



*Roy W. Wesley, Inspector General*

*Bryan B. Beyer, Chief Deputy Inspector General*

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# OIG | OFFICE *of the* INSPECTOR GENERAL

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Independent Prison Oversight

June 2020

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

*Semiannual Report  
July–December 2019*

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June 5, 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 *Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. This is the Office of the Inspector General's 30th semiannual report, as mandated by California Penal Code sections 6126(a) and 6133(b)(1), which addresses the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee discipline cases we monitored and closed between July 1, 2019, and December 31, 2019.

We assessed the performance of the three entities within the department responsible for conducting internal investigations and handling the employee disciplinary process: hiring authorities (such as prison wardens), the Office of Internal Affairs, and department attorneys. Between July 1, 2019, and December 31, 2019, we monitored and closed 158 cases, and concluded that the department's overall performance in conducting internal investigations and handling employee discipline cases was *satisfactory*. Of the 158 cases, we rated one case as *superior*, 130 as *satisfactory*, and 27 as *poor*. Of the 27 cases we rated as *poor*, the Office of Internal Affairs was the only departmental unit that performed in an overall *satisfactory* manner in those cases, indicating that the hiring authority and department attorneys were the main factors in the overall *poor* case ratings.

We found that hiring authorities overall performed in a *satisfactory* manner in discovering allegations of employee misconduct and referring the allegations to the Office of Internal Affairs, but the timeliness of such referrals declined from the prior reporting periods of July through December 2018 and January through June 2019. We also found that hiring authorities fell short in the timeliness of conducting the investigative and disciplinary findings conferences and in serving disciplinary actions on peace officers. Hiring authorities made timely investigative and disciplinary findings in just 58 percent of the cases and delayed serving disciplinary actions on peace officers in 42 percent of the cases. However, we determined that, in our opinion, hiring authorities made appropriate determinations concerning internal investigations in 95 percent of the cases and determined appropriate employee disciplinary penalties in 89 percent of the cases.

The Office of Internal Affairs performed in a *satisfactory* manner in processing and analyzing employee misconduct referrals from hiring authorities and in investigating the misconduct allegations. The Office of Internal Affairs processed and analyzed referrals from hiring authorities



in a *satisfactory* manner. It timely processed referrals in 97 percent of the cases. In addition, Office of Internal Affairs' special agents performed well in conducting interviews and completing investigative reports. Special agents completed all necessary and relevant interviews, used effective interviewing techniques, and completed thorough investigative reports in 98 percent of the cases.

Department attorneys performed in a *satisfactory* manner in providing legal advice to the department during the Office of Internal Affairs' processing of employee misconduct referrals. In addition, department attorneys provided appropriate and thorough legal advice to special agents during the course of investigations in all cases we monitored in which an attorney was assigned.

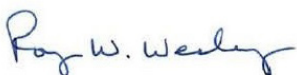
However, the performance of the department's advocates, either a department attorney or employee relations officer, was *poor* when providing legal representation during the litigation process, due primarily to the delayed service of disciplinary actions on peace officers. However, department attorneys and employee relations officers performed exceptionally well in preparing disciplinary actions, and included all relevant facts and allegations, causes of action, and penalties in all cases in which the department served a disciplinary action.

As in our two prior reports, we conducted an analysis of the unnecessary costs the department incurred when it delayed in processing employee disciplinary cases. We found, once again, that the department delayed processing cases involving both peace officers and nonpeace officers, resulting in unnecessary costs to the State and taxpayers of approximately \$224,211.

Finally, in this report, we also highlight the department's lack of a clear policy regarding the distribution of confidential crime scene photographs to unauthorized individuals. This situation not only exposes the department to civil liability, but also places the department at risk of potentially compromising ongoing criminal investigations. Consequently, we provide a recommendation to the department to implement an unambiguous policy concerning the distribution of crime scene photographs.

We also noted that the department lacks a policy for addressing rules violation reports issued against inmates after a determination was made the employee who authored the report was not truthful, and we recommend that the department establish a policy to remedy this concern.

Sincerely,

A handwritten signature in blue ink that reads "Roy W. Wesley". The signature is written in a cursive, flowing style.

Roy W. Wesley  
Inspector General

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“Lady Justice” (page v): Adapted from an illustration at [www.vecteezy.com](http://www.vecteezy.com)



LADY JUSTICE

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

*(California Penal Code section 6126 (a))*

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

*(California Penal Code section 6133 (a))*

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

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

— *State of California*  
*Excerpted from Penal Code sections*

Terms Used in This Report	
<b>Case Management System</b>	The California Department of Corrections and Rehabilitation’s computer program and database that staff use to enter and maintain information regarding internal investigations and employee discipline cases.
<b>Corrective Action</b>	A documented nonadverse action such as verbal counseling, training, written counseling, or a letter of instruction that a hiring authority takes to assist the employee in improving work performance, behavior, or conduct. Corrective action cannot be appealed to the State Personnel Board.
<b>Disciplinary Action</b>	A documented action that is punitive in nature and intended to correct misconduct or poor performance or which terminates employment and may be appealed to the State Personnel Board. It is also the “charging” document served on an employee who is being disciplined, advising the employee of the causes for discipline and the penalty to be imposed. Also referred to as an “adverse action” or a “notice of adverse action.”
<b>Department Operations Manual</b>	The department’s operations manual. The full title is <i>California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual</i> (Sacramento: State of California, 2020). Commonly known as the DOM, it is available on the internet at <a href="https://www.cdcr.ca.gov/Regulations">https://www.cdcr.ca.gov/Regulations</a> .
<b>Employee Disciplinary Matrix</b>	The department’s list and chart, which is not all inclusive, of causes for employee discipline with applicable penalty levels. The list and chart set forth the range of disciplinary penalties from official reprimand to dismissal (DOM, Sections 33030.16 and 33030.19).
<b>Employee Relations Officer</b>	A person, who is not an attorney, employed by a California Department of Corrections and Rehabilitation institution, facility, or parole region responsible for coordinating disciplinary actions for the hiring authority and for representing the department at the State Personnel Board in cases not designated by the Employment Advocacy and Prosecution Team.
<b>Employment Advocacy and Prosecution Team</b>	A team of attorneys in the California Department of Corrections and Rehabilitation’s Office of Legal Affairs assigned to provide legal advice during internal investigations and to litigate employee discipline cases.
<b>Executive Review</b>	A supervisory- or management-level review conducted by a hiring authority, department attorney, and OIG attorney to resolve a significant disagreement regarding investigative findings, proposed discipline, or lack thereof, or a proposed settlement.
<b>Hiring Authority</b>	An executive, such as a warden, superintendent, or regional parole administrator, authorized by the Secretary of the California Department of Corrections and Rehabilitation to hire, discipline, and dismiss staff members under his or her authority.

Continued on next page.



Terms Used in This Report (continued)	
<b>Inquiry</b>	The collection of preliminary information concerning an allegation of employee misconduct necessary to evaluate whether the matter should be referred to the Office of Internal Affairs' Central Intake Unit.
<b>Investigative and Disciplinary Findings Conference</b>	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case.
<b>Letter of Intent</b>	A document served on an employee informing him or her that the investigation into the employee's misconduct was completed within one year and that he or she can expect disciplinary action to follow within a specified period after the letter of intent.
<b>Office of Internal Affairs</b>	The entity within the California Department of Corrections and Rehabilitation responsible for investigating allegations of employee misconduct.
<b>Office of Internal Affairs' Central Intake Unit</b>	A unit of the Office of Internal Affairs consisting of special agents assigned to review referrals from hiring authorities regarding alleged employee misconduct.
<b>Office of Internal Affairs' Central Intake Panel</b>	A collection of stakeholders led by the Office of Internal Affairs that reviews hiring authority referrals regarding allegations of employee misconduct and which is responsible for ensuring the referrals are appropriately evaluated. Although a department attorney and an OIG attorney provide input at Office of Internal Affairs' Central Intake Panel meetings, a manager from the Office of Internal Affairs' Central Intake Unit is the individual who makes decisions at the meetings regarding the disposition of hiring authority referrals.
<b>Special Agent</b>	In the context of this report, a special agent is an investigator employed by the California Department of Corrections and Rehabilitation assigned to investigate alleged employee misconduct.
<b>State Personnel Board</b>	A quasi-judicial board established by the California State Constitution that oversees merit-based job-related recruitment, selection, and disciplinary processes of State employees.
<b>Vertical Advocate</b>	A department attorney assigned to the Employment and Advocacy Prosecution Team of the California Department of Corrections and Rehabilitation's Office of Legal Affairs.

Source: The Office of the Inspector General.



# California Department of Corrections and Rehabilitation Institutions and Parole Regions



### CDCR Headquarters

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

### CDCR Training Center

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

### Parole Regions

North Parole Region      South Parole Region

### Adult Institutions

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

### Juvenile Institutions

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

### Community Correctional Facilities

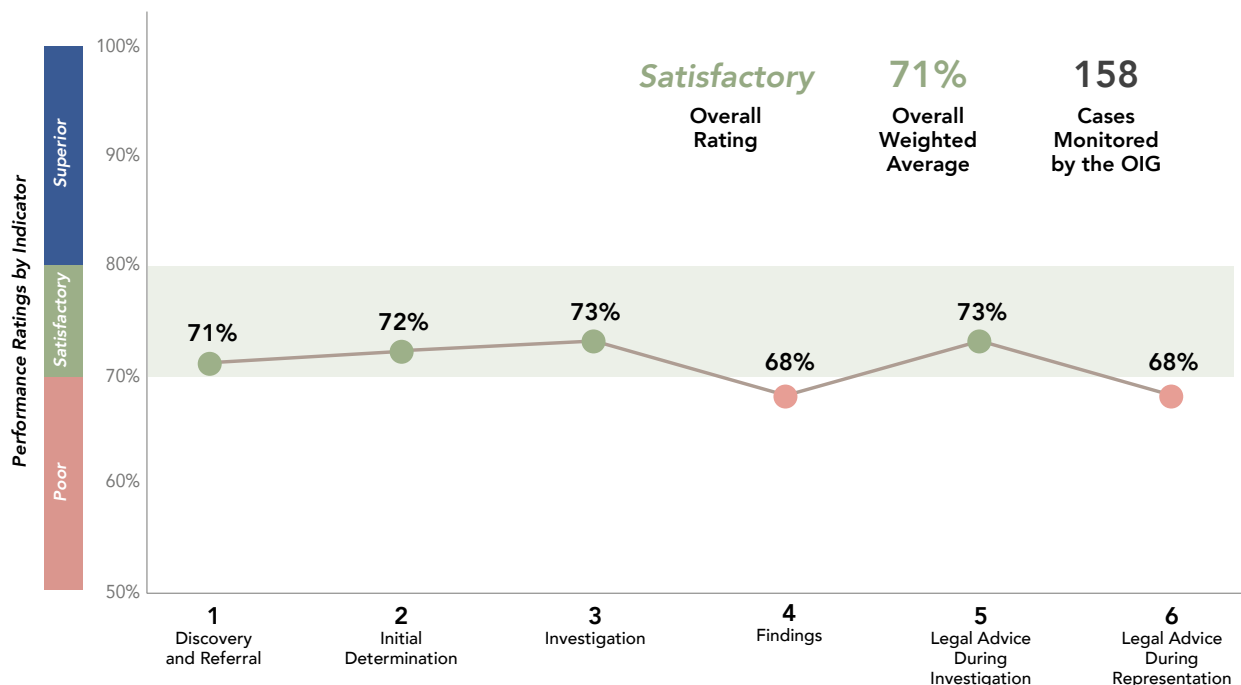
ABRV	FACILITY NAME	LOCATION
1	DCCF Delano CCF	Delano
2	GSMCCF Golden State Modified CCF	McFarland
3	CVMCCF Central Valley Modified CCF	McFarland
4	SMCCF Shafter Modified CCF	Shafter
5	TMCCF Taft Modified CCF	Taft
6	DVMCCF Desert View Modified CCF	Adelanto

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

## Summary

The Office of the Inspector General has been monitoring and reporting on the internal investigations and employee disciplinary process of the California Department of Corrections and Rehabilitation (the department) since 2005 under the authority granted by California Penal Code sections 6126(a) and 6133. This report is our 30th semiannual report. In this rendition, we report our assessment of 158 employee misconduct cases OIG attorneys monitored and closed from July 1, 2019, through December 31, 2019. As to the 158 cases we monitored and closed from July through December 2019, the department's overall performance for these 158 cases was *satisfactory*. Of these 158 cases, we rated one case *superior*, 130 *satisfactory*, and 27 *poor*. Although we found hiring authorities received a *satisfactory* rating for discovering and referring allegations of misconduct to the Office of Internal Affairs, they received a *poor* rating concerning the timeliness in which they determined investigative and disciplinary findings and in processing misconduct cases. We found the Office of Internal Affairs performed in a *satisfactory* manner in processing and analyzing allegations from hiring authorities and in conducting investigations regarding alleged misconduct. Finally, department attorneys also performed in a *satisfactory* manner in providing legal advice to the Office of Internal Affairs. However, we found the performance of department advocates, such as department attorneys or employee relations officers, was *poor* in litigating employee discipline cases. Figure 1 below depicts the corresponding percentages.

**Figure 1. The OIG's Overall Rating of the Department's Investigative and Discipline Process During the Period From July Through December 2019**



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

Moreover, we found that for the 27 cases we rated *poor*, which is 17 percent of the total cases, the only departmental unit that performed in a *satisfactory* manner in at least one of the performance indicators overall was the Office of Internal Affairs. We assessed the Office of Internal Affairs' performance using two performance indicators: processing and analyzing referrals from hiring authorities, and conducting the investigations of alleged employee misconduct. While the Office of Internal Affairs performed in a *satisfactory* manner in processing and analyzing referrals from hiring authorities in the 27 cases we assessed *poor* overall, its performance was *poor* in investigating allegations of employee misconduct as to the 27 cases.

In our report for the January 1, 2019, through June 30, 2019, reporting period, we announced our implementation of a new methodology for assessing the department's performance in conducting internal investigations and its handling of employee misconduct cases. We used the same methodology for this reporting period of July 1, 2019, through December 31, 2019. We divided the department's performance into six specific units of measurement referred to as performance indicators (*indicators*). The purpose of these six indicators is to provide a more direct assessment of the three departmental entities we monitor: hiring authorities; the Office of Internal Affairs; and the department attorneys from the Office of Legal Affairs Employment Advocacy and Prosecution Team.

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

OIG attorneys answered various compliance- or performance-related questions concerning each of the six performance indicators. In addition, they rated each of the six indicators as *superior*, *satisfactory*, or *poor* based on the collective answers to the indicator questions. We then analyzed each case as a whole to determine an overall rating for each case, using the same descriptors. From there, we assigned a point value to each indicator rating and case rating (discussed in detail in the **Methodology** section of this report on page 16), resulting in a percentage figure we used to arrive at an overall rating of each departmental unit's performance using the six indicators. We also used the same method to assess the department as a whole in its handling of a matter from the time a hiring authority referred an employee misconduct allegation to the

Office of Internal Affairs until the conclusion of any employee misconduct litigation for the period of July 1, 2019, through December 31, 2019. Using this methodology, we concluded the department overall performed in a *satisfactory* manner when conducting internal investigations and handling employee misconduct cases for those cases we monitored and closed from July 1, 2019, through December 31, 2019.

For more details concerning the cases the OIG monitored and closed during this reporting period, individuals may directly access our discipline monitoring case summaries on the OIG website ([www.oig.ca.gov](http://www.oig.ca.gov)). If viewing this report on our website, click on the image below to be taken to our interactive dashboard. Once there, to review the case summaries, choose the settings listed below.

From the pull-down menu in the Reporting Period field, choose **Jul 1–Dec 31, 2019**

- For the other filters, choose **ALL**; these include
  - **Case Number, Case Type, Division or Mission, Region, Allegation, Finding, Penalty, and Case Rating**
  - Leave date delimiter fields empty (**Incident Start Date and Incident End Date**)

Filter Selection Panel

The screenshot displays the OIG Case Summaries dashboard. A red dashed box highlights the 'Filter Selection Panel' on the left side of the dashboard. This panel includes the following fields:

- Reporting Period:** Jul 1 - Dec 31, 2019
- Published Date:** [ALL]
- Case Number:** [ALL]
- Case Type:** [ALL]
- Division or Mission:** [ALL]
- Region:** [ALL]
- Allegation:** [ALL]
- Finding:** [ALL]
- Penalty:** [ALL]
- Case Rating:** [ALL]
- Incident Start Date:** [Empty]
- Incident End Date:** [Empty]
- Reset Filters** button
- Filtered Cases: 158**

The main content area shows a case summary for **Incident Date: January 1, 2012** and **OIG Case Number: 19-0030486-DM**. The **Allegations** are 'Other Failure of Good Behavior'. The **Case Type** is 'Direct Action (No Subject Interview)'. The **Indicator Ratings\*** are 'Satisfactory' (3 indicators). The **Case Rating** is 'Satisfactory'. The **Incident Summary** states: 'Between January 1, 2012, and January 1, 2018, an officer allegedly engaged in sexual activity with a minor. On July 11, 2019, outside law enforcement arrested the officer.' The **Disposition** states: 'The hiring authority sustained the allegation, and identified dismissal as the appropriate penalty. The OIG concurred. However, the officer resigned prior to the imposition of the disciplinary action. The hiring authority placed a letter in the officer's official personnel file indicating he resigned under unfavorable circumstances.'

Below the case summary, there are six performance indicators with their respective descriptions and assessments:

- Indicator 1:** How well did the department discover and refer allegations of employee misconduct? The hiring authority discovered and referred allegations of employee misconduct to the Office of Internal Affairs in a *superior* manner because the hiring authority referred the matter to the Office of Internal Affairs just ten days after discovering the alleged misconduct.
- Indicator 2:** How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities? The OIG found no major deficiencies, resulting in a *satisfactory* assessment.
- Indicator 3:** How well did the department investigate allegations of employee misconduct? This performance indicator is not applicable.
- Indicator 4:** How well did the department determine its findings for alleged misconduct and process the case? The OIG found no major deficiencies, resulting in a *satisfactory* assessment.
- Indicator 5:** How well did the department attorney provide legal advice during the Office of Internal Affairs Central Intake Panel meeting and the Investigative process? The OIG found no major deficiencies, resulting in a *satisfactory* assessment.
- Indicator 6:** How well did the department provide legal representation during litigation? This performance indicator is not applicable.

At the bottom of the dashboard, there are quick links to the Office of Governor Gavin Newsom, C-ROB, California Department of Corrections and Rehabilitation, and various utility links like Careers, Privacy Policy, Accessibility, Contact Us, and Register to Vote.

## Hiring Authorities

Hiring authorities are authorized to hire, discipline, and dismiss employees under their authority. Pursuant to the Department Operations Manual, a hiring authority can be the secretary, the general counsel, an undersecretary, or any chief deputy secretary, executive officer, chief information officer, assistant secretary, director, deputy director, associate deputy director, associate director, warden, superintendent, health care manager, regional health care administrator, or regional parole administrator.<sup>1</sup>

For the July through December 2019 reporting period, we determined that hiring authorities performed in a *satisfactory* manner overall in discovering allegations of employee misconduct and referring the allegations to the Office of Internal Affairs, even though hiring authorities' performance in timely referring employee misconduct allegations to the Office of Internal Affairs declined compared with prior reporting periods. The timeliness of referrals from hiring authorities has been an ongoing concern that we reported on in three prior semiannual reports. During this reporting period, we found that hiring authorities timely submitted allegations of employee misconduct to the Office of Internal Affairs in 70 percent of the cases, but did not timely submit allegations in 30 percent of cases. This percentage reflects an increase in untimely referrals from the January through June 2019, and July through December 2018 reporting periods, during which we found hiring authorities delayed referring matters to the Office of Internal Affairs in 23 percent and 24 percent of the cases, respectively. The OIG remains concerned about the timeliness of referrals because such delays could affect the Office of Internal Affairs' ability to conduct thorough investigations before the deadline to take disciplinary action. Such delays could also impact the timely service of disciplinary actions on employees found to have committed misconduct, which for peace officers, is within one year of the discovery of the alleged misconduct.<sup>2</sup>

We also assessed hiring authorities on the quality and timeliness of their decision-making regarding the Office of Internal Affairs' investigations and the allegations, and in processing the cases, including the service of disciplinary actions. We determined that hiring authorities' performance was *poor* overall in these areas. Hiring authorities timely conducted investigative and disciplinary findings conferences in only 58 percent of the cases. Unfortunately, the department does not have a clear policy outlining a time frame for deciding the outcome of the allegations. In our report for the January through June 2019 period, we recommended that the department either clarify its policy or implement a new unambiguous policy stating when a hiring authority is required to hold an investigative and disciplinary findings conference. The department has not adopted

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

2. California Government Code section 3304(d)(1).

the OIG’s recommendation, and the department continues to perform poorly in this area.

However, aside from delayed investigative and disciplinary findings conferences, we found that, overall, hiring authorities made appropriate determinations regarding the allegations in 126 of 132 cases in which they made findings, or 95 percent of the cases. Furthermore, hiring authorities decided to impose discipline in 90 of the 132 cases. Of these 90 cases in which hiring authorities decided to impose discipline, in our opinion, hiring authorities selected the appropriate penalty in 80 of 90 cases, or 89 percent.

For those cases in which hiring authorities decided to impose discipline, especially on peace officers, they continued delaying service of disciplinary actions, another concern we have raised in the past. The department did not serve disciplinary actions on peace officers within 30 days of the decision to impose discipline, which departmental policy requires, in 58 percent of the cases. Therefore, the department served disciplinary actions on peace officers in accordance with the time frame set forth in departmental policy in only 42 percent of the cases. For the current reporting period, the department served all disciplinary actions on nonpeace officers within the required time frame.

## The Office of Internal Affairs

Office of Internal Affairs’ special agents are responsible for processing employee misconduct referrals submitted by hiring authorities. They also conduct internal investigations. Between July and December 2019, we found the Office of Internal Affairs performed overall in a *satisfactory* manner when processing referrals from hiring authorities and when conducting the investigations. Notably, the Office of Internal Affairs timely processed referrals from hiring authorities in 97 percent of cases. The Office of Internal Affairs also conducted thorough investigations in 97 percent of cases. Special agents completed all necessary and relevant interviews and used effective interviewing techniques in 98 percent of cases. In addition, they completed thorough investigative reports in 98 percent of the cases.

An ongoing theme in this report and with our reports in recent years has been our disagreements with the Office of Internal Affairs regarding its decisions made concerning hiring authority referrals. Based on information the Office of Internal Affairs provided to the OIG, the Office of Internal Affairs made decisions regarding 1,000 referrals between July and December 2019, some of which it received before July 1, 2019. Of these 1,000 decisions, the OIG disagreed with the Office of Internal Affairs’ decision in 145 cases (15 percent). As in the past, the nature of the disputes included our recommendations that the Office of Internal Affairs add allegations, such as dishonesty or domestic violence, or open

a full investigation rather than return the matter to the hiring authority to address the allegations without an investigation.

Concerning the Office of Internal Affairs' investigations of deadly force cases, for those cases we monitored and closed during the July through December 2019 reporting period, the Office of Internal Affairs improved its timeliness in completing deadly force investigations from 16 percent (three of 19 cases) for the January through June 2019 period to 40 percent (six of 15 cases ) for the July through December 2019 period.

## Department Attorneys

The third departmental unit we assessed consists of attorneys from its Office of Legal Affairs' Employment Advocacy and Prosecution Team. These attorneys provide legal advice to the Office of Internal Affairs during the latter's decision-making process regarding hiring authority referrals, as well as throughout an investigation if a department attorney is assigned to a case. In addition, the department attorneys provide legal representation to hiring authorities for some cases during the employee disciplinary process.

We found that department attorneys performed overall in a *satisfactory* manner in providing legal advice to the department during the Office of Internal Affairs' processing of employee misconduct referrals and its investigations. The department attorneys performed exceptionally well in providing appropriate and thorough legal advice to special agents during the course of investigations, and did so in 100 percent of cases. However, department attorneys' performance was not as stellar in other aspects, such as in timely and accurately entering the deadline to take disciplinary action into the department's case management system, or in timely and thoroughly providing feedback to special agents regarding draft investigative reports.

We found the department's performance during litigation was *poor* overall. The primary factor for the *poor* assessment was untimely service of disciplinary actions on peace officers. Once a hiring authority decided to impose discipline, the department did not serve disciplinary actions on peace officers within 30 days of the decision to take disciplinary action in compliance with departmental policy in 58 percent of cases.



# Introduction

## Background

As discussed in the **Summary**, the California Penal Code mandates the Office of the Inspector General to oversee and report on the California Department of Corrections and Rehabilitation’s (the department) internal investigations and employee disciplinary process. Whenever a hiring authority reasonably believes an employee committed misconduct or engaged in criminal activity, the hiring authority must timely submit a referral to the department’s Office of Internal Affairs’ Central Intake Unit requesting an investigation or requesting approval to address the allegations without an investigation.<sup>3</sup> Participants from the Office of Internal Affairs, department attorneys from the Employment Advocacy and Prosecution Team, and the OIG comprise a Central Intake Panel, which meets weekly to review the misconduct referrals from hiring authorities. The Office of Internal Affairs leads the meetings, and department attorneys provide legal advice to the Office of Internal Affairs. The OIG also participates to monitor the process, provide recommendations regarding the Office of Internal Affairs’ decisions concerning hiring authority referrals, and determine which cases it will monitor. The Office of Internal Affairs, not the panel, considers the recommendations and makes the final decision regarding what action will be taken as to each hiring authority referral. The options are:

- To conduct an administrative investigation;<sup>4</sup>
- To conduct a criminal investigation;<sup>5</sup>
- To conduct only an interview of the employee (or employees) suspected of misconduct and no other investigative activity;
- To authorize the hiring authority to take direct action against the employee regarding the alleged misconduct without an investigation or interview of the employee (or employees) suspected of misconduct;
- To reject the referral without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or

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

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

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

- To reject the referral and return it to the hiring authority to conduct further inquiry.<sup>6</sup>

The OIG's monitoring activities included overseeing the Office of Internal Affairs' investigations that met our monitoring criteria, as set forth on the next page, and evaluating the performance of the special agents' investigative work. We also monitored the department attorneys' performances during the course of an internal investigation, as well as the work of department advocates, including department attorneys and employee relations officers, in any subsequent disciplinary and litigation process. Finally, we assessed how well hiring authorities performed in deciding allegations of employee misconduct, including the imposition of discipline, as well as how they processed the misconduct cases.

The information discussed in this report concerns the 158 cases we monitored and closed during the period from July through December 2019, including assessments of each departmental units' performance in individual cases. We present the details regarding the administrative cases in which the Office of Internal Affairs conducted an investigation or an interview of the employee suspected of misconduct, cases in which the hiring authority made decisions regarding the investigation and allegations, and, if the hiring authority imposed discipline on an employee, any appeal process regarding the disciplinary action.

Our discussion also includes cases in which the Office of Internal Affairs returned referrals to the hiring authority to address the allegation or allegations based on the evidence available without any investigation, as well as cases wherein the Office of Internal Affairs conducted an investigation, but the hiring authority did not sustain any allegations. To ensure the integrity of the entire process, we do not report the complete details of a case until all administrative proceedings have been completed.

Finally, since the OIG also monitors cases involving alleged criminal conduct, we include the details of criminal investigations we monitored and closed during the period from July through December 2019. We report these cases once the Office of Internal Affairs refers its criminal investigation to the appropriate prosecuting agency for filing consideration or determines there is insufficient evidence to refer the matter.

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

## Scope and Methodology

### Scope

Consistent with prior reporting periods, the OIG monitored and assessed the department's more serious internal investigations of alleged employee misconduct, such as cases involving alleged dishonesty, code of silence, unreasonable use of force, and criminal activity. Since peace officers are held to a higher standard of conduct, which was the core focus of the *Madrid* case (889 F. Supp. 1146 (N.D. Cal. 1995)), pursuant to which we began monitoring the department's internal investigations and employee discipline cases, we once again concentrated our efforts on peace officer employee discipline cases. The following table lists criteria we used to determine which cases to monitor.

**Table 1. Monitoring Criteria Used by the Office of the Inspector General**

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

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

Based on information the Office of Internal Affairs provided, from July 1, 2019, through December 31, 2019, the Office of Internal Affairs received 767 referrals from hiring authorities using a printed form called the “Office of Internal Affairs’ Confidential Request for Internal Affairs Investigation/Notification of Direct Adverse Action,” also known as *Form 989*. However, beginning with the Office of Internal Affairs’ Central Intake Panel meeting held on November 20, 2019, the Office of Internal Affairs received hiring authority referrals using information hiring authorities submitted electronically using a new process implemented by the department. According to the Office of Internal Affairs, it did not have a report that tracked the total number of electronic referrals it received prior to December 31, 2019. Therefore, the Office of Internal Affairs was unable to provide the OIG with data regarding the total number of electronic referrals it received from the time period it began receiving electronic referrals through the end of the reporting period, December 31, 2019. Consequently, the figure of 767 applies only to the number of hiring authority referrals the Office of Internal Affairs received on the printed form and does not include the number of referrals received electronically. Through independent verification using Office of Internal Affairs’ documentation regarding matters for which it *made decisions* between July 1, 2019, and December 31, 2019, we determined the Office of Internal Affairs made decisions concerning 128 electronic referrals. However, since not all of the referrals would be addressed by December 31, 2019, we could not determine the number of additional electronic referrals received but not addressed by years’ end.<sup>7</sup>

Between July 1, 2019, and December 31, 2019, the Office of Internal Affairs made decisions on a total of 1,000 referrals, some of which it received before July 1, 2019.<sup>8</sup> Of the 1,000 referrals for which it made decisions, the Office of Internal Affairs found that in 958 referrals (96 percent), there was sufficient evidence to approve the hiring authority’s request. For the other 42 referrals (4 percent), the Office of Internal Affairs determined there was insufficient evidence of employee misconduct or criminal activity and, therefore, rejected those referrals.

Of the 1,000 hiring authority referrals, the Office of Internal Affairs returned 542 referrals (54 percent) to hiring authorities to take direct action on employee misconduct allegations without pursuing a full investigation or an interview of the employee who was the subject of the investigation. The Office of Internal Affairs approved interviews of employees suspected of misconduct, but not full administrative investigations, in 106 cases (11 percent). These are cases in which the

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7. The number of referrals *addressed* (1,000) includes referrals received both on the printed form as well as electronically, and also includes referrals received before July 1, 2019, but that were not addressed until after July 1, 2019. The number of referrals the Office of Internal Affairs addressed is greater than the 767 referrals received because the number of referrals addressed includes those received electronically and those not addressed before July 1, 2019. The OIG independently determined the number addressed from electronic referrals by referring to the Office of Internal Affairs’ Central Intake Panel agendas.

8. Same as above.

Office of Internal Affairs determined that, in order for a hiring authority to make decisions regarding the allegation, it was only necessary to interview the subject of the investigation and not conduct any other investigative work, such as interviewing other witnesses or collecting other evidence. Therefore, the Office of Internal Affairs determined that, in 648 referrals (65 percent), it did not need to conduct a full administrative investigation.

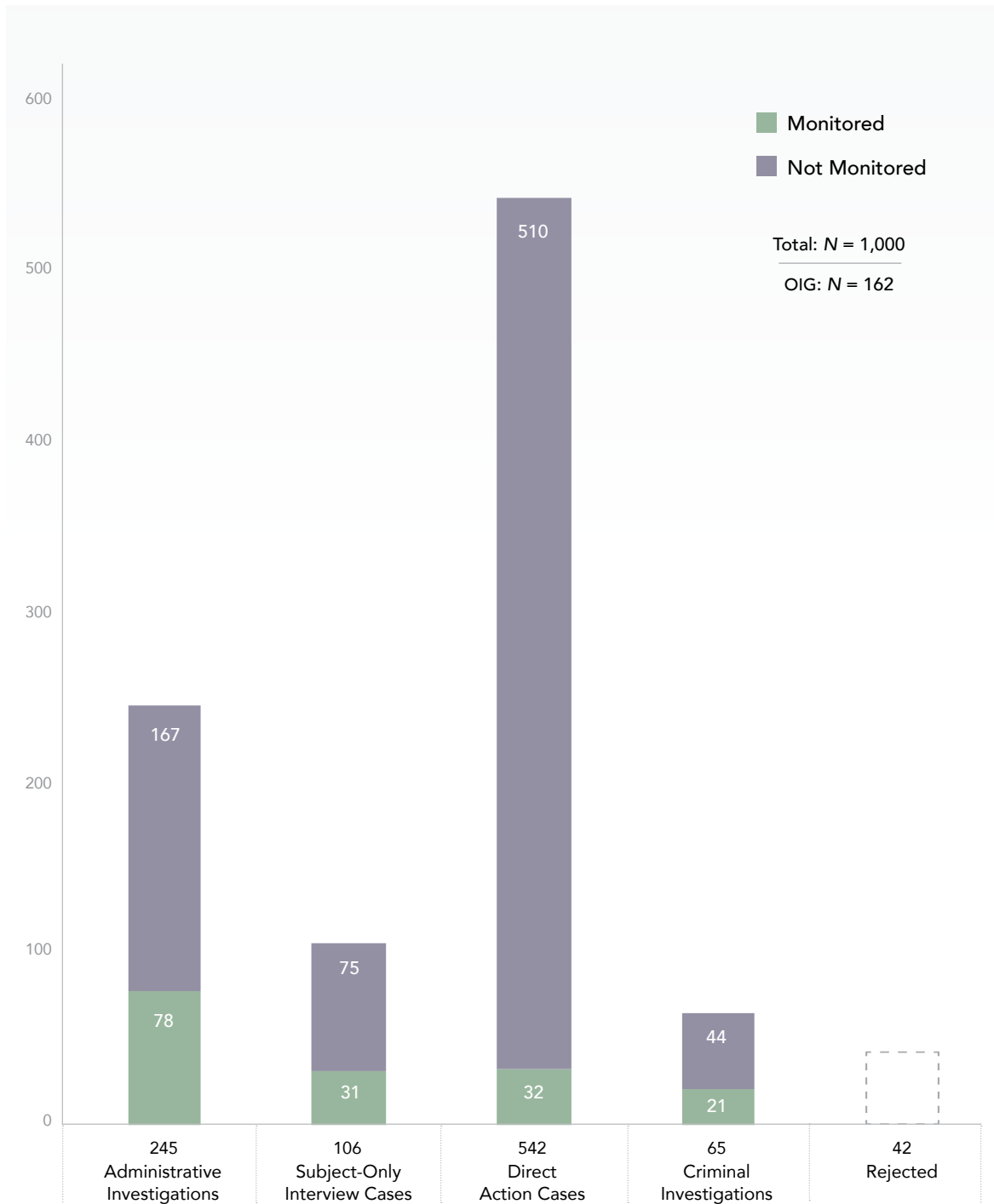
The Office of Internal Affairs determined full administrative investigations were warranted in 245 referrals (25 percent). These investigations included interviewing the employees suspected of misconduct, interviewing percipient witnesses including inmates and private citizens depending on the nature of the alleged misconduct, and obtaining additional documentary evidence, such as computer forensic reports. Finally, the Office of Internal Affairs concluded there was enough evidence to warrant criminal investigations in 65 referrals (7 percent).

Once the Office of Internal Affairs approved a referral, it became a case. Cases that require full investigations typically involve the most serious misconduct and, therefore, constitute the highest percentage of cases we monitored. The OIG identified 162 cases (17 percent) for monitoring out of the 958 referrals in which the Office of Internal Affairs approved the hiring authority's referral from July through December 2019.<sup>9</sup> Of the 162 cases the OIG identified for monitoring, 78 cases (48 percent) involved an administrative investigation, and 21 cases (13 percent) involved a criminal investigation. In 32 of the 162 cases (20 percent) the OIG identified for monitoring, the Office of Internal Affairs decided there was sufficient evidence available for the hiring authority to address the misconduct allegations without any investigation. Of the 162 cases we identified for monitoring, in 31 of the cases (19 percent), the Office of Internal Affairs decided the only investigative work that was needed was an interview of the employee suspected of misconduct. Figure 2 on the next page reflects the number of cases opened by the Office of Internal Affairs from July through December 2019, the types of cases, and the number of cases the OIG accepted for monitoring as to each case type.

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9. The OIG *began monitoring* these 165 cases that the Office of Internal Affairs approved for investigation, employee interview, or direct action in the July through December 2019 reporting period. Elsewhere in the report, we mention that we are reporting on 158 cases that the OIG *monitored and closed* during the July through December 2019 reporting period.

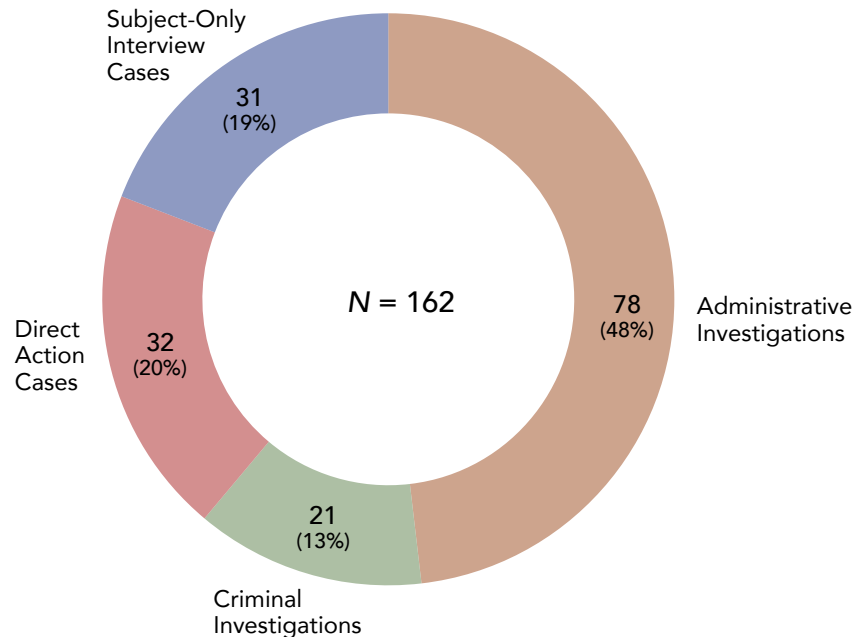
**Figure 2. Decisions the Office of Internal Affairs Made Concerning Hiring Authority Referrals and Cases the OIG Accepted for Monitoring During the Period From July Through December 2019**



Sources: The California Department of Corrections and Rehabilitation's Case Management System and the Office of the Inspector General Tracking and Reporting System.

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

**Figure 3. Percentages of Each Case Type the OIG Accepted for Monitoring During the Period From July Through December 2019**

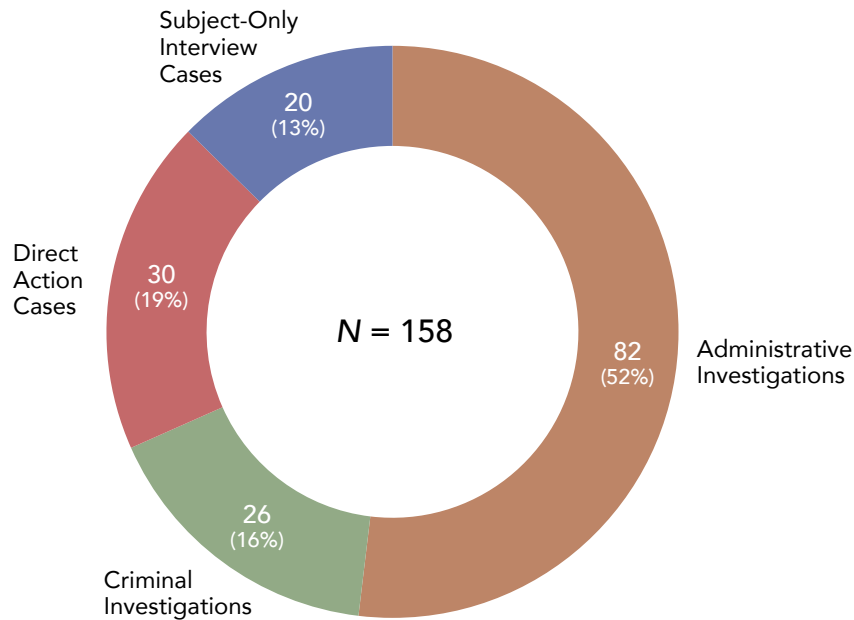


Source: The Office of the Inspector General Tracking and Reporting System.

Not all of the cases we accepted for monitoring during this reporting period were completed and closed before December 31, 2019. We only provide a final assessment of a case once we conclude our monitoring and close it. This report provides an assessment of 158 cases the OIG monitored and closed from July 1, 2019, through December 31, 2019, some of which were opened before July 1, 2019. Of the 158 cases the OIG monitored and closed between July 1, 2019, and December 31, 2019, 132 cases involved alleged administrative misconduct. The remaining 26 involved alleged employee criminal activity. Among the 158 cases we monitored and closed, 133 involved peace officers, 17 involved employees who were not peace officers, and eight involved both peace officers and employees who were not peace officers.

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

**Figure 4. Types of Cases the OIG *Monitored* and *Closed* During the Period From July Through December 2019**

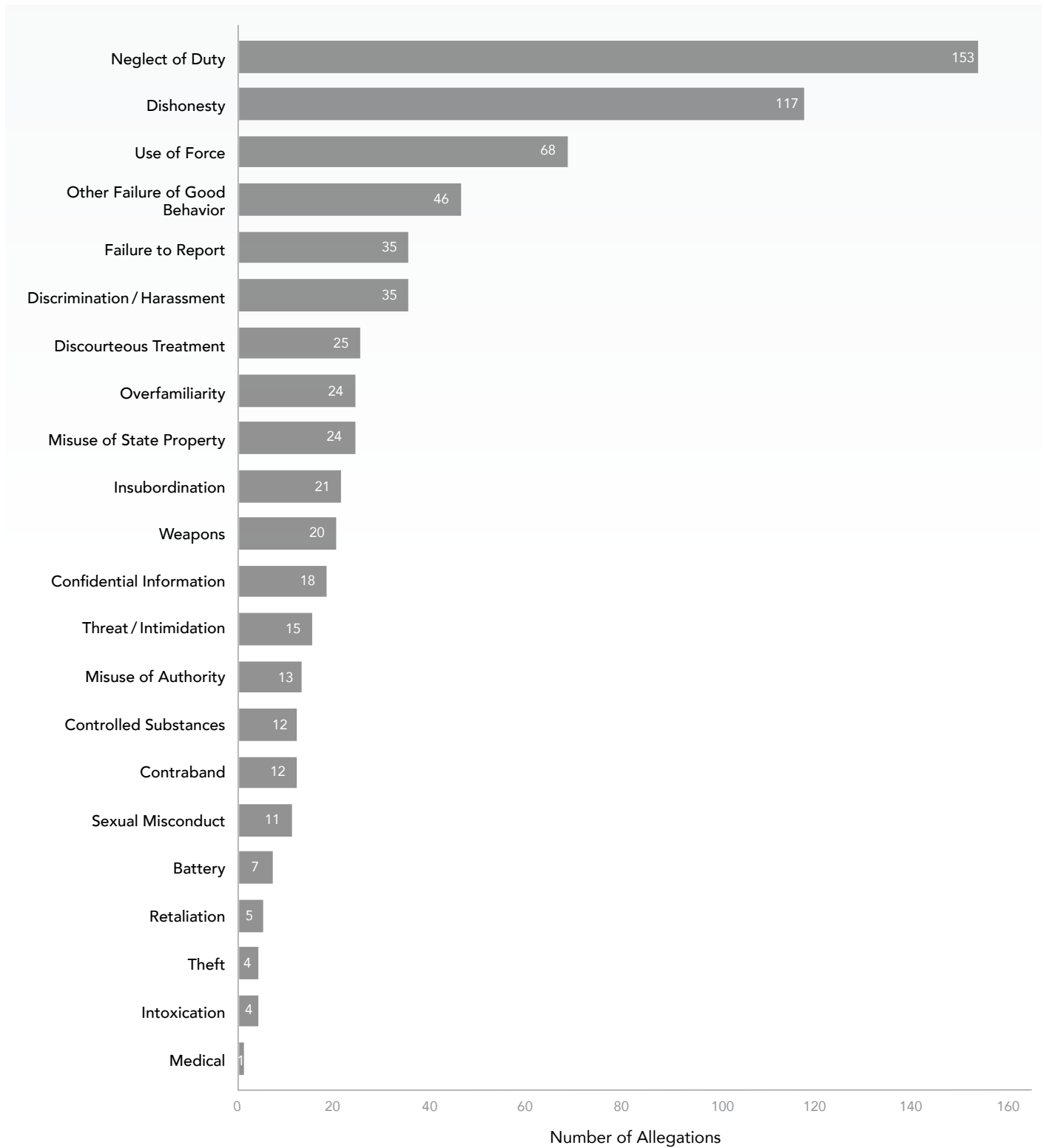


Source: The Office of the Inspector General Tracking and Reporting System.

Many cases have more than one allegation or allegation type and consequently, the total number of allegations exceeds the number of cases we monitored and closed. For example, one case involved allegations an officer bit her boyfriend, bought cocaine, and failed to timely report to the hiring authority that she had been arrested. Although there was only one case, the case involved three types of allegations. In prior reports, we displayed the count of cases that contain at least one allegation of that type, not a count of unique and separate allegations in the case we monitored. Figure 5 on the next page includes a count of unique allegations in the cases we monitored from July through December 2019.



**Figure 5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed During the Period From July Through December 2019**



Note: The total number of allegations exceeds the number of cases we monitored and closed because several cases involve more than one allegation against the subject of the case.

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

## Methodology

To provide more specific assessments of each of the department's units and their compliance with policies and procedures, the OIG developed a new methodology that we used for the first time during the January through June 2019 reporting period. In designing this new methodology, the OIG also developed an assessment tool consisting of six performance indicators broken down by departmental unit: hiring authorities, the Office of Internal Affairs, and department attorneys. Based on the data collected and reported during the January through June 2019 reporting period, we believe this fresh approach achieves our goal of providing the reader with a more accurate and detailed analysis of the department's performance and, once again, are using this methodology. The six performance indicators are:

- **Indicator 1:** how well a hiring authority discovered and referred allegations of misconduct to the Office of Internal Affairs, including the timeliness of the referral and the quality of the inquiry preceding the referral.
- **Indicator 2:** how well the Office of Internal Affairs' Central Intake Unit processed the hiring authority's referral, including the Office of Internal Affairs' Central Intake Unit special agent's analysis of the referral, the Office of Internal Affairs' decision regarding the referral, and the timeliness of the decision.
- **Indicator 3:** the timeliness and effectiveness of the Office of Internal Affairs' performance in conducting investigations.
- **Indicator 4:** the hiring authority's performance after the Office of Internal Affairs returned the case following an investigation or interview, or after authorizing the hiring authority to take direct action on the allegations, including the hiring authority's findings on the allegations, identification of the appropriate disciplinary penalty, and the service of any disciplinary action.
- **Indicator 5:** the department attorney's performance in providing legal advice to the Office of Internal Affairs as special agents processed and analyzed hiring authority employee misconduct referrals and conducted investigations.
- **Indicator 6:** how well the department attorney or employee relations officer represented the department during litigation, including the composition of the disciplinary action and advocacy during administrative hearings before the State Personnel Board.

The OIG also developed compliance- or performance-related questions concerning each indicator, again with the goal of providing a more thorough assessment of the department's performance. The OIG attorneys assigned to monitor each case answered the questions, rated each of the six indicators for each case as *superior*, *satisfactory*, or *poor*, and finally, assigned an overall rating for each case using the same rating terminology.

Although we examined the department’s compliance with its own policies and procedures in arriving at the rating for each indicator, we also used our own judgment and opinion of the quality of the department’s performance from the time a hiring authority referred the allegation, any subsequent investigation, and the completion of any appeal process if a hiring authority took disciplinary action. In addition, while procedural errors alone may not have necessarily resulted in a *poor* assessment, more significant or numerous departures from policy resulted in such a rating since such departures may have resulted in harm to the department or the public. Delayed investigations or discipline could increase costs and even increase the potential for harm by allowing unsuitable or dishonest employees to continue working. Delays can also have a negative effect on the employees suspected of misconduct due to the stress and anxiety employees and their family members may endure while waiting for the outcome. Consequently, such identifiable harm often results in a *poor* assessment rating.

For the July through December 2019 reporting period, the OIG used the same numerical point value assigned to each of the individual indicator ratings and to the overall rating for each case that we used for the January through June 2019 reporting period. The point system is as follows:

<b>Superior</b> .....	4 points
<b>Satisfactory</b> .....	3 points
<b>Poor</b> .....	2 points

The collective value of the assigned points is divided by the total number of points possible to arrive at a weighted average score. The following hypothetical example consisting of 10 cases illustrates this system. For 10 cases, the maximum point value (denominator) is 40 points (10 cases multiplied by 4 points). If the department scored two *superior* results, five *satisfactory* results, and three *poor* results, its raw score (numerator) would be 29 points. The weighted average score is obtained by dividing 29 by 40, yielding a score of 72.5 percent, as given in the hypothetical equation below.

#### Equation. Scoring Methodology

$$\frac{[(2 \text{ superior} \times 4 \text{ points}) + (5 \text{ satisfactory} \times 3 \text{ points}) + (3 \text{ poor} \times 2 \text{ points})]}{(10 \text{ cases} \times 4 \text{ points})}$$

We assigned the final ratings of *superior*, *satisfactory*, and *poor* to weighted averages as follows:

- **Superior:** weighted averages between 100 percent and 80 percent;
- **Satisfactory:** weighted averages between 79 percent and 70 percent;
- **Poor:** weighted averages between 69 percent and 50 percent.<sup>10</sup>

Using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent.

<i>Results &amp; Percentages</i>		
<i>Superior</i>	<i>Satisfactory</i>	<i>Poor</i>
100%–80%	79%–70%	69%–50%

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

## Monitoring Results

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

During the July through December 2019 reporting period, the OIG found the department's overall performance in investigating allegations of employee misconduct and handling its employee disciplinary process to be *satisfactory*. The process began when the hiring authority discovered potential misconduct and referred the allegations to the Office of Internal Affairs or when the Office of Internal Affairs opened a case on its own. The case concluded when one of the following occurred:

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

The department's handling of a criminal case ended when the Office of Internal Affairs completed its criminal investigation and either submitted the investigation for filing consideration to a prosecuting agency, such as a county district attorney's office, the State of California Office of the Attorney General, or the Offices of the United States Attorneys at the U.S. Department of Justice, or determined there was insufficient evidence for a criminal referral.

The OIG's overall assessment of the department's effectiveness in handling cases involving investigations into employee misconduct and the employee disciplinary process is based on a cumulative assessment of our six identified indicators. Two indicators are assigned to each of three involved departmental units: the hiring authority; the Office of Internal Affairs; and the department attorney. The OIG's rating for each

of the six indicators was based on the answers to specific compliance- or performance-related questions. To answer the questions, we used the standards outlined in the Department Operations Manual and other established procedures, such as the Office of Internal Affairs' Field Guide and its deadly force investigations procedures memorandums, as well as our opinion.<sup>11</sup>

**Indicator 1** and **Indicator 4** applied to hiring authorities' performances. Answers to the questions in **Indicator 1** determined how well the hiring authority discovered and referred allegations of employee misconduct to the Office of Internal Affairs, and the answers to the questions in **Indicator 4** assessed how well the hiring authority determined its findings regarding alleged misconduct and processed the misconduct cases. Since hiring authorities do not make any investigative or disciplinary findings in criminal cases, **Indicator 4** did not apply in cases involving criminal investigations.

We used information from the answers to **Indicator 2** to assess how well the Office of Internal Affairs' Central Intake Unit analyzed hiring authority referrals of employee misconduct, whereas the answers to the questions in **Indicator 3** determined how well the Office of Internal Affairs conducted investigations, interviewed employees suspected of misconduct, and prepared investigative reports. If the Office of Internal Affairs did not conduct an investigation or interview of the employee suspected of misconduct, **Indicator 3** did not apply.

The two remaining indicators applied to department attorneys, if any were assigned.<sup>12</sup> The answers to the questions in **Indicator 5** determined our assessment regarding how well the department attorney provided legal advice to the Office of Internal Affairs when it processed referrals of suspected employee misconduct from the hiring authority and when the Office of Internal Affairs conducted administrative investigations. The department does not assign department attorneys to its criminal investigations. Therefore, since a department attorney was not assigned to criminal investigations, only the first six questions in **Indicator 5** applied to department attorneys in cases involving criminal investigations to assess how well the department attorney provided legal advice to the Office of Internal Affairs while it addressed hiring authority referrals. For administrative cases, we also used **Indicator 5** to assess the department attorney's performance during the investigative and disciplinary findings conference conducted by the hiring authority. Finally, we used **Indicator 6** to assess how well the department attorney (or employee relations officer, if the case was not assigned to a department attorney) handled employee discipline litigation.

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11. The DOM is defined in the table of terms used in this report.

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

We found the department’s performance was *satisfactory* in the majority of cases, assessing the department’s overall performance as *superior* in one case, *satisfactory* in 130 cases, and *poor* in 27 cases. If we identified exceptional performance by a departmental unit in an individual performance indicator, we may find the department’s performance as *superior* for that indicator, which may have led to an overall *superior* rating. Table 2 below displays the department’s overall ratings by case type.

**Table 2. Ratings by Case Type: Superior, Satisfactory, and Poor**

Case Type	Superior	Satisfactory	Poor	Total
Full Administrative Investigation	None	78% (57 cases)	22% (16 cases)	100% (73 cases)
Criminal Investigation	None	90% (18 cases)	10% (2 cases)	100% (20 cases)
Direct Action	< 1% (1 case)	80% (24 cases)	17% (5 cases)	100% (30 cases)
Direct Action With Subject Interview	None	80% (16 cases)	20% (4 cases)	100% (20 cases)
Administrative Use of Deadly Force	None	100% (9 cases)	None	100% (9 cases)
Criminal Use of Deadly Force	None	100% (6 cases)	None	100% (6 cases)
<b>Totals</b>	<b>&lt; 1% (1 case)</b>	<b>82% (130 cases)</b>	<b>17% (27 cases)</b>	<b>100% (158 cases)</b>

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

We found the department’s overall performance was *satisfactory* in conducting internal investigations and handling employee discipline cases, and the overall percentage score was 70.89 percent. For the 27 cases we assessed as *poor* overall, the combined assessment score was 50 percent. The indicator ratings for the 27 cases we rated as *poor* can be seen in Table 3 on the next page.

Table 3. Assessment Indicators for 27 Cases Rated as Poor

		Ratings						
		Superior	Satisfactory	Poor	Legal Advice During Investigation	Legal Representation During Litigation	Case Rating	
<b>N = 27</b>								
OIG Case Number	Region	Discovery and Referral	Initial Determination	Investigation	Findings	Legal Advice During Investigation	Legal Representation During Litigation	Case Rating
17-0024351-DM	North	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0025401-DM		Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0025535-DM		Satisfactory	Satisfactory		Poor	Poor	Poor	Poor
18-0025743-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Poor
18-0026027-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0026779-DM		Satisfactory	Poor	Poor	Satisfactory	Superior	Satisfactory	Poor
18-0027958-DM		Poor	Satisfactory	Poor	Poor	Satisfactory		Poor
18-0028029-DM		Poor	Satisfactory	Satisfactory	Poor	Satisfactory		Poor
18-0028178-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
19-0029114-DM		Poor	Poor		Poor	Satisfactory	Poor	Poor
19-0029707-DM		Poor	Satisfactory	Satisfactory	Poor	Poor		Poor
17-0024732-DM	Central	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Poor
17-0024735-DM		Poor	Satisfactory	Poor	Poor	Poor	Poor	Poor
18-0025314-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0026089-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Poor
18-0026347-DM		Poor	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
18-0026786-DM		Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Poor
19-0028811-DM		Satisfactory	Satisfactory		Poor	Poor	Satisfactory	Poor
19-0029047-DM		Poor	Poor	Satisfactory	Poor	Poor		Poor
19-0029110-CM		Poor	Satisfactory	Satisfactory		Satisfactory		Poor
19-0029563-DM		Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor	Poor
19-0029566-DM		Poor	Poor		Poor	Poor	Poor	Poor
18-0027654-DM	South	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Poor
19-0028406-DM		Poor	Satisfactory	Satisfactory	Poor	Satisfactory		Poor
19-0030505-CM		Satisfactory	Satisfactory	Poor				Poor
18-0028099-DM	Other	Satisfactory	Satisfactory	Superior	Poor	Poor	Poor	Poor
19-0029830-DM		Satisfactory	Poor		Poor	Satisfactory	Satisfactory	Poor

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

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



In the 27 cases assessed as overall *poor* during this reporting period, the department's performance was *poor* in five of the six assessment indicators: the hiring authorities' discovery and referral of allegations; the Office of Internal Affairs' investigations; the department's findings for alleged misconduct; the department attorneys' legal advice to the Office of Internal Affairs; and the department attorneys' legal representation during litigation. This means all three departmental units (hiring authorities; the Office of Internal Affairs; and department advocates) contributed to the overall *poor* ratings in some fashion. However, we assessed the Office of Internal Affairs as *satisfactory* in its performance in processing and analyzing referrals from hiring authorities for the 27 cases we rated overall as *poor*.

The following presents information concerning three cases in which all three departmental units performed poorly:

- The hiring authority sustained allegations and imposed a 5 percent salary reduction for one month against a lieutenant who negligently discharged a firearm at home while cleaning it. The hiring authority did not notify the Office of Internal Affairs of the incident until the day after it occurred and did not refer the matter to the Office of Internal Affairs until 118 days after discovery, which was 73 days after policy required. The Office of Internal Affairs intended to reject the referral and, although it ultimately agreed to open the case, did not approve an interview of the officer. The department attorney should have recommended, and the hiring authority should have found, that the lieutenant was grossly negligent and identified a higher penalty based on the seriousness of the misconduct. The hiring authority did not serve the disciplinary action until 54 days after the decision to take disciplinary action, which was 24 days after policy required.
- Another case involved allegations that a lieutenant, a sergeant, and eight officers engaged in a code of silence by preparing dishonest reports regarding the force used during an incident that involved dragging an inmate on the ground. The hiring authority delayed 72 days after discovering the alleged misconduct and 27 days after policy required to refer the matter to the Office of Internal Affairs. The Office of Internal Affairs did not complete the investigation until 11 days before the deadline to take disciplinary action. After the investigation, the hiring authority sustained allegations that a sergeant failed to ensure officers wore safety helmets before entering an exercise yard to remove the inmate, falsified a report for an officer and signed the officer's name, and lied during his interview with the Office of Internal Affairs, and dismissed the sergeant. The department attorney did not provide a memorandum to the hiring authority and the OIG before the investigative and disciplinary findings conference and did not compose the disciplinary action for the sergeant until 76 days after the

decision to dismiss the sergeant. The hiring authority did not serve the disciplinary action until 86 days after the decision to dismiss the sergeant and 56 days after policy required. The department attorney also did not provide a draft prehearing settlement conference to the OIG for review before filing it.

- An officer allegedly pulled an inmate’s hand, resulting in the inmate suffering a broken bone. The hiring authority did not refer the matter to the Office of Internal Affairs until 57 days after discovery and 12 days after policy required. The Office of Internal Affairs initially did not agree to open an administrative investigation because of speculation that other inmates would have reported a responding officer’s intervention and that the inmate’s allegations were not credible, despite his timely reporting of the incident and having suffered a broken bone. Based on the OIG’s recommendation, the Office of Internal Affairs agreed to open an investigation and, after the investigation, the hiring authority deemed the investigation sufficient even though the Office of Internal Affairs did not interview a necessary witness. The department attorney provided a memorandum to the hiring authority that misstated when the inmate reported the incident and did not include corroborating evidence from a second inmate or address inconsistencies between officers’ statements. In addition, the department attorney did not recommend sustaining the allegation, and the hiring authority agreed and did not sustain the allegation or impose a penalty.

Indicator Score

**Satisfactory**

(70.73%)

*Superior*

7 cases

*Satisfactory*

117 cases

*Poor*

34 cases

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

Pursuant to a June 20, 2014, memorandum from the Office of Internal Affairs, hiring authorities are required to refer matters of suspected misconduct within 45 days of discovering the alleged misconduct to the Office of Internal Affairs. We based our assessment in part on this procedure, as well as on departmental policy governing the responsibilities of hiring authorities, including their responsibility to conduct initial inquiries to ensure there is sufficient information before referring a matter to the Office of Internal Affairs.<sup>13</sup> For the July through December 2019 reporting period, we found that hiring authorities overall performed in a *satisfactory* manner in discovering and referring allegations of employee misconduct to the Office of Internal Affairs. In seven cases, we found the hiring authorities’ performance in discovering and referring misconduct allegations garnered a *superior* assessment rating, whereas we found *poor* performance in 34 cases. In 117 cases, we assessed the hiring authorities’ performance as *satisfactory*.

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

Despite the overall *satisfactory* rating, we determined that hiring authorities were still often late in submitting matters to the Office of Internal Affairs, a concern we have raised in the past. During the July through December 2019 reporting period, hiring authorities submitted untimely referrals in 30 percent of the cases, which is an increase in the percentage of untimely referrals compared with the rating of 23 percent of untimely referrals for the January through June 2019 reporting period.

For the 34 cases in which we assessed the hiring authorities' performance as *poor* in discovering and referring allegations of employee misconduct to the Office of Internal Affairs, we found untimely referrals in 30 cases, which is 88 percent of those cases with overall *poor* assessments, indicating that a late referral is a major factor in the *poor* assessment. Although a late referral does not necessarily result in a *poor* assessment, it has been the greatest factor in assessing hiring authorities' performance as *poor*.

Regardless of the OIG's assessment for Performance Indicator 1, for all cases we closed between July and December 2019, the longest delay by a hiring authority in submitting a referral to the Office of Internal Affairs was 588 days, or one year and seven months after policy required. For the reporting period of January through June 2019, the longest delay was 256 days after policy required. For the cases we closed between July and December 2019, the second longest delay was 249 days after policy required, and the shortest delay was 47 days after learning of the alleged misconduct, or two days out of policy.

On the other hand, hiring authorities timely referred matters to the Office of Internal Affairs in all seven of the cases we assessed as *superior* for this indicator. The most timely referral occurred in a case in which the hiring authority referred the matter to the Office of Internal Affairs in just 10 days.

For the cases we monitored and closed between July and December 2019, cases involving allegations of unreasonable use of force constituted the type of case in which hiring authorities had the most frequently delayed referrals. Hiring authorities did not timely refer matters involving alleged unreasonable use of force in 68 percent of those cases. The following are case examples of delayed referrals involving allegations of unreasonable use of force:

- In one case, an officer allegedly failed to report observing another officer use force, failed to submit an incident report before being relieved from duty, and provided false information regarding the date he submitted the report. The hiring authority did not refer the matter to the Office of Internal Affairs until 156 days after the department learned of the alleged misconduct, 111 days after policy required.

- A second case involved two officers who allegedly slammed an inmate to the ground. One of the officers also allegedly failed to report the use of force and obtain medical care for the inmate. The hiring authority did not refer the matter to the Office of Internal Affairs until 93 days after the department learned of the misconduct, 48 days after policy required.
- In a third case, an officer allegedly deployed pepper spray on an inmate without justification, and the officer and a second officer allegedly lied in reports by indicating the inmate posed a threat when the inmate did not. The hiring authority did not refer the matter to the Office of Internal Affairs until 70 days after the department learned of the alleged misconduct, 25 days after policy required.

Of the hiring authorities from the Division of Adult Institutions, the only mission that improved its performance in referring suspected misconduct allegations to the Office of Internal Affairs was the High Security mission. For the July through December 2019 reporting period, hiring authorities from the High Security mission timely submitted 75 percent of the referrals, compared with the prior reporting period of January through June 2019, when the same mission submitted 71 percent of the referrals in a timely manner.

Alternatively, the General Population mission has shown a steady decline in the percentage of timely referrals over the past three reporting periods. For the July through December 2018 reporting period, the General Population mission referred 86 percent of matters in a timely manner. For the January through June 2019 reporting period, the timely referral rate declined to 76 percent. For cases we closed during the July and December 2019 reporting period, the General Population mission timely submitted just 67 percent of the referrals.

For cases the OIG monitored and closed between July and December 2019, hiring authorities determined that dismissal was the appropriate penalty in 36 cases. In five of those 36 cases, or 14 percent, in which hiring authorities initially determined dismissal was the appropriate penalty, they did not timely identify and refer those allegations of serious misconduct to the Office of Internal Affairs. In the prior reporting period of January through June 2019, hiring authorities delayed referring such matters to the Office of Internal Affairs in seven of 47 cases, which was 15 percent of the cases. The percentage of delayed referrals has remained consistent.

- In one of the cases we closed between July and December 2019 in which the hiring authority initially determined dismissal was appropriate, the hiring authority delayed 72 days after discovering the alleged misconduct and 27 days after policy required in referring the matter to the Office of Internal Affairs. After the investigation, the hiring authority sustained allegations

that a sergeant failed to ensure officers wore safety helmets before entering an exercise yard to remove an inmate, falsified a report for an officer and signed the officer's name, and lied during his interview with the Office of Internal Affairs, and dismissed the sergeant. The sergeant filed an appeal with the State Personnel Board, which upheld the dismissal.<sup>14</sup>

- In the other four cases in which the hiring authority decided to dismiss the subjects of the investigation, but did not timely refer the allegations to the Office of Internal Affairs, the subjects ultimately either resigned or retired. For these four cases, the shortest delay was 50 days after discovery, which was five days after policy required, and the longest delay was 64 days after discovery, which was 19 days after policy required.

Below are other examples of additional incidents involving serious allegations in which hiring authorities delayed referring alleged misconduct to the Office of Internal Affairs.

- In one case, two officers allegedly failed to ensure an inmate was alive when conducting a welfare check, and a psychiatric technician allegedly falsified a medical report by stating he spoke with the inmate even though the inmate was already dead. The hiring authority did not refer the matter to the Office of Internal Affairs until 64 days after learning of the alleged misconduct, 19 days after policy required. The hiring authority ultimately found insufficient evidence to sustain the allegations.
- In a second case, numerous officers failed to notice a dead inmate and falsely reported conducting inmate counts and security checks, including conducting standing counts even though the inmate was already dead. Another officer allegedly failed to screen outgoing inmate mail, and five officers allowed inmates to distribute meals to other inmates. A sergeant and two lieutenants failed to adequately supervise officers during inmate counts and meals, four nurses allegedly falsely documented that the inmate refused medications, and two of the nurses discussed the ongoing investigation after being ordered not to do so. The institution had received an anonymous note reporting that an officer had walked “right by the dead body last night” and that “the cellmates were fighting, and one stabbed the other to death and cleaned up the blood.” The hiring authority sustained multiple allegations, including the allegation that one of the officers was dishonest when he claimed he saw the inmate alive and breathing on two occasions even though the inmate was already dead, and decided to dismiss the officer. However, the officer retired before the hiring authority could serve the disciplinary action for dismissal. The hiring authority did not

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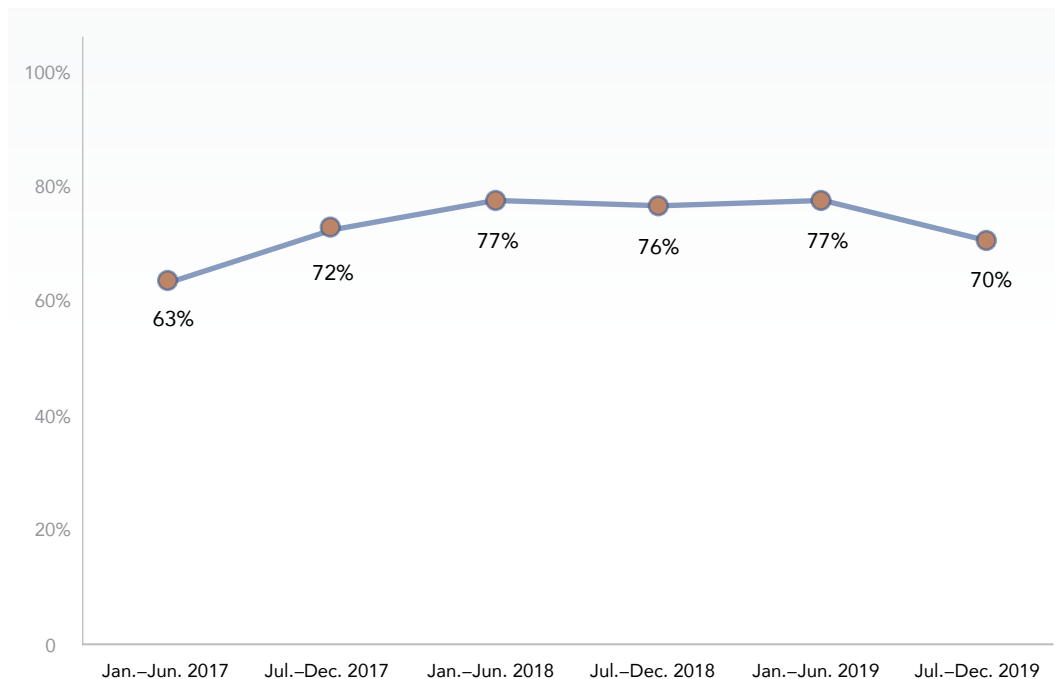
14. Although there were other subjects of the investigation, the dispositions for the other subjects are not pertinent to this discussion.

refer the suspected misconduct to the Office of Internal Affairs until 52 days after learning of the alleged misconduct, seven days after policy required.

- A third case involved a lieutenant and a sergeant who allegedly told an inmate an officer would not be prosecuted for engaging in sexual misconduct with the inmate if the officer resigned. The lieutenant and an officer also used a State computer to exchange email messages containing personal information and profanity, and the lieutenant failed to report his relationship with the officer and used derogatory language to describe an Office of Internal Affairs' special agent when the special agent served an officer who was a witness with an interview notice. The lieutenant also allegedly failed to report suspected criminal conduct of an officer, a nurse, and a cook, inappropriately arranged a random inspection of cooks as a ploy, and lied in a memorandum. The hiring authority did not refer the matter to the Office of Internal Affairs until 115 days after learning of the alleged misconduct, 70 days after policy required.

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

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

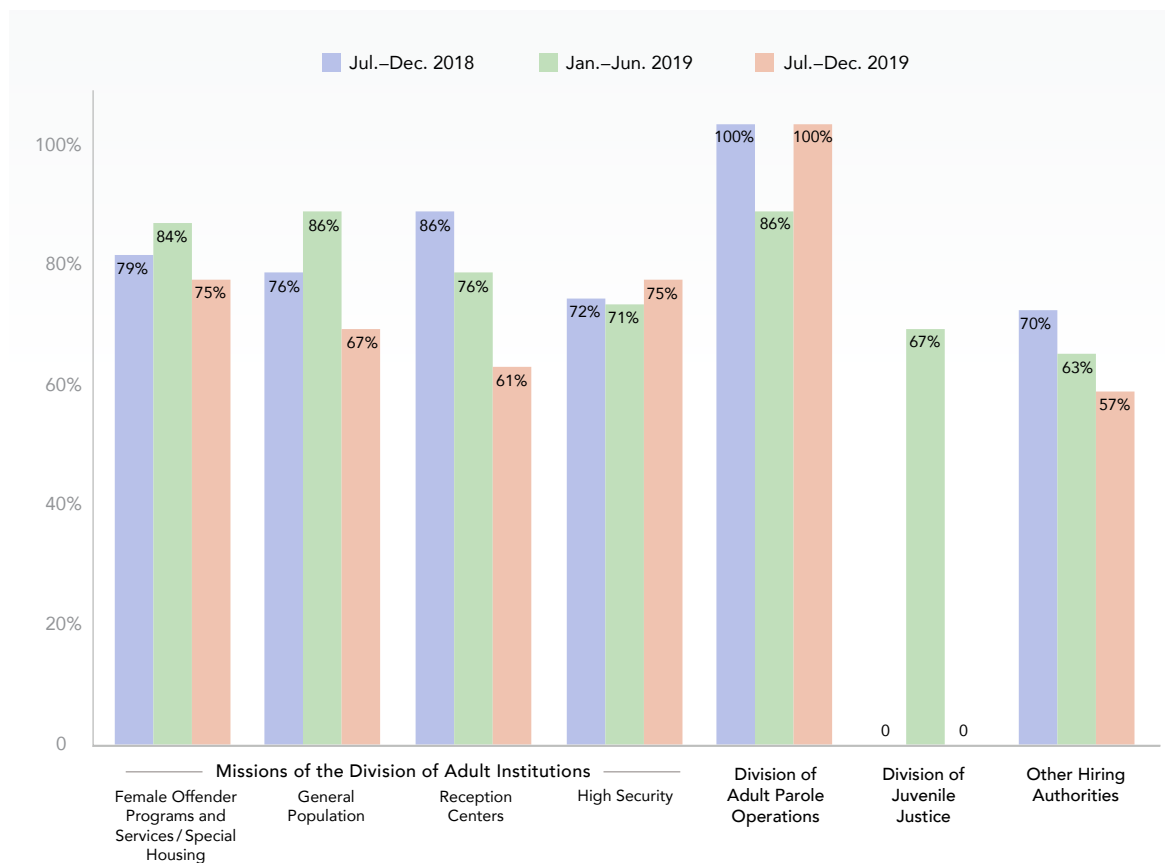


Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2019 and the five prior reporting periods.

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

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

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



Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2019 and the two prior reporting periods.

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

Indicator Score  
**Satisfactory**

(72.15%)

*Superior*  
Zero cases

*Satisfactory*  
140 cases

*Poor*  
18 cases

For cases we monitored and closed between July and December 2019, hiring authorities from the Division of Adult Institutions' *General Population* mission timely referred suspected employee misconduct to the Office of Internal Affairs in 67 percent of the cases. This is a decline in performance compared with the January through June 2019 reporting period, during which the same hiring authorities timely referred suspected misconduct in 86 percent of the cases.

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

After the Office of Internal Affairs received the referrals of alleged misconduct from hiring authorities, it processed and analyzed those referrals collectively in a *satisfactory* manner. We assessed the Office of Internal Affairs' performance as *satisfactory* in this indicator in 140 cases we monitored and closed between July and December 2019. We assessed the Office of Internal Affairs' performance as *poor* in 18 cases and did not find any *superior* performance during this reporting period.

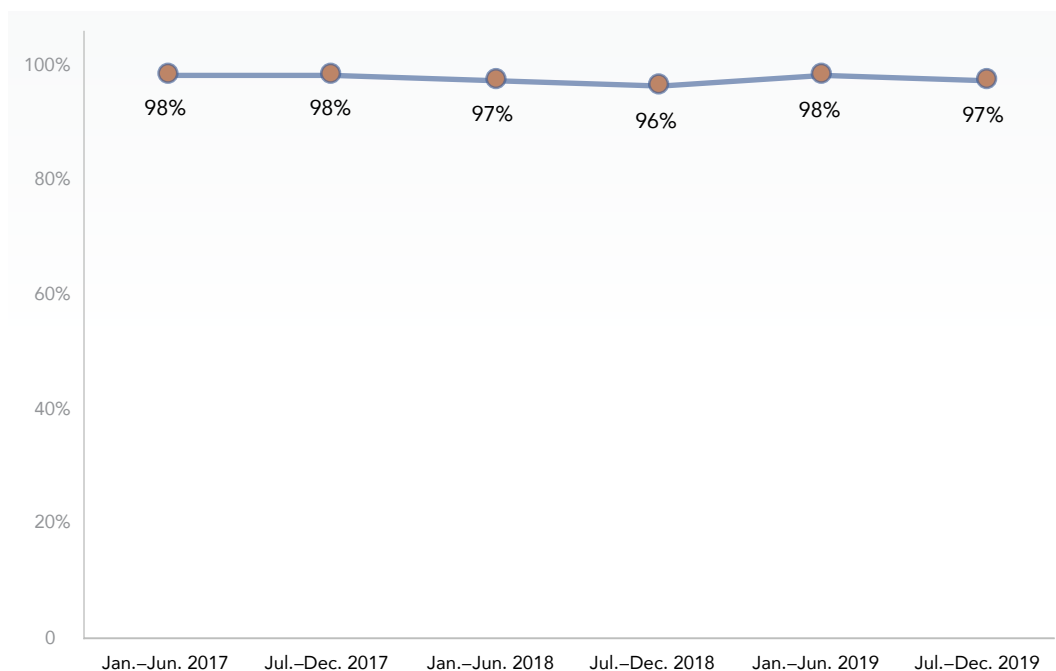
Pursuant to departmental policy, the Office of Internal Affairs must decide on a course of action regarding each hiring authority referral within 30 days of receipt and meets weekly to review those referrals. The Office of Internal Affairs led the weekly meeting and assigned a special agent from the Office of Internal Affairs' Central Intake Unit to review each case before the meeting. The special agent prepared a written analysis of his or her recommendations that included which subjects and allegations were appropriate for the case. The special agent also recommended whether the Office of Internal Affairs should approve an administrative or criminal investigation, approve only an interview of the subject of the investigation, return the case to the hiring authority without an investigation or interview of the employee who was the subject of the investigation, or reject the referral. OIG attorneys reviewed all referrals and the special agents' analyses, attended each weekly meeting, provided recommendations to the department, and identified cases for OIG monitoring.

Our assessment for this indicator is based on the Office of Internal Affairs' Central Intake Unit special agent's analysis and recommendations regarding the hiring authority's referral, the Office of Internal Affairs' final decision regarding the referral, and the timeliness of the Office of Internal Affairs' decision. Although the special agent's analysis is a key consideration, we consider timeliness to be crucial since timely initial determinations can ultimately determine or impact the timeliness of any resulting investigation and the hiring authority's determination and service of any discipline. Timeliness is critical because statute sets forth the deadlines by which disciplinary actions must be served, and failure to meet the deadlines could result in the department not being able to pursue a disciplinary action against an employee.



For cases we monitored and closed between July and December 2019, we determined the Office of Internal Affairs made a timely determination regarding hiring authority referrals in 97 percent of the cases (154 of 158 cases). Similar to the January through June 2019 reporting period in which the Office of Internal Affairs made a timely determination in 98 percent of the cases, the Office of Internal Affairs again performed very well in this area. Figure 8 below shows the percentages of cases for which the department made timely determinations over the last six reporting periods.

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



Note: This figure reflects cases that the OIG monitored and closed during the period from July through December 2019 and the five prior reporting periods.

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

As in the past, we disagreed with the Office of Internal Affairs regarding some of its decisions concerning hiring authority referrals. For referrals the Office of Internal Affairs processed from hiring authorities between July and December 2019, we disagreed with the Office of Internal Affairs' decisions in 145 of 1,000 cases (15 percent). In 22 of these 145 cases, we disagreed with more than one decision, such as both the decision to deny an investigation and whether to add an allegation. For each case submitted to the Office of Internal Affairs, the Office of Internal Affairs is required to decide whether there is sufficient evidence to open a full investigation and if so, whether the nature of the allegations

warrant a criminal or administrative investigation; whether to return the matter to the hiring authority to decide appropriate action without an investigation; whether to approve an interview of the subject of the investigation; or whether to reject a case investigation. The Office of Internal Affairs also decides who the appropriate subjects of the investigation will be and the specific allegations against them.

If we believe the Office of Internal Affairs made an unreasonable decision, we may elevate the Office of Internal Affairs' decision to its management. For the 145 cases in which we disagreed with the Office of Internal Affairs' decision from July 1, 2019, through December 31, 2019, we elevated 10 cases to Office of Internal Affairs' management and recommended administrative investigations in six of them. Of the 10 cases the OIG elevated, the Office of Internal Affairs ultimately reversed its earlier decision and agreed with the OIG in two cases. In one of the cases, the Office of Internal Affairs initially decided to reject the matter entirely, despite evidence of potential misconduct, including a video recording. After the OIG elevated the matter, the Office of Internal Affairs agreed to open an administrative investigation. In the second case, the Office of Internal Affairs initially decided to interview only the six officers who allegedly committed misconduct rather than conduct a full investigation to interview witnesses, including other officers. The Office of Internal Affairs ultimately agreed with the OIG after the OIG elevated the matter to Office of Internal Affairs' management.

For the 158 cases the OIG monitored and closed during the period of July through December 2019, the OIG disagreed with the Office of Internal Affairs in 30 cases (18 percent). Figure 9 on the next page lists these disagreements.

Figure 9.

**Disagreements With Office of Internal Affairs' Decisions Regarding Referrals in the 158 Cases the OIG Monitored and Closed From July Through December 2019**

<b>7</b>	OIA's decision to not open a full administrative investigation (and OIA returned the case to the hiring authority without an investigation or interview of the subject)
<b>1</b>	OIA's decision to not open a full administrative investigation (but approved an interview of the subject)
<b>7</b>	OIA's decision to not add a dishonesty allegation
<b>1</b>	OIA's decision to not add another allegation (not dishonesty)
<b>3</b>	OIA's decision to either remove or not add a subject to a case
<b>9</b>	OIA's decision to not approve an interview of a subject
<b>2</b>	OIA's decision to not open an administrative investigation simultaneously with a criminal investigation
<b>30</b>	<b>Total Disagreements</b>

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

Of the 158 cases, the OIG disagreed with the Office of Internal Affairs in 30 cases. In four of those 30 cases, the OIG recommended interviewing subjects because statute prohibits the hiring authority from taking disciplinary action based solely on an arrest report. However, we did not assess OIA negatively for not approving the interviews. In seven of the 30 cases, the OIG disagreed with more than one decision, and in the remaining 23, we disagreed with one decision.

From July through December 2019, OIA made decisions regarding 1,000 hiring authority referrals and rejected 42 of those referrals. The OIG disagreed with five of the rejections and elevated four of those decisions to OIA management. After reconsideration, OIA approved the recommendation for an administrative investigation in one case, but left the other four rejected.

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

Indicator Score  
**Satisfactory**

(73.05%)

*Superior*

5 cases

*Satisfactory*

108 cases

*Poor*

15 cases

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

Once the Office of Internal Affairs decided to conduct either an administrative or criminal investigation, or to interview an employee suspected of misconduct, it assigned a special agent to conduct the investigation or interview. The Office of Internal Affairs has a regional office and a headquarters office in Sacramento, and regional offices in Bakersfield and Rancho Cucamonga. The Office of Internal Affairs typically assigns the special agent based on the geographic location of the institution of the employee suspected of misconduct. For the cases the OIG monitored and closed from July through December 2019, we found that the Office of Internal Affairs' performance in investigating allegations of employee misconduct was overall *satisfactory*. The OIG determined that the Office of Internal Affairs' performance was *superior* in five cases, *satisfactory* in 108 cases, and *poor* in 15 cases.

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

For cases the OIG monitored and closed between July and December 2019, the OIG concluded that special agents completed all necessary and relevant interviews, asked all relevant questions, and used effective interviewing techniques in 98 percent of the cases, and conducted thorough investigations in 97 percent of cases. Special agents included all relevant facts and evidence in 98 percent of their reports and addressed all appropriate allegations in all of their reports.

For the five cases in which we found the special agent's performance to be *superior* during the July through December 2019 reporting period, the primary factor contributing to that rating was how quickly the special agent completed the investigation. In addition, we found in some cases, special agents used very effective interviewing techniques and completed thorough investigative reports. Below are highlights from the five cases in which we identified *superior* performance:

- In one case, a special agent expertly obtained the necessary evidence regarding an officer's use of deadly force in which an officer discharged a Mini-14 rifle to stop an inmate from attacking another inmate. The officer's shot struck the first inmate, stopping the attack. The special agent prepared a

well-written and concise report, and delivered an exceptional presentation to the Deadly Force Review Board that demonstrated the special agent's mastery of the underlying facts about the case and the policy pertaining to it.

- In a second case, a senior special agent expeditiously completed numerous and lengthy interviews in a case that involved a manager who allegedly made insulting comments regarding employees' medical and mental conditions and gender, referred to an employee as "crazy," retold of an incident wherein an employee referred to another employee using a female-specific vulgar term, and disobeyed orders. The senior special agent completed the investigative report just eight days after completing his final interview and submitted a thorough report to the hiring authority 76 days after the Office of Internal Affairs approved the investigation.
- In a third case, a special agent used outstanding interviewing techniques, persisted in asking questions, and elicited statements from witnesses, despite their reluctance to provide any information. The special agent also completed the investigation in just 67 days.
- A fourth case involved a counselor who allegedly threatened to shoot his wife and lied to outside law enforcement. The special agent completed a complicated and thorough interview of the counselor and finalized the investigative report two months after a district attorney's office agreed the department could proceed with an administrative investigation. The hiring authority found insufficient evidence to sustain the allegations.
- In a fifth case, a psychiatric technician allegedly provided her mobile phone number to an inmate. The special agent reviewed and analyzed extensive computer forensic evidence including photographs and detailed records of communications between the psychiatric technician and the inmate. The special agent also interviewed the inmate and psychiatric technician and completed the investigative report in 43 days. The hiring authority found insufficient evidence to sustain the allegations.

*The Office of Internal Affairs improved its timeliness in completing deadly force investigations.*

Between July and December 2019, the OIG monitored and closed 15 cases the Office of Internal Affairs investigated regarding the use of deadly force. Nine of these cases involved administrative investigations and the remaining six involved criminal investigations. The OIG assessed all 15 of these cases as *satisfactory*, despite finding that special agents did not comply with the department's internal time frames for completing

investigations in nine of the 15 cases. Pursuant to the department’s deadly force investigation procedures in place at the time of all 15 incidents, Office of Internal Affairs’ special agents were to complete deadly force investigations within 90 days of assignment and complete all interviews in criminal deadly force investigations within 72 hours.<sup>15</sup>

For the deadly force cases the OIG monitored and closed between July and December 2019, special agents completed deadly force investigations within 90 days of assignment in six of the 15 deadly force cases, which is 40 percent. This is an improvement from the January through June 2019 reporting period during which the Office of Internal Affairs timely completed deadly force investigations in only three of 19 cases, or 16 percent. Of the nine deadly force investigations not completed within the required time frame between July and December 2019, the longest delay was 163 days after the incident (73 days after policy required), and the second-longest delay was 158 days after the incident (68 days after policy required). Eight of the delays were in cases involving administrative investigations, with only one involving a criminal investigation.

Concerning criminal investigations in deadly force cases we monitored and closed between July 1, 2019, and December 31, 2019, the Office of Internal Affairs completed all interviews within the required 72-hour time frame in three of the six criminal deadly force cases, or 50 percent.

In our January through June 2019 report, we discussed the Office of Internal Affairs’ September 6, 2019, modifications to its deadly force investigation policy. One aspect of the policy modification was the allowance of a potential extension of the 90-day requirement for completing deadly force investigations in those cases where an investigative need requires a longer investigation.

The other aspect of the policy change was a modification of the time frame in which special agents must complete interviews in the criminal deadly force investigations. These interviews no longer need to be completed within 72 hours of the incident, but only as soon “as reasonably practical after the incident.”<sup>16</sup> All but one of the 15 deadly force cases we monitored and closed between July and December 2019 predated both of the revisions, and for the one incident that occurred after the revisions, the Office of Internal Affairs completed the investigation within the required time frame.

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

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

Of the 15 deadly force investigation cases, 11 cases involved incidents in which the shooter aimed at and intended to shoot an individual, or in some cases, animals. In two of the cases, the shooters fired warning shots, and in one of those warning shot cases, the round ricocheted and struck an inmate in the torso; the inmate survived. In one of the remaining two incidents, six officers grabbed an inmate's wrists and ankles while he was resisting officers on the ground. While on the ground, the inmate became unresponsive and ultimately died. The final incident involved three officers who deployed pepper spray on an inmate who attacked them with a weapon, and a fourth officer who struck the inmate in the head with a baton, stopping the attack.

On the next page, Figure 10 reflects the numbers and types of deadly force used in the incidents the OIG monitored and closed during the July through December 2019 reporting period. The number is greater than the number of deadly force cases because in some cases, departmental staff used deadly force more than once. For example, in one case, an officer may have fired two shots for effect, intending to shoot a target, and also fired a warning shot. In addition, in some cases, a single incident gave rise to both administrative and criminal investigations, but we only count each use of force once since there was only one incident.



Ruger Mini-14 .223 caliber rifle

Figure 10.

## Types of Deadly Force Used

	<i>Totals</i>
Shots for Effect	17
Warning Shots	4
Baton	1
Physical Force	1
<b>Total</b>	<b>23</b>



Source: Office of the Inspector General Tracking and Reporting System. Figures are for the period from July through December 2019.

Photographs courtesy of the Department of Corrections and Rehabilitation.



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

After the Office of Internal Affairs returned the matter to the hiring authority without an investigation or after completing an administrative investigation or interview of an employee suspected of misconduct, the hiring authority met with the OIG and the department attorney, if assigned, to determine the appropriate disposition of the misconduct allegations. As long as the hiring authority made reasonable attempts to schedule the investigative and disciplinary findings conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. If the hiring authority sustained any allegations, the hiring authority also determined whether to impose discipline and if so, the type of discipline to impose. The hiring authority was also responsible for serving any disciplinary action within the required time frame. Between July and December 2019, the OIG assessed the hiring authority's performance in these areas in 132 cases and determined that the hiring authorities' overall performance in this indicator was *poor*. We assessed the hiring authorities' performance as *superior* in one case, *satisfactory* in 95 cases, and *poor* in 36 cases.

We used this indicator to assess whether the hiring authorities conducted the investigative and disciplinary findings conferences in a timely manner, were adequately prepared for the conferences, made appropriate investigative and disciplinary findings, and served the disciplinary actions in a timely manner.

#### *Hiring authorities often did not conduct investigative and disciplinary findings conferences in a timely manner.*

Although the department does not have a clear policy governing when hiring authorities are required to conduct the investigative findings conference, we assessed hiring authorities based on a 14-day time frame pursuant to our interpretation of the Department Operations Manual provision.<sup>17</sup> However, as long as the hiring authority made reasonable attempts to schedule the findings and penalty conference within 14 days and held the conference within 30 days of receipt of the case, we did not negatively assess a hiring authority for a late conference. For the July through December 2019 reporting period, the OIG found that hiring authorities conducted investigative and disciplinary findings conferences within 14 days in only 58 percent of the cases (76 of 132). Although this is a modest improvement from the 55 percent considered timely in the January through June 2019 reporting period, the number of delayed conferences is still of concern. Delayed conferences often resulted in the untimely service of disciplinary actions.

Indicator Score  
**Poor**  
(68.37%)

*Superior*  
1 case

*Satisfactory*  
95 cases

*Poor*  
36 cases

17. DOM, Section 33030.13.

Untimely investigative and disciplinary findings conferences and delayed service of disciplinary actions on peace officers were the primary reasons for *poor* assessments. This was particularly true in dishonesty cases. In the 49 cases in which at least one employee was suspected of being dishonest, the department conducted timely investigative and disciplinary findings conferences in only 25 of the cases, or 49 percent. This is less than the 54 percent of cases involving alleged dishonesty we assessed as timely in the January through June 2019 reporting period. Timely investigative and disciplinary findings conferences are crucial because in many cases, the resulting penalty will be dismissal of an employee from the department if the hiring authority finds the employee was dishonest, and such delays may unnecessarily extend the payment of salary, in addition to retaining dishonest employees in positions where they can continue to cause harm.

*Hiring authorities often held untimely investigative and disciplinary findings conferences in dismissal cases.*

Hiring authorities' performance in conducting investigative and disciplinary findings conferences for the cases we monitored and closed between July and December 2019 was untimely in close to half of the cases in which they decided to dismiss an employee. The OIG monitored and closed 36 cases during the July through December 2019 reporting period in which hiring authorities decided dismissal was warranted, and the hiring authorities delayed conducting the investigative and disciplinary findings conferences in 15 of those 36 cases, or 42 percent.

- Hiring authorities delayed conducting the investigative and disciplinary findings conferences in eight cases in which they decided to dismiss an employee and subsequently served a disciplinary action for dismissal.
- In cases in which the employee resigned or retired, hiring authorities delayed conducting the investigative and disciplinary findings conference in six cases.
- In the remaining case in which the hiring authority delayed conducting the conference and initially determined dismissal was warranted, the hiring authority ultimately reached a settlement agreement with an associate warden, reducing the dismissal to a demotion.

The longest delay out of all 15 cases was 183 days after policy required, and the shortest delay was six days after policy required. In the case with the longest delay, the hiring authority sustained allegations against a captain for grabbing an office technician's thighs, stroking her hair, pulling her on top of him while he was sitting down, telling her he liked Catholic girls "because they're dirty," and lying during an interview with the Office of Internal Affairs. In this case, although the hiring authority

conducted an initial investigative and disciplinary findings conference in a timely manner, the hiring authority did not address all allegations at the first conference. Despite the OIG's recommendation, the hiring authority did not address the remaining allegation until 197 days after the Office of Internal Affairs completed its investigation and returned the matter to the hiring authority, which was 183 days after policy required. The captain ultimately resigned before discipline could be imposed.

*The department did not serve disciplinary actions on peace officers within the time frame set forth in policy in more than half of the cases in which hiring authorities decided to impose discipline.*

Of the cases the OIG monitored and closed between July and December 2019, the OIG found that, once again, the department did not perform well in timely serving disciplinary actions on peace officers. Pursuant to policy, the department is required to serve disciplinary actions on peace officers within 30 days of the hiring authority's decision to take disciplinary action. The hiring authority made his or her decision at an investigative and disciplinary findings conference. A department attorney attended the conference if one was assigned, and an OIG attorney attended in those cases we monitored.

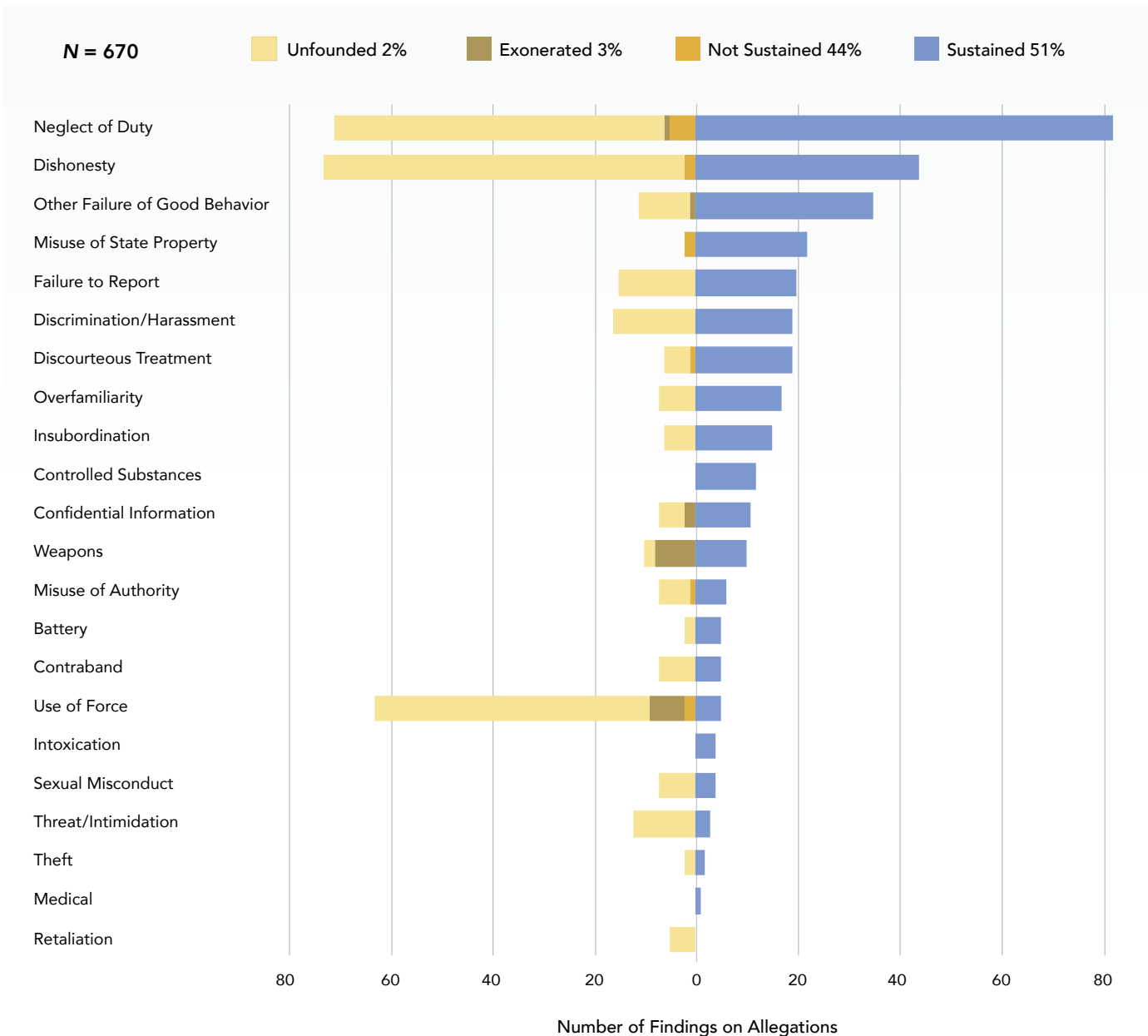
For the July through December 2019 reporting period, the department served disciplinary actions on peace officers in 66 cases. Of those 66 cases, the department did not timely serve the disciplinary actions in 38 cases, or 58 percent. For the previous reporting period of January through June 2019, we found the department delayed serving disciplinary actions on peace officers in 45 of 75 cases, or 60 percent. Between July and December 2019, the shortest delay in serving peace officers with disciplinary action was 31 days after the hiring authority decided to take disciplinary action, which was one day after policy required. The longest delay was 149 days after the decision to take disciplinary action, or 119 days after policy required. While the percentage has improved slightly from the prior reporting period, the percentage still demonstrates our concern that the department is not serving disciplinary actions within the required time frame.

*Despite the overall poor assessment, hiring authorities made appropriate investigative findings and penalty determinations in the majority of cases.*

A hiring authority was required to prepare for the investigative and disciplinary findings conference by reviewing all the available evidence. This evidence could include the Office of Internal Affairs' investigative reports, reports from outside law enforcement agencies, audio and video recordings, and other supporting documentation. The hiring authority, department attorney, if assigned, and the OIG attorney, if monitoring the case, consulted to discuss the evidence and address the alleged misconduct. If the hiring authority determined further evidence was needed in order to make a fully informed decision regarding the

allegations, the hiring authority may have requested further investigation from the Office of Internal Affairs. However, if the hiring authority determined there was sufficient evidence to decide, the hiring authority made findings regarding the allegations, and, if the allegations were sustained, whether to impose corrective action or disciplinary action.

**Figure 11. Administrative Cases: Findings Determined by Hiring Authorities**



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

For cases monitored and closed between July and December 2019, the OIG determined that hiring authorities identified the appropriate subjects and allegations in 99 percent of the cases, and made the appropriate findings in 95 percent of those cases. In our opinion, we also found that hiring authorities decided on the appropriate penalty in 89 percent of the cases in which the hiring authority decided to impose a penalty. Figure 11 on the facing page displays the findings hiring authorities made regarding allegations presented to them for review.

*For cases the OIG monitored and closed from July through December 2019, the OIG determined that the hiring authority proposed an unreasonable course of action and subsequently sought review by a departmental executive in one case.*

Policy provides that when either the OIG or department attorney believes a hiring authority made an unreasonable decision regarding whether to sustain an allegation or the discipline to be imposed, the OIG or department attorney may raise that decision to the hiring authority's supervisor for further review. The desired outcome of this process of seeking review by the hiring authority's supervisor is to determine whether the hiring authority's decision is just and proper.<sup>18</sup> If either the OIG or department attorney believes the hiring authority's supervisor also made an unreasonable decision, the matter may be presented to higher levels, such as to a director, an undersecretary, or the Secretary of the department. We use the executive review process only in very limited cases.

Of the 132 administrative cases the OIG monitored and closed during the July through December 2019 reporting period, the OIG sought a higher level of review in only one case. We previously discussed this case on page 35 to highlight the senior special agent's *superior* performance in conducting the investigation. However, notwithstanding the senior special agent's *superior* performance, the OIG concluded the hiring authority made an unreasonable decision regarding the penalty and, therefore, used the executive review process.

In this case, the hiring authority sustained allegations that a manager made a derogatory statement concerning an employee's mental health condition, repeated an employee's use of a gender-specific vulgar term, initiated a training session to discuss the inquiry into his own misconduct, and singled out a witness during a training, but did not sustain the other allegations against the manager, and imposed a five-working-day suspension. The OIG did not concur and elevated the hiring authority's decisions. The hiring authority's supervisor agreed with the OIG and ended the manager's probationary period, returned the manager to a supervisory position, and imposed a five-working-day suspension. The OIG concurred with these decisions. However, the OIG

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<sup>18</sup>. DOM, Section 33030.14.

did not agree with the hiring authority’s supervisor’s decision to combine and recharacterize the misconduct as one allegation of discourteous treatment rather than multiple violations, or the hiring authority’s decision to not sustain allegations the manager misused his authority and violated the department’s equal employment opportunity policy.

The manager filed an appeal with the State Personnel Board. After a prehearing settlement conference, the hiring authority indicated to the OIG that he intended to enter into a settlement withdrawing the rejection during probation and the five-working-day suspension, and instead intended to issue a letter of reprimand. The OIG did not concur with the settlement proposal and sought a higher level of review. At the higher level of review, the hiring authority’s supervisor agreed with the OIG and did not settle the matter. Following a hearing, the State Personnel Board upheld the five-working-day suspension and the rejection on probation.

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

For cases we monitored and closed from July through December 2019, department attorneys provided legal advice to the Office of Internal Affairs in a *satisfactory* manner as the Office of Internal Affairs’ Central Intake Unit processed employee misconduct referrals from hiring authorities and during its internal investigations. In three cases, we found the department attorney’s performance to be *superior*. We assessed 133 cases as *satisfactory* and 18 cases as *poor*.

The department assigned attorneys to only some of the cases in which the Office of Internal Affairs conducted administrative investigations, and it did not assign them to criminal investigations. The department assigned attorneys in 131 cases we monitored and closed. In 101 of the 131 cases, the Office of Internal Affairs conducted investigations or an interview of the subject alleged to have committed misconduct. In the 101 cases, department attorneys provided legal advice to special agents during administrative investigations. In all 101 cases, the legal advice was thorough and appropriate.<sup>19</sup> Department attorneys consulted with hiring authorities regarding investigative findings in 130 cases. In 122 of these 130 cases, or 94 percent, department attorneys’ consultation was appropriate. In 99 cases, department attorneys provided legal advice to hiring authorities regarding disciplinary determinations. In 92 of the 99 cases, or 93 percent, department attorneys provided appropriate advice regarding the disciplinary determinations.

<sup>19</sup>. Due to the uniqueness of each case, department attorneys did not necessarily perform each function assessed by the questions in Performance Indicator 5.

Indicator Score  
**Satisfactory**  
(72.56%)

*Superior*  
3 cases

*Satisfactory*  
133 cases

*Poor*  
18 cases

Notwithstanding the performance noted above, department attorneys still delayed making entries regarding critical dates into the department’s case management system. Pursuant to policy, once department attorneys are assigned a case, they have 21 days from assignment to enter into a computerized case management system the date of the reported incident, the date of discovery, the deadline for taking disciplinary action, and any exceptions to the deadline known at the time. Between July and December 2019, department attorneys either did not make any entry into the case management system regarding the relevant dates, or made late or incomplete entries, in 28 out of 132 cases, or 21 percent. This is the same percentage we reported in the January through June 2019 reporting period. Of the 131 cases in which department attorneys or employee relations officers entered the critical dates into the case management system, they did not make correct entries in 10 cases, or 8 percent. This is an improvement from the 11 percent of cases in which department attorneys or employee relations officers failed to correctly enter critical dates between January and June 2019. Not only do other departmental units and staff rely on these dates in performing their respective duties, but the dates are critical to ensuring the disciplinary process, including the service of any disciplinary action, is completed before the deadline for the disciplinary action expires. Not entering critical dates on time can prevent the hiring authority from imposing discipline.

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

For the cases we monitored and closed from July through December 2019, we assessed department advocates’ performance in providing legal representation to the department in 71 cases and concluded the overall assessment rating was *poor*. We rated the department’s performance in this indicator as *superior* in one case, *satisfactory* in 49 cases, and *poor* in 21 cases.

In this indicator, we assessed the department’s legal representation during litigation, which began with the preparation of any disciplinary actions and ended with the completion of any appeal process to the State Personnel Board or appellate court. During the July through December 2019 reporting period, there were 71 cases in which the department assigned an attorney or an employee relations officer provided legal representation during litigation. The department assigned an attorney in all but one of the 71 cases. In this one case, an employee relations officer was responsible for handling the duties. Our assessment did not distinguish between department attorneys and employee relations officers, but assessed the department’s legal representation as a whole.

The specific duties we assessed were the drafting of thorough and legally adequate disciplinary actions in a timely manner, the representation of the department at prehearing settlement conferences before the State

Indicator Score
<b>Poor</b>
(67.96%)
<i>Superior</i>
1 case
<i>Satisfactory</i>
49 cases
<i>Poor</i>
21 cases

Personnel Board, the preparation of cases for evidentiary hearings, and the litigation of cases before the State Personnel Board. If any party pursued an appeal to the superior or appellate courts, department attorneys handled those appeals, and the OIG continued monitoring and assessing their representation of the department during the writ or appeal proceedings. This indicator also included an assessment of the timeliness of serving disciplinary actions on peace officers, although because of some overlapping responsibilities with hiring authorities, this issue is also assessed in Indicator 4.

In all but one of the cases with a *poor* assessment rating, the hiring authorities delayed in serving disciplinary actions on peace officers as discussed above on page 41 in the section addressing the assessments for Indicator 4. In the one case with a *poor* assessment, but a timely disciplinary action, we based the negative assessment on the department attorney's failure to provide the OIG with a prehearing settlement conference statement before filing it with the State Personnel Board and agreeing to settle the case without consulting the OIG, which we considered a lack of adequate consultation with the OIG.

The OIG's assessment also included whether department attorneys and employee relations officers prepared legally sufficient and thorough disciplinary actions. For cases the OIG closed between July and December 2019, department attorneys and employee relations officers prepared disciplinary actions in 69 cases. Despite the overall *poor* assessment for this indicator, we found that in all 69 cases in which a department advocate prepared a disciplinary action, the department advocate prepared disciplinary actions that contained the relevant facts, relevant and legally supported causes of action, all factual allegations hiring authorities sustained, and the correct penalties. In eight of the 69 cases (12 percent), department attorneys prepared disciplinary actions that did not contain the correct legal references. However, the failure to include the correct legal references did not affect the overall validity of the disciplinary actions or our assessment.

In the one case we assessed as *superior*, the OIG based the *superior* rating on the department's prompt service of a disciplinary action for dismissal on an officer who was found to have conspired with an inmate and an inmate's daughter to smuggle marijuana, tobacco, and mobile phones into an institution for inmates. The officer also received bribes from the inmate and the inmate's daughter, provided his first name to the inmate, told the inmate about personal problems, and lied during his interview with the Office of Internal Affairs. The hiring authority served the disciplinary action for dismissal on the officer just 15 days after making the decision to dismiss the officer, thereby swiftly ending the employment of a peace officer who threatened the safety and security of the institution, was not qualified to work as a peace officer, and brought discredit to the department.



## The Department Untimely Processed Dismissal Cases Involving Both Peace Officers and Nonpeace Officers, Resulting in Payment of Approximately \$224,211 to Ultimately Dismissed Employees During the Delays

For the July through December 2019 reporting period, the OIG examined the department's delays in dismissal cases relative to four critical steps in the department's internal investigations and employee disciplinary process. We concluded that the department's delays in these four critical steps resulted in the department and taxpayers paying approximately \$224,211 in salary and benefits to both peace officers and nonpeace officers who were dismissed during those delays.<sup>20</sup> Of the 24 cases in which the department served the employee with a disciplinary action for dismissal, and the dismissal was later upheld or the employee resigned, 18 of the cases, or 75 percent, had delays in one of the critical steps. These critical steps are:

- Whether the hiring authority referred allegations of employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.
- Whether the Office of Internal Affairs processed employee misconduct referrals from the hiring authority within 30 days of receipt.
- Whether the hiring authority conducted the investigative and disciplinary findings conference within 14 days of receipt of the case from the Office of Internal Affairs. However, the OIG did not negatively assess the department if the hiring authority made reasonable attempts to schedule the conference within 14 days, but schedules prevented the conference from being held within 14 days, and it was held within the 30 days.
- Whether the department served the disciplinary action on a peace officer within 30 days of making the decision to impose discipline.

Regarding these four critical steps, the OIG found the following in the 24 cases in which the department served a dismissal and the dismissal was later upheld or the employee resigned:

- The hiring authority delayed referring misconduct allegations to the Office of Internal Affairs beyond the 45-day time frame that policy requires in two cases, or 8 percent. The total cumulative delay for

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

this critical step was 32 days, and the department paid approximately \$12,508 to would-be dismissed employees during the delays.

- The Office of Internal Affairs did not delay processing referrals beyond the 30-day time frame policy requires in any of the 24 cases.
- The hiring authority delayed investigative and disciplinary conferences beyond the 14-day time frame policy requires in eight of the 24 cases, or 33 percent. The total cumulative delay for this critical step was 261 days, and the department paid approximately \$92,718 to would-be dismissed employees during the delays.
- The department delayed serving disciplinary actions on peace officers beyond the 30 days policy requires in 14 of 23 cases, or 61 percent. The total cumulative delay for this critical step was 347 days, and the department paid approximately \$118,985 to would-be dismissed employees during the delays. Two of the 23 cases involved the same peace officer, but the OIG treated these as one case for purposes of our calculations.

The following are notable examples of cases with extensive delays:

- In one case, an officer tested positive for marijuana after a random drug test. The hiring authority delayed 69 days after policy requires in conducting the investigative and disciplinary findings conference only to find the evidence insufficient to make a finding, and then requested an interview of the officer. After the Office of Internal Affairs conducted the interview and returned the matter to the hiring authority, the hiring authority decided to dismiss the officer, but delayed 35 days after policy requires in serving a disciplinary action for dismissal. In all, the department paid this officer approximately \$32,918 during the 104 days of unnecessary delay.
- In a second case, an officer failed to report a use of force on an inmate and lied to a supervisor about the incident. The hiring authority delayed 21 days after policy requires in conducting the investigative and disciplinary findings conference, and 68 days after policy requires to serve a disciplinary action for dismissal. In all, the department paid this officer approximately \$28,170 during the 89 days of unnecessary delay.

We also note those cases the OIG monitored and closed between July and December 2019 in which the department decided to dismiss peace officers, but did not timely serve the notices of disciplinary action for dismissal, regardless of whether the dismissal was upheld, or the peace officer resigned or retired. Regardless of the final outcome, the department did not timely serve dismissal notices on peace officers in 16 of 26 cases (62 percent) in which the hiring authority decided that dismissal was the appropriate penalty. This percentage represents a slight improvement in the department's performance from the prior reporting period of January through June 2019, during which the department delayed serving disciplinary actions on peace officers in 23 of 35 cases (66 percent).

## The Department Lacks a Clear Policy Concerning the Sharing of Crime Scene Photographs

During the July through December 2019 reporting period, the OIG monitored three cases involving peace officers who inappropriately used their department-issued or personal mobile phones to take photographs of crime scenes involving inmate-on-inmate homicides, and disclosed those confidential crime scene photographs to others in the department, as well as outside the department.<sup>21</sup> Although the department has a policy that prohibits staff from bringing personal mobile phones into institutions, and a policy that generally prohibits improper access and disclosure of confidential information, there are no policies specifically addressing the disclosure of confidential crime scene photographs taken using either State-issued or personal devices. Such policies are critical to secure the integrity of ongoing criminal investigations, curb the possibility of lawsuits, and eliminate confusion throughout the department.

In one case, a sergeant and four officers allegedly shared photographs of a gruesome crime scene with other employees, none of whom had a business reason for seeing the photographs. The incident involved an inmate who brutally murdered his cellmate. The photographs included close-ups of the inmate's gaping wounds, as well as the bloody cell. One of the officers allegedly shared the photographs with a friend, and a second officer allegedly showed them to a relative. One of the officers also allegedly brought his personal mobile phone into the institution, used his personal phone to take some of the photographs, and lied to a sergeant and to special agents during his interview with the Office of Internal Affairs concerning the incident.

The hiring authority sustained the allegations against the officer who allegedly lied, except for the allegation that he brought his personal mobile phone into the institution, and dismissed the officer. The hiring authorities sustained all the allegations against the remaining officers and the sergeant, and imposed penalties ranging from a letter of reprimand to a 10 percent salary reduction for 13 months. During the course of the investigation, three of the officers and the sergeant claimed they shared the photographs in part for "training purposes" regarding prison gang violence and brutality. One of the officers stated he shared them with friends because they were interested in what it was like to work in a prison, and he did not think the photographs were confidential. The officer who used his personal phone stated he used his personal phone rather than his work phone because his personal phone was more accessible at the time.

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21. Two of these cases involved the same inmate homicide, but involved staff from multiple institutions, resulting in two separate cases.

The remaining two cases we monitored between July and December 2019 involving this issue have not yet concluded. Both cases arose from one incident in which numerous peace officers of various ranks allegedly provided photographs of another horrific homicide crime scene to a chief deputy warden, associate warden, lieutenants, and officers, without authorization to disclose the photographs. Again, a lieutenant claimed he used the photographs as a tool to provide training to other staff members regarding conducting cell searches and administrative segregation unit welfare checks, and to show others what could happen in a prison. During the investigative and disciplinary findings conference for these cases, the hiring authority determined that other staff members shared the photographs as part of informal training and that management was aware this had taken place.

The three above-mentioned cases illustrate the lack of understanding throughout the department regarding what information is and is not acceptable to share. Such confusion makes it difficult for the department to maintain the integrity of its processing of crime scenes which, in turn, could compromise any subsequent criminal investigation against involved inmate suspects. In addition, critical evidence could be damaged, altered, or even lost, especially when such evidence is obtained using a personal mobile phone, because the department does not maintain, and does not have the ability to track, data exchanged on personal electronic devices. Moreover, disclosure of confidential crime scene photographs could expose the department to civil liability and damages for invasion of privacy, emotional distress, and negligence.<sup>22</sup> Consequently, the OIG recommends that the department develop a policy specifically delineating when and for what purposes it is and is not acceptable for its employees to disclose confidential crime scene photographs.

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22. *Catsouras v. C.H.P.* (2010) 181 Cal.App.4th 856.

## The Department Did Not Review Rules Violation Reports Sustained Against Inmates After Finding That Authors of Reports Were Dishonest

When an inmate violates the department's rules, the employee who witnessed the misconduct is required to prepare a *rules violation report* summarizing the inmate's alleged misconduct. The inmate is entitled to a hearing on the matter before a senior hearing officer, typically a lieutenant, who then determines whether to sustain the allegation or allegations against the inmate and if so, the discipline the inmate should receive. If an allegation is sustained, the inmate may suffer discipline, such as loss of time, credits, or privileges. A sustained rules violation report may also negatively affect an inmate's parole suitability or status. The department's Division of Juvenile Justice employs a similar procedure when wards allegedly violate departmental rules, except it refers to the document as a *serious misconduct behavior report*.

During a case we monitored during the July through December 2019 reporting period and are continuing to monitor, the department levied a rules violation report against an inmate after a use-of-force incident. After an Office of Internal Affairs' investigation, the hiring authority's supervisor determined that the authors of the rules violation report, two officers, were not honest in their reporting of the incident. Ultimately, an undersecretary reviewed the matter and decided to not sustain dishonesty allegations against the officers.

However, even though an undersecretary decided to not sustain dishonesty allegations against the officers, the case exposed an issue concerning the department's practice in addressing rules violation reports issued against inmates when the department, after the issuance of a rules violation report, subsequently determines that the author of the rules violation report was dishonest concerning the incident. The OIG reviewed cases from the prior reporting period of January through June 2019 to determine if there were similar instances in which a hiring authority sustained a dishonesty allegation against an employee who had authored a false rules violation report, but the hiring authority did not subsequently determine whether the rules violation report against the inmate should be dismissed or modified based on the sustained dishonesty allegation. The OIG identified three cases with similar fact patterns from the prior reporting period:

- In one case, an officer alleged that, on January 1, 2018, while escorting an inmate who was restrained in hand and leg restraints across an exercise yard, the inmate tried to break free by pulling away from the officer's partner and moving toward him. The officer also claimed he grabbed the inmate's head and forced him to the ground, and the inmate landed on the officer's hand. The officer did not report any further force. The officer sustained a broken hand. The officer issued the inmate a

rules violation report for assault on a peace officer. The hearing officer found the inmate guilty and assessed a credit loss of 90 days. However, the officer's partner reported that, after the inmate pulled away, the officer pushed the inmate to the ground and punched him twice. After an Office of Internal Affairs' investigation, the hiring authority determined that the inmate was pulling away from the officer's grip because the officer was hurting the inmate by pinching his arm and squeezing too tightly. The hiring authority also determined the officer failed to report punching the inmate, lied during his Office of Internal Affairs' interview when explaining how and when he punched the inmate, and dismissed the officer. The officer ultimately entered into a settlement agreement pursuant to which he agreed to resign. However, as of February 25, 2020, the inmate still had a sustained rules violation report. The OIG contacted the hiring authority and recommended that the hiring authority review the rules violation report to determine whether it should be modified or dismissed. As a result of the OIG's recommendation, on March 19, 2020, the hiring authority advised the OIG that he had reviewed the matter and intended on dismissing the rules violation report against the inmate. The hiring authority subsequently dismissed the rules violation report.

- In a second case, an officer alleged that, on August 23, 2018, he ordered an inmate to return to a medical clinic after the inmate left his crutches at the clinic. The inmate continued walking, and the officer ordered him multiple times to get on the ground, but the inmate did not comply. The officer claimed that the inmate then faced him and clenched his fist, and the officer was afraid the inmate was going to assault him. The officer then struck the inmate three times with a baton, and the inmate got on the ground. The officer issued the inmate a rules violation report for willfully resisting a peace officer. The hearing officer found the inmate guilty, assessed a credit loss of 90 days, and restricted the inmate's telephone and day room privileges for 30 days. In the meantime, a lieutenant reviewed the officer's report, which contained essentially the same language as in the rules violation report, and asked the officer to better describe the imminent threat. The officer claimed the inmate clenched his fist and took a bladed stance. The hiring authority determined that a visual recording of the incident appeared to contradict the officer's statement and requested an Office of Internal Affairs' investigation. After an investigation, the hiring authority determined that the officer lied about the inmate clenching his fist and threatening the officer, and dismissed the officer. The department served the officer with a disciplinary action for dismissal, but he retired before it took effect. However, as of February 25, 2020, the inmate still had a sustained rules violation report. Upon discovery, the OIG recommended the hiring authority review the rules violation report to determine whether

it should be modified or dismissed. As a result of the OIG's recommendation, on March 2, 2020, the hiring authority advised the OIG he had reviewed the matter and decided to dismiss the rules violation report in the interest of justice. The hiring authority subsequently dismissed the rules violation report.

- In a third case, an officer alleged in a serious misconduct behavior report that, on September 30, 2017, a ward was running in an area of the facility in which he should not have been. The officer, who was seated in a van, alleged that he gave multiple orders to the ward to stop. After the ward did not comply, the officer drove the van toward the ward, exited the van, and allegedly ordered the ward to submit to handcuffs. The officer alleged that, as he was placing handcuffs on the ward, the ward became agitated, clenched his fist, and tried to pull away. The officer claimed that the ward spun around, swung his left arm at the officer, and made contact with the officer's ribs. The officer pulled the ward to the ground, and the ward landed face first. The officer finished placing restraints on the ward. After reviewing the incident reports, the hiring authority referred the matter to the Office of Internal Affairs for investigation. After an investigation, the hiring authority determined that the officer lied when he reported that the ward swung his left arm and made contact with the officer's rib area, and that the officer failed to document that he pushed the ward into the side of the van, causing the ward's head to strike the van. The hiring authority also found that the officer was dishonest in his interview with the Office of Internal Affairs. On May 1, 2018, the hiring authority decided to dismiss the officer. The officer ultimately entered into a settlement agreement pursuant to which he resigned from employment with the department. The OIG discovered that the ward still had a sustained serious misconduct behavior report and contacted the hiring authority. On April 17, 2020, the OIG recommended the hiring authority review the serious misconduct behavior report to determine whether it should be modified or dismissed. As a result of the OIG's recommendation, the hiring authority reviewed the case and dismissed the serious misconduct behavior report.

The OIG recommends the department formulate a policy to require a review of rules violation reports in cases (or serious misconduct behavior reports in cases involving wards) in which the hiring authority later determines the author of the rules violation report was dishonest. The hiring authority, in consultation with the department attorney and the OIG, should analyze whether the rules violation report should be revoked, modified, or sustained based on the facts uncovered during the internal investigation.

## The OIG Added Value in Its Monitoring of Cases From July Through December 2019

The OIG assigns attorneys to monitor the department's internal investigations and employee disciplinary process. The OIG attorneys are experienced in various fields of the law, including criminal prosecution, civil rights litigation, administrative law, civil law, and appellate litigation. Throughout the course of our monitoring between July and December 2019, we contemporaneously monitored the performances of hiring authorities, Office of Internal Affairs' special agents, and department attorneys. We believe that the OIG attorneys made a positive impact in several cases, a few of which we highlight below.

- In one case, a sergeant allegedly approved a cell move for an inmate without adequately researching whether the inmate was compatible with his new cellmate, lied in a report indicating he appropriately researched the matter before moving the inmate, and lied during his interview with the Office of Internal Affairs. A lieutenant allegedly failed to review and approve the cell move before the inmate's transfer to the new cell. The first inmate subsequently killed the cellmate. Two officers allegedly failed to activate their alarms or carry personal alarms and radios, one of the officers allegedly did not remain at the cell front after discovering the medical emergency, and the second officer allegedly did not seek emergency medical response. The OIG responded to the scene and conducted a review of the incident. The OIG identified the potential staff misconduct and recommended the hiring authority refer the matter to the Office of Internal Affairs. The hiring authority agreed and submitted a request for investigation to the Office of Internal Affairs, which approved an investigation. After the investigation, the hiring authority sustained the allegations against the sergeant, except that he improperly approved the cell move, and imposed a one-year suspension and demoted him to officer. The hiring authority also found the officers did not carry personal alarms and radios and that the second officer did not seek an emergency medical response, and issued letters of reprimand to both.
- In a second case, the OIG had a positive impact on the Office of Internal Affairs in its processing of the hiring authority's request for investigation. In this case, an officer allegedly pulled an inmate's hand while applying restraints, resulting in a broken bone in the hand. The inmate claimed he heard a "pop" while the officer was applying the restraints. A second officer ran over and told the first officer to stop. A second inmate reportedly heard the first inmate say, "You're tugging on my arm" and request medical assistance. The special agent who reviewed the hiring authority's request recommended rejecting the hiring authority's referral, speculating that other inmates would have reported



the second officer responding to the incident. The special agent also concluded the first inmate's allegations were not credible, despite a broken bone and the inmate's timely reporting of the incident. The OIG pointed out that the inmate timely reported the incident, there was no other explanation for the broken bone, the inmate appeared credible when interviewed, and we urged the Office of Internal Affairs to approve an investigation, despite the special agent's recommendation to reject the matter. Based on the OIG's recommendation, the Office of Internal Affairs approved an investigation.

- In a third case, an officer negligently discharged a firearm at home, lied to outside law enforcement about the incident, and lied during her interview with the Office of Internal Affairs. During the investigation, the OIG recommended an additional witness interview to fully investigate the allegations. The special agent agreed, and the interview provided credible incriminating evidence. The hiring authority subsequently sustained the allegations and dismissed the officer. The officer resigned before the dismissal took effect.
- In a fourth case, outside law enforcement arrested an officer for allegedly being intoxicated in public and kicking a security guard's car door. The officer also allegedly swore at and lied to outside law enforcement and failed to appear in court, resulting in a bench warrant being issued for the officer's arrest. Before the investigative and disciplinary findings conference, the department attorney advised he did not believe there was sufficient evidence to sustain the vandalism allegation. The OIG disagreed and pointed out a photograph documenting the damaged vehicle. Based on the OIG's recommendation, the department attorney reassessed the evidence and recommended the hiring authority sustain the allegation. The hiring authority sustained the allegations, except the allegation that the officer lied to outside law enforcement, and dismissed the officer. The officer filed an appeal with the State Personnel Board, which upheld the dismissal.

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## Recommendations

For the July to December 2019 reporting period, we offer the following recommendations to the department:

Nº 1. The OIG renews its recommendation that the department either clarify its current policy or develop a precise policy setting forth a specific time frame in which a hiring authority must conduct investigative and disciplinary findings conferences in employee discipline cases and a time frame in which a hiring authority must make findings regarding the sufficiency of an internal investigation, findings regarding employee misconduct allegations, and, if there are sustained allegations, the appropriate corrective action or disciplinary penalty. The OIG recommends the department develop a time frame reflecting the number of days the conference must be held after a hiring authority receives the following:

1. an investigative report from the Office of Internal Affairs;
2. a report from the Office of Internal Affairs regarding its interview of an employee suspected of misconduct; or
3. a notice of approval from the Office of Internal Affairs to take direct action on employee misconduct allegations without an investigation or interview.

Nº 2. The OIG renews its recommendation that the department implement a policy requiring department attorneys or employee relations officers to provide all disciplinary actions to the hiring authority within a specific number of days after the investigative and disciplinary findings conference to ensure employees receive timely service of their disciplinary actions and to reduce unnecessary costs.

Nº 3. The OIG recommends that the department develop and implement a policy specifically delineating when and for what purposes it is and is not acceptable for staff to disclose confidential crime scene photographs.

Nº 4. The OIG recommends that the department formulate a policy requiring the review of rules violation reports for cases in which the hiring authority later determines the author of the rules violation report was dishonest.

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

*Semiannual Report  
July–December 2019*

OFFICE *of the* INSPECTOR GENERAL

*Roy W. Wesley*  
Inspector General

*Bryan B. Beyer*  
Chief Deputy Inspector General

STATE of CALIFORNIA  
June 2020

OIG