a youth counselor directed a ward to attack another youth counselor. The youth counselor allegedly failed to remove the disruptive ward from the classroom and living unit, thereby creating an unsafe work environment.	✗
	Documented	Yes		
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 29	Investigation Ordered by HA	Yes	On September 24, 2018, the department's Office of Audits and Court Compliance provided the OIG with the names of seven inmates who made allegations of unreasonable use of force by officers at the institution.	✗
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 30	Investigation Ordered by HA	Yes	On October 1, 2018, the OIG received an anonymous complaint alleging a warden intentionally removed the price tag from an item at a thrift store in order to purchase the item at a significantly reduced price with the intent of subsequently reselling the item for a profit.	✓
	Documented	Yes		
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		

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Appendix C. Detail and Outcomes of Field Inquiry Cases Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Assessment of the Department's Performance in Conducting Staff Misconduct Inquiries Referred by the OIG			Incident Summary	Overall Rating Adequate = ✓ Inadequate = ✗
Case 31	Investigation Ordered by HA Documented	Yes	On October 25, 2018, an inmate submitted a complaint to the OIG alleging an officer directed him to assault other inmates.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	No		
	Timely	Yes		
	Free from Bias	Yes		
Case 32	Investigation Ordered by HA Documented	Yes	On November 2, 2018, an inmate's wife submitted a complaint to the OIG alleging the department denied the inmate access to a mental health crisis bed and failed to address the inmate's safety concerns.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		
Case 33	Investigation Ordered by HA Documented	Yes	On December 31, 2018, an inmate submitted a complaint to the OIG alleging that two officers used unreasonable force on an inmate when they took him to the ground and banged his head on the floor, even after he had been subdued. The inmate alleged the same two officers observed two inmates fighting, but failed to intervene to stop the fight. When one of the inmates began to walk away from the fight, the officers allegedly ordered the inmate to continue fighting.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	No		
	Timely	Yes		
	Free from Bias	Yes		
Case 34	Investigation Ordered by HA Documented	No	On January 29, 2019, an inmate's spouse submitted a complaint to the OIG alleging the department provided expired and moldy food during a family visit and the department did not accept a doctor's note to allow her to bring in outside food. Additionally, the complainant alleged that a family visiting officer did not answer telephone calls and threatened the inmate after the complainant contacted the department's ombudsman.	✗
	Sufficient Interviews	N/A		
	Sufficient/Relevant Evidence	N/A		
	Timely	N/A		
	Free from Bias	N/A		
Case 35	Investigation Ordered by HA Documented	Yes	On February 13, 2019, a departmental employee submitted a complaint to the OIG alleging that an officer made a vulgar statement to other employees and posted an employee counseling record on a union bulletin board, which appeared to be stained with fecal matter.	✗
	Sufficient Interviews	No		
	Sufficient/Relevant Evidence	Yes		
	Timely	No		
	Free from Bias	Yes		
Case 36	Investigation Ordered by HA Documented	Yes	On March 6, 2019, a third party submitted a complaint to the OIG alleging two officers were engaged in a sexual relationship with an inmate.	✓
	Sufficient Interviews	Yes		
	Sufficient/Relevant Evidence	Yes		
	Timely	Yes		
	Free from Bias	Yes		

Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff

Complaint	On April 7, 2017, an inmate submitted a complaint to the OIG alleging that the institution wrongly rescinded 42 of his educational milestone credits and that he received no response to his efforts to correct the mistake. He also alleged that the OIG poster in his housing unit did not display accurate contact information for the OIG.
Response	The warden determined there was a misunderstanding about which staff were responsible for verifying educational credits and that staff in the institution's education office will be assigned such responsibility to prevent this issue from reoccurring. The institution replaced the outdated posters with new posters containing accurate contact information for inmates to correspond with our office.
Assessment	Within a week of contacting the warden regarding the inmate's complaint, he met with us to discuss the merits of this inmate's complaint. The warden was well prepared to discuss the issues, and demonstrated that he had examined the inmate's concerns and spoken with the involved staff. However, when we reviewed this inmate's records and discussed the inmate's case with the department's Office of Education, we confirmed that the institution should not have rescinded 14 of the inmate's 42 credits. Our review also determined that the timing of the institution's decision to rescind the inmate's credits and staff members' failure to respond to his requests for assistance deprived him of a meaningful opportunity to challenge the decision.

Complaint	On February 7, 2018, an inmate submitted a complaint to the OIG alleging that the institution wrongly rescinded 56 of his educational milestone credits and failed to expedite the processing of his appeal even though he alleged in his appeal that he was due to be released from prison in only 37 days.
Response	We raised the inmate's complaint with the department's executive staff on February 8, 2018. Within two weeks, the department explained that it could not advance the inmate's release date because of a regulation that prohibits the department from advancing an inmate's release from prison if doing so would cause the inmate to be released within 60 days of the change.
Assessment	Although the department's original response was accurate, when we later conferred with the department's Office of Education, we determined that the inmate had not completed the required steps to earn the credits and the institution was correct to rescind his credits. However, we also learned that the department failed to apply additional credit losses that would have caused the inmate to spend additional time in prison. We determined the department released the inmate from prison 32 days early. Our review also determined that the timing of the institution's decision to rescind the inmate's credits and staff failure to respond to his requests for assistance deprived him of a meaningful opportunity to challenge the decision to rescind his credits.

Complaint	On February 7, 2018, an inmate's family member submitted a complaint to the OIG, alleging the department was improperly calculating the inmate's release date, and was holding him in prison beyond his correct release date.
Response	The department identified an error in its calculation of the inmate's release date and adjusted the inmate's release date so that he would be released six days sooner.
Assessment	The department responded to our inquiries related to this complaint in a timely manner and thoroughly researched the inmate's allegations and the questions we posed. Ultimately, the department accelerated the inmate's release date by six days, which was the earliest date permitted by department regulation. However, had institution staff immediately restored credits the inmate earned after being discipline-free for a 60-day period, the department's regulation would not have restricted the inmate from being released even sooner.

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Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Complaint	On February 22, 2018, an inmate's family member submitted a complaint to the OIG, alleging the institution mistakenly re-classified the inmate as a sex offender, which caused his release date to be extended. The inmate wrote to us a few days later explaining that the reclassification would extend his release date by 97 days.
Response	The department determined the sex offender registration requirements did not apply and reversed the institution's decision to classify the inmate as a sex offender. The institution's error caused the inmate to be released from prison 97 days late.
Assessment	Although the department's analysis was incorrect, at every step of our inquiry, the department timely responded to our questions and requests for information. Ultimately, once we elevated to the department's headquarters, the Office of Legal Affairs agreed that the institution's interpretation of the law was incorrect and reversed the institution's decision.
Complaint	On February 27, 2018, an inmate's mother submitted a complaint to the OIG alleging the department failed to award her son the educational achievement credits he earned after completing two college courses in August 2017. The credits, if applied, would advance the inmate's release date by 14 days.
Response	The hiring authority determined the inmate completed the approved educational program, credited the inmate with 14 days of milestone completion credits, and revised his earliest possible release date.
Assessment	The department thoroughly reviewed our concerns and took immediate action to review the inmate's claim. Because the department acted on the inmate's claim immediately, it was able to advance the inmate's release date before the department's regulations precluded it from awarding him the credits he earned.
Complaint	On June 25, 2018, an inmate submitted a complaint to the OIG alleging he had information about an alleged homicide that occurred at an institution, and alleged staff involvement in the homicide. The inmate, who was a suspect in the criminal investigation into the homicide, also claimed that the institution's investigative services unit refused to interview him despite his requests to be interviewed.
Response	After we contacted the institution, the investigative services unit immediately interviewed the inmate to determine what he knew about the homicide.
Assessment	We recommended that the investigate services unit confer with the district attorney before interviewing the inmate considering the inmate was a suspect in the ongoing homicide investigation. The investigative services unit did not contact the district attorney's office before interviewing the inmate, but adequately informed the inmate of his Miranda rights before interviewing him.
Complaint	On June 7, 2017, an inmate's wife submitted a complaint to the OIG alleging that, after we visited the institution and met with members of the facility's inmate advisory council, officers in the housing unit we visited removed and threw away posters that contained information instructing inmates how to contact our office to report misconduct.
Response	Two days later, we conducted an unannounced visit to the housing unit and confirmed that our posters had been removed. We ensured that the posters were returned to the original location and informed the hiring authority and a sergeant working in the housing unit that the posters should remain in that location so that inmates know how to contact our office.
Assessment	We conducted a subsequent unannounced site visit five months later and found that the posters remained in the specified location.

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Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Complaint	On July 5, 2017, an inmate submitted a complaint to the OIG alleging the department did not timely deliver his mail, and in some instances did not deliver his mail at all. He also alleged mail room staff did not respond to his requests for assistance (Form 22s), in which he complained that he was not receiving his mail. The lack of a response to his Form 22s prevented the inmate from utilizing the department's appeal process.
Response	The mail room supervisor could not locate any documentation indicating that mail room staff ever received or responded to the inmate's Form 22s. Within two weeks of our first contact, the hiring authority provided training to mail room employees regarding procedures for receiving and responding to inmates' Form 22 requests for assistance.
Assessment	The hiring authority responded to our questions and requests for documentation in a timely manner and addressed the inmate's concerns appropriately.

Complaint	On February 9, 2018, we received a complaint from an inmate's wife alleging the analysis the Board of Parole Hearings performed during her husband's Nonviolent Parole Review was inaccurate and that the Board considered information it was not permitted to consider.
Response	Less than two months after we raised our concerns with the Board, the Board corrected its decision so that it reflected accurate information and considered only information the Board was permitted to consider, and informed the inmate of the changes.
Assessment	The Board timely and thoroughly reviewed our concerns and appropriately revised its decision to correct the inaccuracies.

Complaint	On March 29, 2018, we received a complaint from an inmate alleging that the department's Office of Appeals unjustly denied the inmate's appeals as untimely even though he mailed the appeal within the prescribed time limits, but staff members allegedly failed to timely process his mail.
Response	The day after we raised our concerns to the department's Office of Appeals, it reversed its earlier determination and accepted the inmate's appeal as timely filed.
Assessment	The department timely responded to our concerns and processed the inmate's third level appeal.

Complaint	On February 5, 2018 and on February 16, 2018, we received complaints alleging an inmate had concerns for his safety after confidential information from his records had been disclosed to other inmates. The confidential information the department placed in the inmate's file indicated he had been convicted of a sex offense involving a minor. The inmate alleged the information was false and placed his safety at risk. The complaints also alleged that the institution informed the inmate that he was going to be transferred to another institution where the inmates who accessed his confidential information were currently housed.
Response	The department examined our concerns that the inmate might be transferred to another institution where he could be harmed by other inmates who posed a risk to his safety and determined the inmate would not be transferred to the other institution because his records indicated he had enemy concerns at that institution. The institution attempted to correct the inaccurate information in the inmate's records, but failed to remove the incorrect information from the file. When we re-examined the inmate's records three months later, we noticed that the inmate had another new entry in his file that incorrectly indicated the inmate had been convicted of a sex offense involving a minor. When we contacted the institution about the incorrect entry, it removed the new entry in its entirety.
Assessment	The department thoroughly reviewed the inmate's concerns that he would be transferred to another prison where other inmates resided who posed a threat to his safety. However, the department did not take adequate steps to remove the inaccurate information from the inmate's records indicating that he had been convicted of a sex offense involving a minor.

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Appendix D. Detail and Outcomes of Field Inquiry Cases Not Containing Allegations of Staff Misconduct, as Determined by Staff (continued)

Complaint	On September 23, 2018, we received a complaint from an inmate's mother alleging that she had sent her son a package on September 8, 2018 containing appropriate clothing for his upcoming release from prison on September 25, 2018, but her son had not yet received the package.
Response	The warden received the same complaint we did, and immediately tasked his staff with examining the concerns identified in the complaint. Two hours later, the warden informed the complainant that her son's clothing was at the institution and would be provided to her son upon his release from prison. The day after her son's release from prison, the mother contacted the warden and alleged that the institution charged her son \$38 for not having clothes to wear upon his release even though the inmate wore his own clothes at the time of his release. The warden responded the next morning, informing the complainant that the charge was an error and that her son would be reimbursed within five business days.
Assessment	The warden was very responsive to the inmate's mother, immediately tasking his staff with gathering answers to her questions and providing complete responses within hours of receiving the messages. On the other hand, our efforts to monitor the institution's response to the complaints were hampered because the staff member assigned to update us about the institution's efforts to assist the complainant did not respond to any of our three inquiries until 14 days after the inmate had been released from prison. We then had to make three requests for the institution's records related to the complaint before the staff member sent the records we needed to review the actions the warden took in response to the complaints.
Complaint	On June 16, 2018, an inmate's wife submitted a complaint to the OIG alleging an officer in the visiting area ended her visit with her husband, issued her a 30-day suspension of visiting privileges, and issued her husband a rules violation even though they were complying with all visiting policies and staff directives.
Response	The warden ordered his staff to perform an inquiry into the complaint, finding insufficient evidence of misconduct to warrant a referral to the Office of Internal Affairs. The warden, instead, ordered the officer to receive training in the area of report writing.
Assessment	We disagreed with the warden's decision not to refer the case to the Office of Internal Affairs because the video footage of the inmate's visit demonstrated that the inmate and his wife complied with the officer's directions and that the incident report the officer ordered did not accurately reflect what happened. The warden agreed that the inmate's and wife's actions did not warrant the issuance of a rules violation report, ordered the violation reduced to a counseling chrono, and restored the wife's visiting privileges. We elevated this concern all the way up to the Secretary of the department, who did not believe there was sufficient evidence to warrant an investigation.

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Complaint Intake and Field Inquiries

Addressing Complaints of Improper Governmental Activities Within the California Department of Corrections and Rehabilitation

Initial Report

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
June 2020

OIG