



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

December 2020

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

*Semiannual Report
January–June 2020*



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

We also offer an online subscription service.

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

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

Regional OfficesSacramento
Bakersfield
Rancho Cucamonga

December 10, 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 please find 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 31st semiannual report, as mandated by California Penal Code sections 6126 (a) and 6133 (b) (1), which summarizes the California Department of Corrections and Rehabilitation's (the department) performance in conducting internal investigations and handling employee discipline cases we monitored and closed between January 1, 2020, and June 30, 2020.

Specifically, we assessed the performance of the three entities within the department responsible for conducting internal investigations and managing the employee disciplinary process: hiring authorities (such as prison wardens), the Office of Internal Affairs, and department attorneys. Between January 1, 2020, and June 30, 2020, we monitored and closed 153 cases throughout California, and concluded that the department's overall performance in conducting internal investigations and handling employee discipline cases was *poor*. Of the 153 cases, we rated 105 cases *satisfactory* and 48 *poor*.

While we recognize the department faced unprecedented challenges due to the outbreak of the novel coronavirus disease (known as COVID-19) during this reporting period, the decline in the department's overall performance since the last reporting period from *satisfactory* to *poor* is concerning. As in other reports released by our office this year, we present the results of our work while acknowledging the demands of conducting internal investigations and handling employee discipline cases in the midst of a global pandemic. Especially against this backdrop, we believe it remains critical that the department appropriately and timely address allegations of employee misconduct and criminal activities.

In assessing the first of the three entities, we found that hiring authorities performed in a *satisfactory* manner in discovering allegations of employee misconduct and referring those allegations to the Office of Internal Affairs. However, we determined that the hiring authorities' performance was *poor* in the quality and timeliness of their decision-making regarding Office of Internal Affairs' investigations, allegations, the processing of the cases, and the service of disciplinary actions. Hiring authorities conducted timely investigative and disciplinary findings conferences in just 63 percent of the cases and delayed serving disciplinary actions on peace officers in 48 percent of the cases.

The Office of Internal Affairs, the second entity, performed in a *satisfactory* manner in both processing referrals from hiring authorities and conducting investigations. The Office of Internal Affairs processed referrals from hiring authorities in a timely manner in 98 percent of cases and conducted thorough investigations in



97 percent of cases. However, we disagreed with the Office of Internal Affairs' decisions concerning hiring authority referrals in 10 percent of cases. Also, for cases involving the use of deadly force, Office of Internal Affairs' special agents did not comply with the department's internal time frames for completing these investigations in 45 percent of the cases.

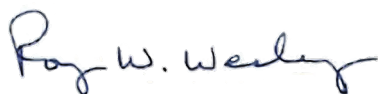
Department attorneys, the third entity, performed in a *satisfactory* manner in providing legal advice to the department while the Office of Internal Affairs processed employee misconduct referrals and conducted investigations. During this reporting period, department attorneys provided appropriate consultation in 91 percent of cases. However, we found department attorneys' performance during litigation to be *poor*, primarily resulting from the untimely service of disciplinary actions on peace officers.

As in our three prior reports, we conducted an analysis of the unnecessary costs the department incurred while it delayed in processing employee disciplinary cases. We found that for the cases we monitored and closed during the January 1, 2020, through June 30, 2020, reporting period, such delays resulted in approximately \$312,584 of unnecessary costs to the State and taxpayers. Over the past three reporting periods, the department has unnecessarily paid approximately \$850,736 in salary and benefits to employees during the delays.

Finally, we highlight the department's inefficient and costly practice whereby the Office of Internal Affairs delayed opening administrative investigations pertaining to incidents which also involve alleged criminal activity until the corresponding criminal investigations have concluded. Not only does this practice result in unnecessary costs in salary and benefits to ultimately dismissed employees, as noted in the preceding paragraph, but it can affect the viability of obtaining witness testimony and evidence, and taking disciplinary action. Consequently, we provide a recommendation to the department to develop and implement a policy that the Office of Internal Affairs will concurrently open an administrative case in those instances in which there is also a corresponding criminal investigation and that it not wait until the conclusion of the criminal investigation to conduct the administrative investigation.

We also highlight in this report the department's lack of a policy regarding the manner in which hiring authorities manage officers who are subject to domestic violence restraining orders. We recommend the department develop a policy concerning this issue. We also expound upon those situations in which department attorneys challenged a hiring authority's employee discipline decision. In doing so, the department attorneys at times invoked executive review when they merely disagreed with a hiring authority concerning the weight of the evidence in employee discipline cases. To address this concerning trend, we recommend the department modify its policy concerning executive reviews.

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

Contents

Illustrations	iv
Summary	1
Introduction	9
Background	9
Scope and Methodology	11
Monitoring Results	21
The Department’s Overall Performance in Investigating Employee Misconduct and in Handling Its Employee Disciplinary Process Was Poor	21
<i>Indicator 1</i> The Performance by Hiring Authorities in Discovering and Referring Allegations of Employee Misconduct Was Satisfactory	27
<i>Indicator 2</i> The Performance by the Office of Internal Affairs in Processing and Analyzing Hiring Authority Referrals of Employee Misconduct Was Satisfactory	33
<i>Indicator 3</i> The Performance by the Office of Internal Affairs in Investigating Allegations of Employee Misconduct Was Satisfactory	37
<i>Indicator 4</i> The Performance by Hiring Authorities in Determining Findings Regarding Alleged Misconduct and Processing the Misconduct Cases Was Poor	41
<i>Indicator 5</i> The Performance by Department Attorneys in Providing Legal Advice While the Office of Internal Affairs Processed Employee Misconduct Hiring Authority Referrals and Conducted Internal Investigations Was Satisfactory	40
<i>Indicator 6</i> The Performance of Department Attorneys and Employee Relations Officers in Providing Legal Representation During Litigation Was Poor	50
The Department Untimely Processed Dismissal Cases, Resulting in the Payment of Approximately \$312,584 to Ultimately Dismissed Employees During the Delays	54
The Office of Internal Affairs Delayed Opening Administrative Investigations in Cases in Which Employees Also Engaged in Alleged Criminal Activity	58
The Department Lacks a Policy Concerning Its Handling of Restraining Orders in Domestic Violence Cases	63
The Department Attorneys at Times Elevated Decisions Made by Hiring Authorities, Even When The Decisions Were Appropriate	72
The OIG Added Value in Its Monitoring of Cases From January Through June 2020	76
Recommendations	79
Response to the Report	81
The OIG’s Comments Concerning the Response Received From the Department of Corrections and Rehabilitation	83

Illustrations

Figures

1. The OIG’s Overall Rating of the Department’s Investigative and Discipline Process During the Period From January Through June 2020	1
2. Decisions the Office of Internal Affairs Made Concerning Hiring Authority Referrals and Cases the OIG Accepted for Monitoring During the Period From January Through June 2020	13
3. Percentages of Each Case Type the OIG Accepted for Monitoring During the Period From January Through June 2020	14
4. Types of Cases the OIG Monitored and Closed During the Period From January Through June 2020	15
5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed During the Period From January Through June 2020	16
6. The Six Indicators Used to Assess the Department’s Performance, and the Department’s Overall Ratings From January Through June 2020	20
7. Percentages of Cases Hiring Authorities Referred to the Office of Internal Affairs Within 45 Days	30
8. Timely Hiring Authority Referrals by Divisions; Division of Adult Institutions’ Missions; and Other Hiring Authorities	31
9. Percentages of Cases With Timely Determinations Made by the Office of Internal Affairs’ Central Intake Unit	33
10. Disagreements With Office of Internal Affairs’ Decisions Regarding Referrals in the 153 Cases the OIG Monitored and Closed From January Through June 2020	36
11. Number and Types of Deadly Force Used in Cases We Monitored and Closed From January Through June 2020	40
12. Administrative Cases: Findings Determined by Hiring Authorities	45
13. A Hiring Authority’s Options When an Officer Is Under a Restraining Order	66
14. Excerpts From a Notice of Nonpunitive Action	68

Illustrations (continued)

Tables

Terms Used in This Report	vii
1. Monitoring Criteria Used by the Office of the Inspector General	11
2. Ratings by Case Type: <i>Superior</i> , <i>Satisfactory</i> , and <i>Poor</i>	23
3. Assessment Indicators for 48 Cases Rated as <i>Poor</i>	24
4. Executive Review Cases	48
5. Detailed Information Regarding Costs Associated With Unnecessary Delays in Dismissal Cases	57
6. Types of Restraining Orders	71

Graphics

The California Department of Corrections and Rehabilitation: Institutions and Parole Regions	vi
The OIG’s Mandate	viii
The OIG Website: Case Summaries	3
Summary of Facts	7

“Scales of Justice” (cover): Graphic image designed by the U.S. Department of Justice; sourced via the internet

“Lady Justice” (page *viii*): Adapted from an illustration at www.vecteezy.com



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	Susanville
3	HDSP High Desert State Prison	Susanville
4	FSP Folsom State Prison	Represa
5	SAC California State Prison, Sacramento	Represa
6	CMF California Medical Facility	Yuba City
7	SOL California State Prison, Solano	Yuba City
8	MCSP Mule Creek State Prison	Ione
9	SO 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 Sainra Valley State Prison	Soledad
17	PVSP Pleasant Valley State Prison	Coalinga
18	COR 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	CM California Institution for Men	Chino
28	CIW California Institution for Women	Corona
29	CRC California Rehabilitation Center	Norco
30	CVSP Chuckawalla Valley State Prison	Bythe
31	ISP Ironwood State Prison	Bythe
32	CAL Calipatria State Prison	Calipatria
33	CEN Centinela State Prison	Imperial
34	RJ 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	DDCF Delano CCF	Delano
2	GS MCCF Golden State Modified CCF	McFarland
3	CV MCCF 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.

Terms Used in This Report	
Case Management System	The California Department of Corrections and Rehabilitation’s computer program and database that staff use to enter and maintain information regarding internal investigations and employee discipline cases.
Corrective Action	A documented nonadverse action such as verbal counseling, training, written counseling, or a letter of instruction that a hiring authority takes to assist the employee in improving work performance, behavior, or conduct. Corrective action cannot be appealed to the State Personnel Board.
Disciplinary Action	A documented action that is punitive in nature and intended to correct misconduct or poor performance or which terminates employment and may be appealed to the State Personnel Board. It is also the “charging” document served on an employee who is being disciplined, advising the employee of the causes for discipline and the penalty to be imposed. Also referred to as an “adverse action” or a “notice of adverse action.”
Department Operations Manual	The department’s operations manual. The full title is <i>California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual</i> (Sacramento: State of California, 2020). Commonly known as the DOM, it is available on the internet at https://www.cdcr.ca.gov/Regulations .
Employee Relations Officer	A person, who is not an attorney, employed by a California Department of Corrections and Rehabilitation institution, facility, or parole region responsible for coordinating disciplinary actions for the hiring authority and for representing the department at the State Personnel Board in cases not designated by the Employment Advocacy and Prosecution Team.
Employment Advocacy and Prosecution Team	A team of attorneys in the California Department of Corrections and Rehabilitation’s Office of Legal Affairs assigned to provide legal advice during internal investigations and to litigate employee discipline cases.
Executive Review	A supervisory- or management-level review conducted by a hiring authority, department attorney, and OIG attorney to resolve a significant disagreement regarding investigative findings, proposed discipline, or lack thereof, or a proposed settlement.
Hiring Authority	An executive, such as a warden, superintendent, or regional parole administrator, authorized by the Secretary of the California Department of Corrections and Rehabilitation to hire, discipline, and dismiss staff members under his or her authority.
Investigative and Disciplinary Findings Conference	A meeting at which the hiring authority makes decisions regarding the findings and penalty in an employee discipline case.
Office of Internal Affairs	The entity within the California Department of Corrections and Rehabilitation responsible for investigating allegations of employee misconduct.
Office of Internal Affairs’ Central Intake Unit	A unit of the Office of Internal Affairs consisting of special agents assigned to review referrals from hiring authorities regarding alleged employee misconduct.
Office of Internal Affairs’ Central Intake Panel	A collection of stakeholders led by the Office of Internal Affairs that reviews hiring authority referrals regarding allegations of employee misconduct and which is responsible for ensuring the referrals are appropriately evaluated. Although a department attorney and an OIG attorney provide input at Office of Internal Affairs’ Central Intake Panel meetings, a manager from the Office of Internal Affairs’ Central Intake Unit is the individual who makes decisions at the meetings regarding the disposition of hiring authority referrals.
Special Agent	In the context of this report, a special agent is an investigator employed by the California Department of Corrections and Rehabilitation assigned to investigate alleged employee misconduct.
State Personnel Board	A quasi-judicial board established by the California State Constitution that oversees merit-based job-related recruitment, selection, and disciplinary processes of State employees.

Source: The Office of the Inspector General.



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))

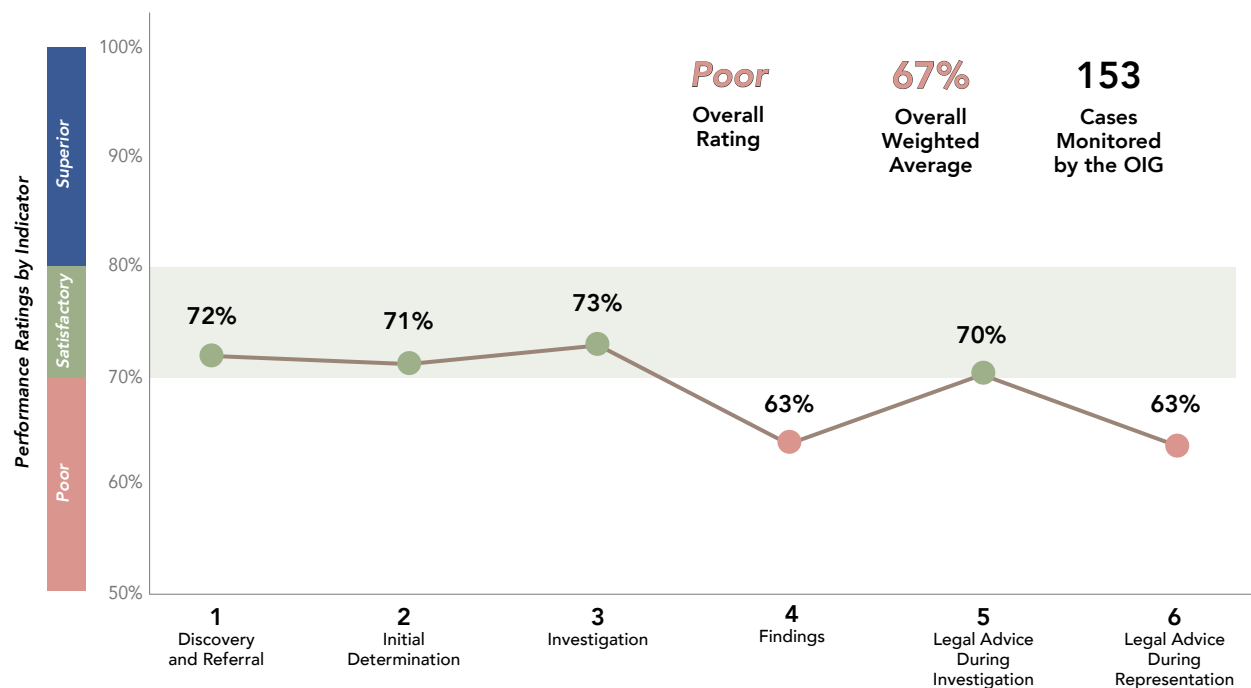
— *State of California*
Excerpted from Penal Code sections

Summary

The Office of the Inspector General (the OIG) 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 31st semiannual report, in which we detail our assessment of 153 employee misconduct cases OIG attorneys monitored and closed from January 1, 2020, through June 30, 2020. Concerning the 153 cases we monitored and closed within this time frame, the department’s overall performance for these 153 cases was *poor*.

The department’s performance was *satisfactory* in discovering and referring misconduct cases, making initial determinations regarding the referrals, performing the investigation, and providing legal advice during the investigation. However, the department’s performance was *poor* when making and processing investigative and disciplinary findings regarding alleged misconduct, and providing legal representation during litigation. Figure 1 below depicts each assessment area and the corresponding percentages.

Figure 1. The OIG’s Overall Rating of the Department’s Investigative and Discipline Process During the Period From January Through June 2020



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

During this reporting period, the performance indicator most significantly affecting the department's *poor* performance was the department's investigative and disciplinary findings after the Office of Internal Affairs completed its investigation. Of the cases in which the department made investigative and disciplinary findings, the department's performance was *poor* in 63 of the 132 cases, or 48 percent. In the OIG's opinion, in 60 of the 132 cases in which the department made findings, the department did not handle the cases with due diligence. Further, the hiring authorities did not timely consult with the OIG and department attorney regarding the sufficiency of the evidence, investigation, findings, and disciplinary determinations in 49 cases, or 37 percent. Specifically, the department's untimely service of disciplinary actions affected this performance indicator. Out of the 132 cases in which the department served a disciplinary action, the department failed to timely serve the disciplinary action in 60 cases, or 45 percent. Likewise, in cases in which the department provided legal representation during litigation, the department's performance was *poor* in 37 of the 77 cases, or 48 percent.

In our report for the January 2019 through June 2019 reporting period, we announced our implementation of a new methodology for assessing the department's performance in conducting internal investigations and handling employee misconduct cases. We used the same methodology for this reporting period of January 1, 2020, through June 30, 2020. 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 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 who monitored the cases answered various compliance- or performance-related questions concerning each of the six indicators. In addition, they rated each of the six indicators as *superior*, *satisfactory*, or *poor* based on the collective answers to the indicator questions. They then analyzed each case as a whole to determine an overall rating for each case, using the same descriptors. From there, they assigned a

point value to each indicator rating and case rating (discussed in detail in the Methodology section of this report), 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 to the conclusion of any employee misconduct litigation for the period of January 1, 2020, through June 30, 2020. Using this methodology, we concluded the department's overall performance was *poor* when conducting internal investigations and handling employee misconduct cases for the cases we monitored and closed from January 1, 2020, through June 30, 2020. 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). 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 following settings:

From the pull-down menu in the Reporting Period field, choose **Jan 1–Jun 30, 2020**

- 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:** A dropdown menu set to 'Jan 1–Jun 30, 2020'.
- Published Date:** A dropdown menu set to 'ALL'.
- Case Number:** A dropdown menu set to 'ALL'.
- Case Type:** A dropdown menu set to 'ALL'.
- Division or Mission:** A dropdown menu set to 'ALL'.
- Region:** A dropdown menu set to 'ALL'.
- Allegation:** A dropdown menu set to 'ALL'.
- Finding:** A dropdown menu set to 'ALL'.
- Penalty:** A dropdown menu set to 'ALL'.
- Case Rating:** A dropdown menu set to 'ALL'.
- Incident Start Date:** An empty text field.
- Incident End Date:** An empty text field.
- General Cases Only:** A dropdown menu set to 'No'.
- Reset Filters:** A button.
- Filtered Cases:** A counter showing '153'.

The main content area shows a case summary for incident **18-002806-DM**. The incident date is **January 1, 2019**. The case type is **Administrative Investigation**. The indicator ratings are shown as a bar chart with a 'Poor' rating. The case rating is also 'Poor'. The summary text describes an alleged misconduct by a parole administrator involving a supervising parole agent and a man in the office lobby.

Hiring Authorities

Although hiring authorities' performance in timely referring employee misconduct allegations to the Office of Internal Affairs has been an ongoing concern we have raised in four prior semiannual reports, 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 during the January through June 2020 reporting period. During this reporting period, we found that hiring authorities timely submitted allegations of employee misconduct to the Office of Internal Affairs in 82 percent of the cases, but did not timely submit allegations in 18 percent of the cases. The hiring authorities have improved in this area since the last reporting period from July through December 2019, when they delayed referring matters to the Office of Internal Affairs in 30 percent of the cases. Overall, 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. In addition, the delays could impact the timely service of disciplinary actions on employees found to have committed misconduct, which for officers,¹ is within one year of the discovery of the alleged misconduct.²

We also assessed hiring authorities concerning the quality and timeliness of their decision-making regarding Office of Internal Affairs' investigations, allegations, the processing of the cases, and the service of disciplinary actions. We determined that hiring authorities' performance was *poor* overall in these areas because hiring authorities timely conducted investigative and disciplinary findings conferences in only 63 percent of the cases. However, despite delayed investigative and disciplinary findings conferences, we found that hiring authorities made appropriate determinations regarding the allegations in 124 of 132 cases in which they made findings, or 94 percent of the cases. Further, hiring authorities decided to impose discipline in 103 of the 132 cases. Of these 103 cases in which hiring authorities decided to impose discipline, in our opinion, hiring authorities selected the appropriate penalty in 91 of 103 cases, or 88 percent.

For those 103 cases in which hiring authorities decided to impose discipline, especially on officers, they continued to delay service of disciplinary actions, another concern we have raised in the past. The department did not serve disciplinary actions on officers within 30 days of the decision to impose discipline, which departmental policy requires, in 48 percent of the cases. As it follows, the department timely served

1. In this report, when we use the word *officer*, we are referring to correctional peace officers, including correctional officers, sergeants, lieutenants, parole agents, special agents, and so forth.

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

disciplinary actions on officers in accordance with departmental policy in only 52 percent of the cases.

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 January and June 2020, we found the Office of Internal Affairs performed overall in a *satisfactory* manner when processing referrals from hiring authorities and when conducting investigations. To reach this conclusion, OIG attorneys answered approximately 49 questions for each monitored investigation to assess the performance of the Office of Internal Affairs. The questions measure the performance of Office of Internal Affairs' special agents from their initial processing of hiring authority referrals, the actual investigation of allegations, the preparation of reports, the performance of any follow-up investigation requested by hiring authorities, and the timeliness of these activities. (Some assessment questions did not apply to certain cases. For example, some questions assess the effectiveness of criminal investigative techniques. Those questions are not applicable to Office of Internal Affairs' administrative investigations.) If a special agent conducted a proper, thorough, and timely investigation, the Office of Internal Affairs received a *satisfactory* rating for that case. In those instances in which the Office of Internal Affairs' special agent went above and beyond what was expected of him or her, then the Office of Internal Affairs received a *superior* rating. Therefore, in stating that the Office of Internal Affairs performed overall in a *satisfactory* manner, we conclude that it overall met the standards expected of those performing internal investigations. To that end, we found that the Office of Internal Affairs timely processed referrals from hiring authorities in 98 percent of the cases, that it conducted thorough investigations in 97 percent of the cases, and that it completed thorough investigative reports in 99 percent of the cases.

There were some areas we examined, however, in which we determined the Office of Internal Affairs needed improvement, including its initial decision-making concerning hiring authority referrals and the timeliness in which it completed deadly force investigations. From January through June 2020, the Office of Internal Affairs made decisions regarding 1,006 employee misconduct referrals from hiring authorities. The Office of Internal Affairs received some of these referrals before January 1, 2020. Of these 1,006 decisions, the OIG disagreed with the Office of Internal Affairs' decision in 102 cases (10 percent). As in the past, the nature of the disputes included the Office of Internal Affairs' decisions to not add allegations to investigations, such as dishonesty or domestic violence allegations, or its decisions to not open full investigations rather than return the referral to hiring authorities to address the misconduct allegations without investigations.

In September 2019, the Office of Internal Affairs modified its policy concerning deadly force investigations to relax the time frames in which its special agents needed to complete such investigations and in which to complete interviews in criminal investigations involving deadly force. For the cases the OIG monitored and closed during the January through June 2020 reporting period, the Office of Internal Affairs did not timely complete deadly force investigations in five of the 11 cases (45 percent). This is a decline in the rate of timeliness from July through December 2019, for which it did not timely complete deadly force investigations in six of 15 cases (40 percent).

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 its decision-making process regarding hiring authority referrals, as well as throughout an investigation, if a department attorney is assigned to the case. In addition, department attorneys provide legal representation to hiring authorities for some cases during the employee disciplinary process.

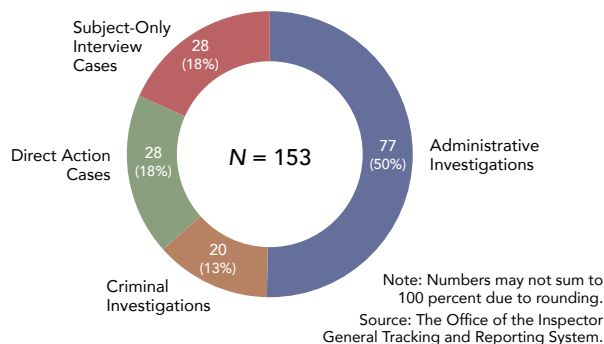
We found that department attorneys performed overall in a *satisfactory* manner in providing legal advice to the department while the Office of Internal Affairs processed employee misconduct referrals and conducted investigations. For cases we monitored and closed from January through June 2020, department attorneys provided appropriate consultation in 91 percent of the cases. However, they still delayed making entries into the department's case management system regarding critical dates in 26 out of 133 cases, or 20 percent. Failing to enter critical dates on time could cause hiring authorities to untimely impose discipline because the critical dates are not properly tracked.

Despite department attorneys' overall *satisfactory* performance in the areas described above, we found their performance during litigation to be *poor*. The primary reason for the *poor* assessment was service of disciplinary actions that did not comply with departmental policy. In 37 out of 75 cases, or 49 percent, the department attorneys did not ensure that the disciplinary actions complied with departmental policy.

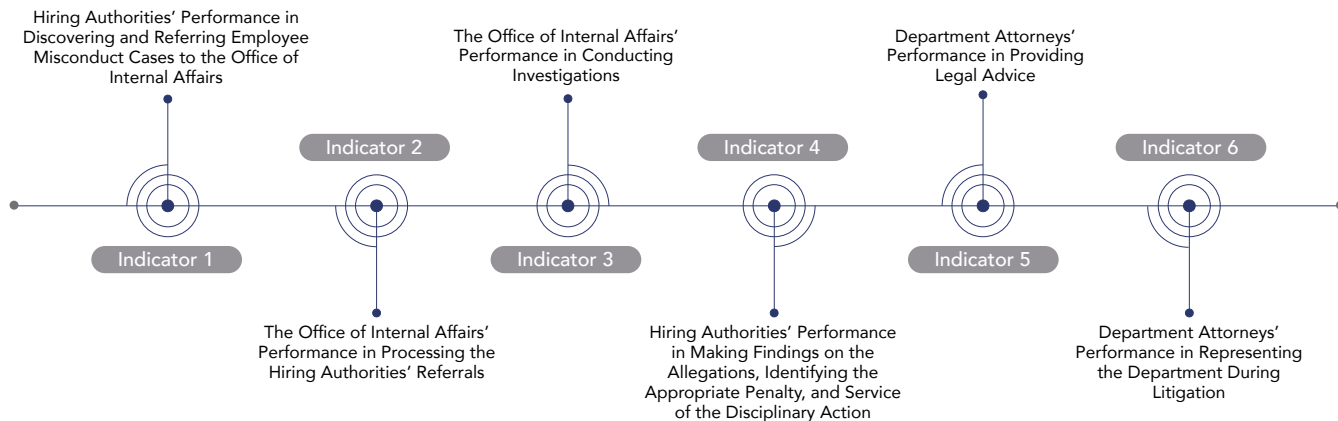
SUMMARY OF FACTS: MONITORING INTERNAL INVESTIGATIONS AND THE EMPLOYEE DISCIPLINARY PROCESS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, JANUARY–JUNE 2020

The Office of the Inspector General (the OIG) is mandated by the California Penal Code to oversee internal investigations and employee discipline cases of the California Department of Corrections and Rehabilitation (the department), and to advise the public regarding the adequacy of each investigation and whether employee discipline is warranted. Since 2005, the OIG has fulfilled its mission to bring transparency to investigations and employee discipline through diligent and trustworthy monitoring, reporting, and recommending improvements to the department.

Types of Cases the OIG Monitored and Closed During the Period From January Through June 2020



The Six Indicators Used to Assess the Department's Performance



Overall Ratings for the January Through June 2020 Reporting Period

Overall Rating: **Poor**
Overall Weighted Average: 67%

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

Indicator 1 – Hiring Authorities	72%
Indicator 2 – Office of Internal Affairs	71%
Indicator 3 – Office of Internal Affairs	73%
Indicator 4 – Hiring Authorities	63%
Indicator 5 – Department Attorneys	70%
Indicator 6 – Department Attorneys	63%

Recommendations to Address Departmental Delays in Opening Administrative Investigations in Which There Was Also a Criminal Investigation; to Address a Lack of Policy Concerning Officers Subject to Restraining Orders; and to Modify the Department's Executive Review Policy

- Develop and implement a policy that the Office of Internal Affairs concurrently open and conduct administrative investigations when a related criminal investigation is pending and not wait for the conclusion of the criminal investigation to commence the administrative investigation.
- Formulate and implement a policy for the department to manage officers subject to domestic violence restraining orders.
Modify departmental policy and limit the ability of a department attorney to challenge and elevate a hiring authority's decision in an employee discipline case to three circumstances: when a hiring authority is clearly ignoring critical evidence; when no reasonable person could make the findings the hiring authority made; or if the department attorney believes the hiring authority is acting contrary to policy or law.
-

(This page left blank for reproduction purposes.)

Introduction

Background

As discussed in the Summary, the California Penal Code mandates the Office of the Inspector General (the OIG) 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 approval to address the allegations without an investigation.³ 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 monitors the process, provides recommendations to the Office of Internal Affairs regarding decisions on referrals, and determines which cases the OIG will monitor. The Office of Internal Affairs, not the panel, makes the final decision regarding the action it will take on each hiring authority referral. The options are:

- To conduct an administrative investigation;⁴
- To conduct a criminal investigation;⁵
- 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;

3. Department Operations Manual, Section 33030.5.2 (hereafter: the DOM). The DOM is defined in table of terms at the beginning of this report.

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 without further action concerning the allegation or allegations because there is no reasonable belief misconduct occurred; or
- To reject the referral and return it to the hiring authority to conduct further inquiry.⁶

The OIG’s monitoring activities include overseeing the Office of Internal Affairs’ investigations that meet our monitoring criteria, as set forth on the next page, and evaluating the performance of the special agents’ investigative work. We also monitor department attorneys’ performances during internal investigations, as well as the work of department advocates, including department attorneys and employee relations officers, in any subsequent disciplinary and litigation process. Finally, we assess how well hiring authorities perform in determining allegations of employee misconduct, including the imposition of discipline, as well as how they process the misconduct cases.

The information discussed in this report concerns the 153 cases we monitored and closed during the period from January through June 2020, including assessments of each departmental unit’s performance in individual cases. Further, we detail herein the administrative cases in which the Office of Internal Affairs conducted an investigation or interview of an 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 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, because the OIG also monitors cases involving alleged criminal conduct, we include the details of criminal investigations we monitored and closed during the period from January through June 2020. 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.

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 an 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. Because 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 officer employee discipline cases. Table 1 below 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
Use of Force	Use of force resulting in, or which could have resulted in, serious injury or death or discharge of a deadly weapon.
Dishonesty	Perjury; material misrepresentation in an official law enforcement report; failure to report a use of force resulting in, or which could have resulted in, serious injury or death; or material misrepresentation during an internal investigation.
Obstruction	Intimidating, dissuading, or threatening witnesses; retaliation against an incarcerated person or against another person for reporting misconduct; or the destruction or fabrication of evidence.
Sexual Misconduct	Sexual misconduct prohibited by California Penal Code section 289.6.
High Profile	Cases involving alleged misconduct by high-ranking department officials; misconduct by any employee causing significant risk to institutional safety and security, or for which there is heightened public interest, or resulting in significant injury or death to an incarcerated person, ward, or parolee (excluding medical negligence).
Abuse of Position or Authority	Unorthodox punishment or discipline of an incarcerated person, ward, or parolee; or purposely or negligently creating an opportunity or motive for an incarcerated person, ward, or parolee to harm another incarcerated person, ward, parolee, staff, or self, i.e., suicide.
Criminal Conduct	Trafficking of items prohibited by the California Penal Code or criminal activity that would prohibit an 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* (N.D. Cal. 1995) 889 F.Supp. 1146 (citation (URL) accessed on 10-9-20).

Based on information the Office of Internal Affairs provided, from January 1, 2020, through June 30, 2020, the Office of Internal Affairs received 1,025 employee misconduct referrals, most of them with information hiring authorities submitted electronically using a new process the department implemented on November 20, 2019. Of the 1,025 referrals, the Office of Internal Affairs received a small portion, 44 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*.

Between January 1, 2020, and June 30, 2020, the Office of Internal Affairs made decisions concerning a total of 1,006 referrals, some of which it received before January 1, 2020. Of the 1,006 referrals for which it made decisions, the Office of Internal Affairs found that in 929 referrals (92.2 percent), there was sufficient evidence to approve the hiring authority’s request for investigation or approval to take direct disciplinary action on the misconduct allegations. For the other 78 referrals (7.8 percent), the Office of Internal Affairs determined there was insufficient evidence of employee misconduct or criminal activity and, therefore, rejected those referrals.

Of the 1,006 referrals, the Office of Internal Affairs returned 467 referrals (46.4 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 122 cases (12.1 percent). These are cases in which the Office of Internal Affairs determined that, in order for a hiring authority to make decisions regarding the allegation, it was only necessary to interview the subject of the investigation and not conduct any other investigative work, such as interviewing other witnesses or collecting other evidence. In total, the Office of Internal Affairs determined that, in 589 referrals (58.5 percent), it did not need to conduct a full administrative investigation.

The Office of Internal Affairs determined full administrative investigations were warranted in 246 referrals (24.5 percent). These investigations included interviewing the employees suspected of misconduct; interviewing percipient witnesses, including incarcerated persons and private citizens, depending on the nature of the alleged misconduct; and obtaining additional documentary evidence, such as computer forensic reports. Lastly, the Office of Internal Affairs concluded there was enough evidence to warrant criminal investigations in 93 referrals (9.2 percent).⁷

Generally, once the Office of Internal Affairs approved the referrals, the referrals become cases. Cases that require full investigations typically involved the most serious misconduct and, therefore, constituted the

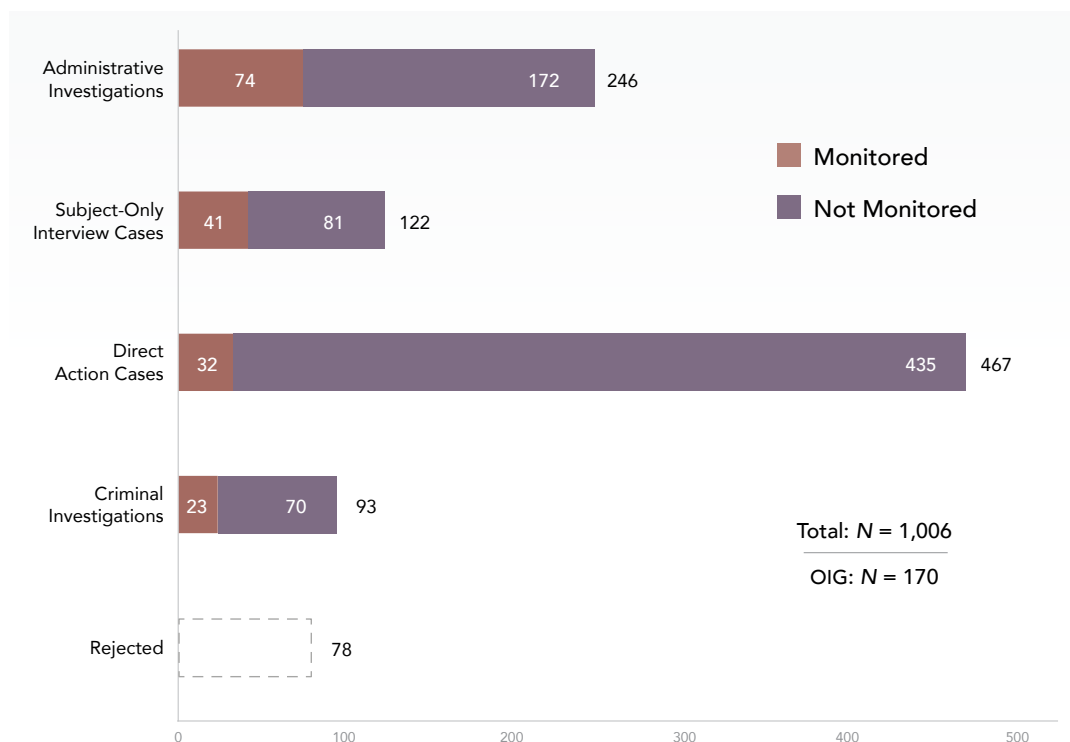
7. Numbers may not sum to 100 percent due to rounding.

highest percentage of cases we monitored. From January through June 2020, the OIG identified 170 cases (17 percent) for monitoring out of the 1,006 referrals in which the Office of Internal Affairs approved the hiring authority's referrals.⁸

Of the 170 cases the OIG identified for monitoring, 74 cases (44 percent) involved an administrative investigation and 23 cases (14 percent) involved a criminal investigation. In 32 of the 170 cases (19 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 170 cases we identified for monitoring, in 41 of the cases (24 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 below reflects the number of cases opened by the Office of Internal Affairs from January through June 2020, the types of cases, and the number of cases the OIG accepted for monitoring as to each case type.

Figure 2. Decisions the Office of Internal Affairs Made Concerning Hiring Authority Referrals and Cases the OIG Accepted for Monitoring During the Period From January Through June 2020

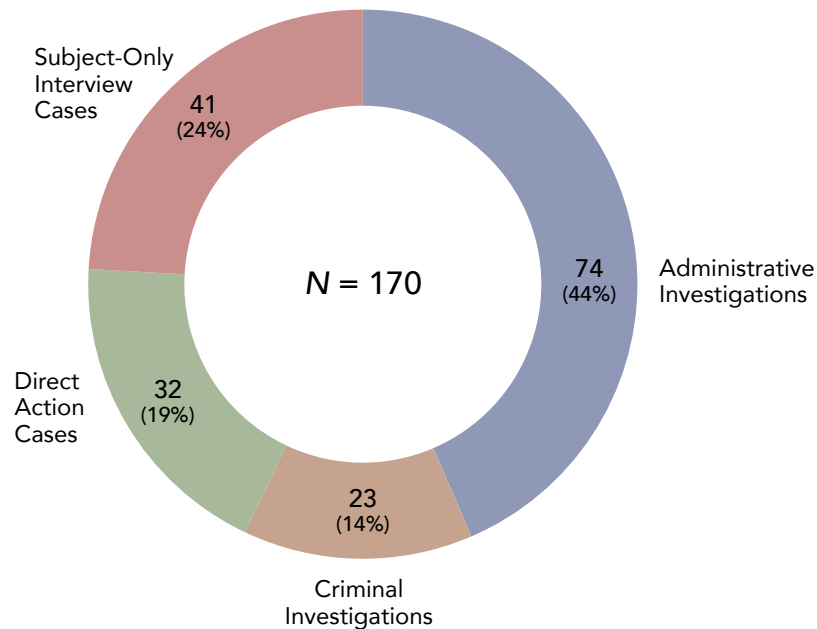


Sources: The California Department of Corrections and Rehabilitation's Case Management System and the Office of the Inspector General Tracking and Reporting System.

8. The OIG began monitoring these 170 cases that the Office of Internal Affairs approved for investigation, employee interview, or direct action in the January through June 2020 reporting period. Elsewhere in the report, we mention that we are reporting on 153 cases that the OIG monitored and closed during the January through June 2020 reporting period.

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 January Through June 2020



Note: Numbers may not sum to 100 percent due to rounding.

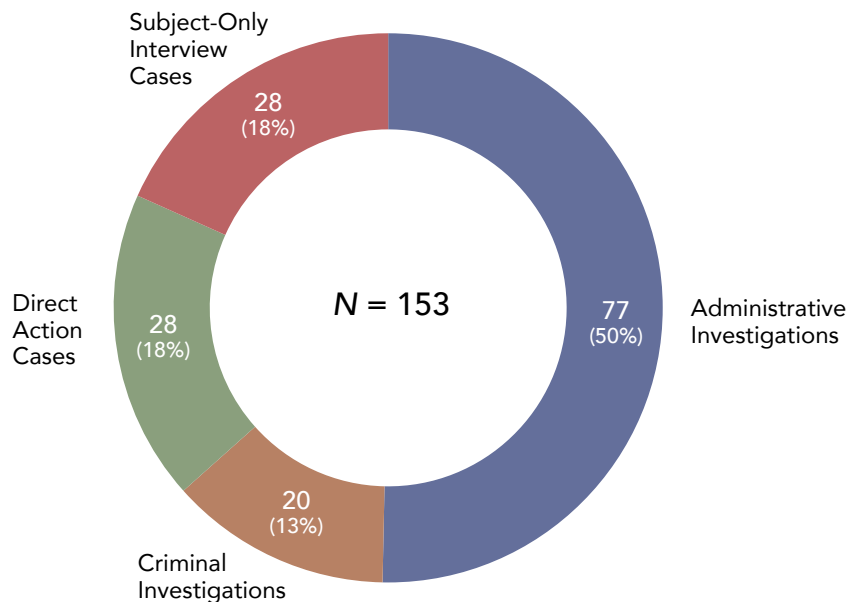
Source: The Office of the Inspector General Tracking and Reporting System.

Not all of the cases we accepted for monitoring during this reporting period were completed and closed before June 30, 2020. We only provide a final assessment of a case once we conclude our monitoring and close it. This report provides an assessment of 153 cases the OIG monitored and closed from January 1, 2020, through June 30, 2020, some of which were opened before January 1, 2020. Of the 153 cases the OIG monitored and closed between January 1, 2020, and June 30, 2020, 133 cases involved alleged administrative misconduct. The remaining 20 involved alleged employee criminal activity.⁹ Among the 153 cases we monitored and closed, 137 involved officers, nine involved employees who were not officers, and seven involved both officers and employees who were not officers.

9. Although there were 133 administrative cases, hiring authorities held investigative and findings conferences in 132 cases because an officer died before the conference in one case.

Figure 4 below reflects the percentages of case types the OIG monitored, closed, and is reporting for the January through June 2020 period.

Figure 4. Types of Cases the OIG *Monitored* and *Closed* During the Period From January Through June 2020

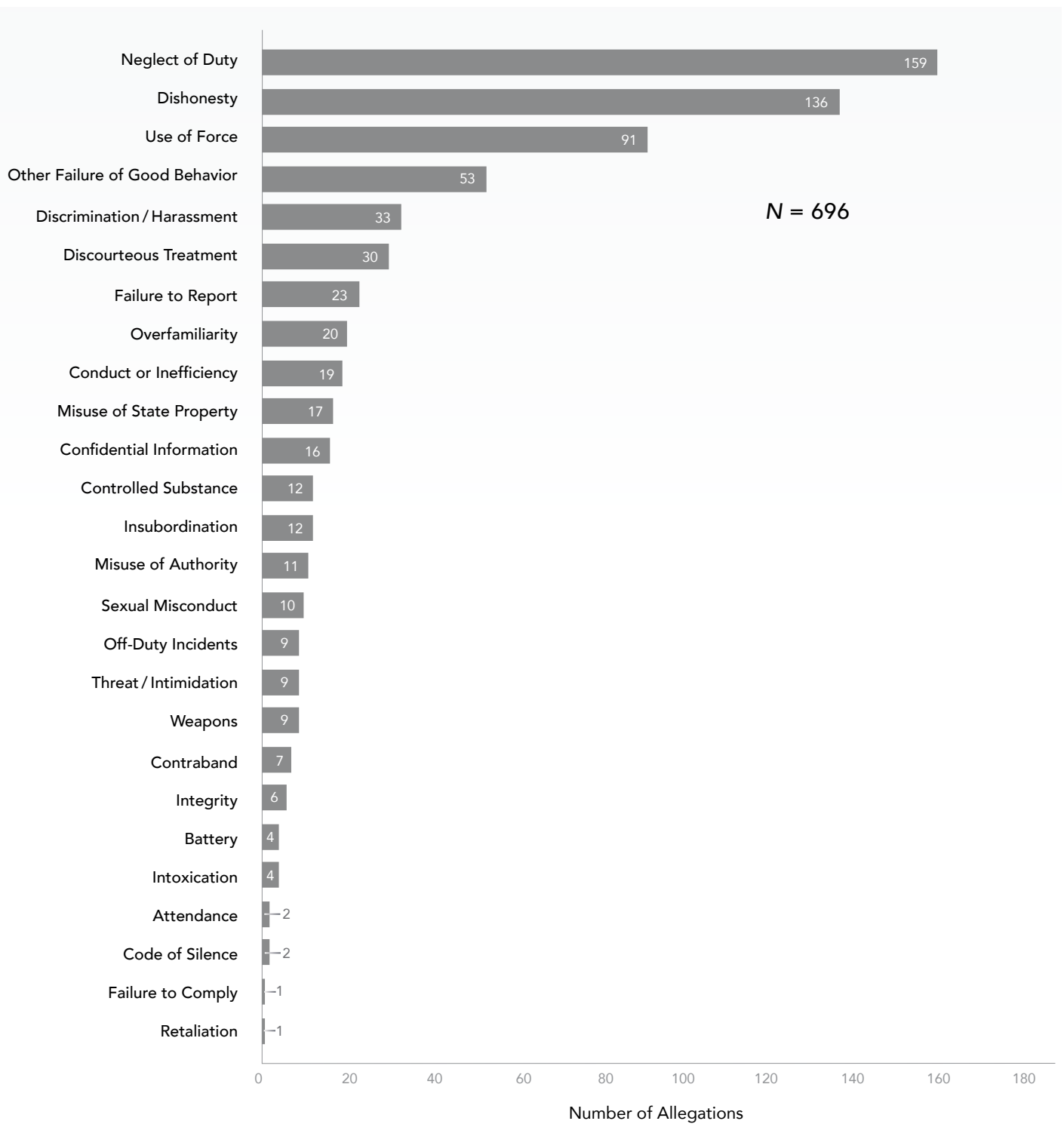


Note: Numbers may not sum to 100 percent due to rounding.

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 that a counselor used unnecessary force on an incarcerated person, failed to report the unnecessary force, misused his authority, lied in a report, and misused the State email system to send non-work-related emails. Although there was only one case, the case involved five types of allegations. Figure 5 on the next page includes the number of unique allegations in the cases we monitored from January through June 2020.

Figure 5. Allegation Distribution in Administrative Cases the OIG Monitored and Closed During the Period From January Through June 2020



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

During the January through June 2019 reporting period, the OIG implemented a new methodology to provide more specific assessments of each of the department's units and its compliance with policies and procedures. Specifically, the OIG 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 for the January through June 2019 reporting period, and the July through December 2019 reporting period, we believe this approach achieves our goal of providing a more accurate and detailed analysis of the department's performance. As such, we are continuing to use this methodology herein. The following list describes the six performance indicators:

- **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 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, during any subsequent investigation, and upon 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, because 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 January through June 2020 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 last two reporting periods: the January through June 2019 reporting period and the July through December 2019 reporting period. The point system is as follows:

Superior 4 points

Satisfactory 3 points

Poor 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 four 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.¹⁰

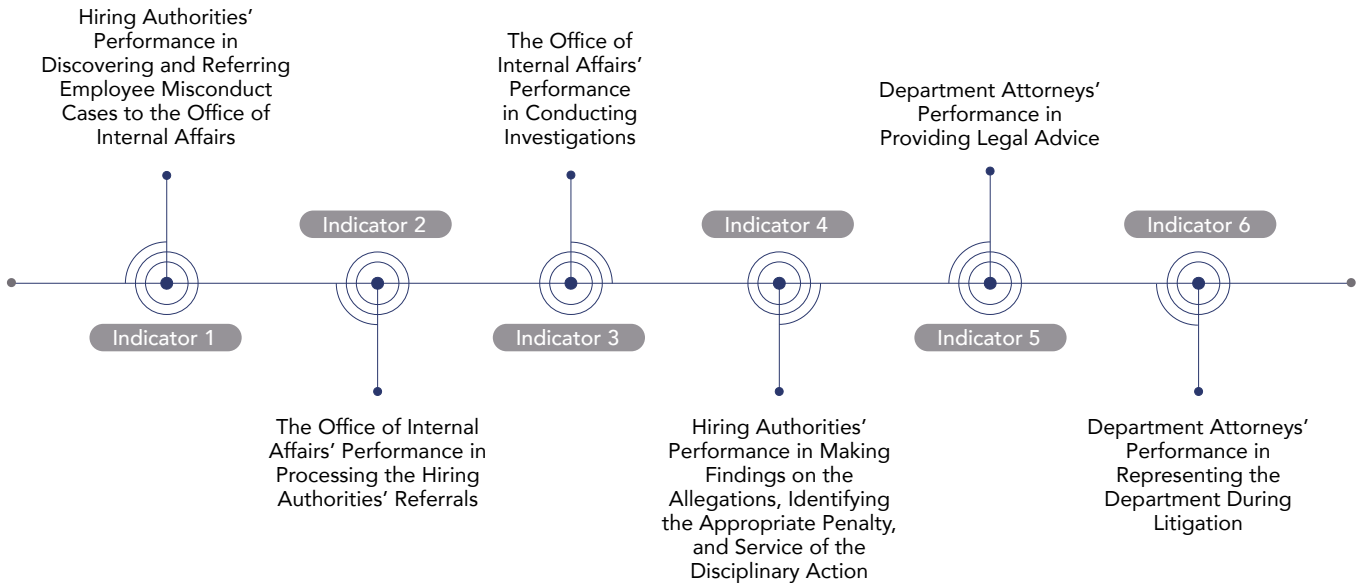
Using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent.

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

On the next page, we offer a brief overview of the six indicators and the corresponding performance ratings for the period of this report.

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

Figure 6. The Six Indicators Used to Assess the Department’s Performance, and the Department’s Overall Ratings for January Through June 2020



Overall Rating: *Poor*
 Overall Weighted Average: 67%

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



Source: The Office of the Inspector General.

Monitoring Results

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

During the January through June 2020 reporting period, the OIG found the department's overall performance in investigating allegations of employee misconduct and handling its employee disciplinary process to be *poor*. 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 based its rating for each of the six indicators on the answers to specific compliance- or performance-related questions. To answer the questions, we used the standards outlined in the Department Operations Manual and other established procedures, such as the Office of Internal Affairs' Field Guide and its deadly force investigations procedures memoranda, as well as our opinion.

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. Because 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.¹¹ 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. Because the department does not assign department attorneys to its 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 the hiring authority conducted.

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

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.

After considering the ratings for our six indicators, we found the department's overall performance was *poor*. Specifically, we assessed the department's overall performance as *satisfactory* in 105 cases and *poor* in 48 cases. We did not find that the department's overall performance was *superior* in any of the cases. 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	63% (45 cases)	37% (26 cases)	100% (71 cases)
Criminal Investigation	None	87% (13 cases)	13% (2 cases)	100% (15 cases)
Direct Action	None	79% (22 cases)	21% (6 cases)	100% (28 cases)
Direct Action With Subject Interview	None	57% (16 cases)	43% (12 cases)	100% (28 cases)
Administrative Use of Deadly Force	None	67% (4 cases)	33% (2 cases)	100% (6 cases)
Criminal Use of Deadly Force	None	100% (5 cases)	None	100% (5 cases)
Totals	None	69% (105 cases)	31% (48 cases)	100% (153 cases)

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

Further, we found the department's overall performance was *poor* in conducting internal investigations and handling employee discipline cases, and the overall percentage score was 67.16 percent. For the 48 cases we assessed as *poor* overall, the combined assessment score was 50 percent. The indicator ratings for the 48 cases we rated as *poor* can be seen in Table 3 on the next page.

Table 3. Assessment Indicators for 48 Cases Rated as Poor

N = 48

Ratings

Superior Satisfactory Poor

■ ■ ■

OIG Case Number	Discovery and Referral	Initial Determination	Investigation	Findings	Legal Advice During Investigation	Legal Representation During Litigation	Case Rating
18-0026630-DM	■	■	■	■	■	■	■
18-0027063-DM	■	■	■	■	■	■	■
18-0027907-DM	■	■	■	■	■	■	■
18-0028061-DM	■	■	■	■	■	■	■
19-0028460-DM	■	■	■	■	■	■	■
19-0028461-DM	■	■	■	■	■	■	■
19-0028521-DM	■	■	■	■	■	■	■
19-0028585-DM	■	■	■	■	■	■	■
19-0028664-DM	■	■	■	■	■	■	■
19-0029480-DM	■	■	■	■	■	■	■
19-0030102-DM	■	■	■	■	■	■	■
19-0030103-DM	■	■	■	■	■	■	■
19-0030676-DM	■	■	■	■	■	■	■
19-0030973-DM	■	■	■	■	■	■	■
19-0031234-DM	■	■	■	■	■	■	■
19-0031237-DM	■	■	■	■	■	■	■
19-0031394-DM	■	■	■	■	■	■	■
19-0031397-DM	■	■	■	■	■	■	■
19-0031460-DM	■	■	■	■	■	■	■
20-0032413-DM	■	■	■	■	■	■	■
18-0026087-DM	■	■	■	■	■	■	■
18-0026285-DM	■	■	■	■	■	■	■
19-0028806-DM	■	■	■	■	■	■	■
19-0029111-DM	■	■	■	■	■	■	■
19-0029419-DM	■	■	■	■	■	■	■
19-0029704-DM	■	■	■	■	■	■	■
19-0030008-DM	■	■	■	■	■	■	■
19-0030253-DM	■	■	■	■	■	■	■
19-0030270-DM	■	■	■	■	■	■	■
19-0030328-DM	■	■	■	■	■	■	■
19-0030480-DM	■	■	■	■	■	■	■
19-0031645-DM	■	■	■	■	■	■	■
20-0032280-DM	■	■	■	■	■	■	■
20-0033179-DM	■	■	■	■	■	■	■
18-0025474-DM	■	■	■	■	■	■	■
18-0026622-DM	■	■	■	■	■	■	■
18-0026623-DM	■	■	■	■	■	■	■
18-0027653-DM	■	■	■	■	■	■	■
18-0028279-DM	■	■	■	■	■	■	■
19-0028527-DM	■	■	■	■	■	■	■
19-0028740-DM	■	■	■	■	■	■	■
19-0029712-DM	■	■	■	■	■	■	■
19-0029898-CM	■	■	■	■	■	■	■
19-0030022-DM	■	■	■	■	■	■	■
19-0030260-DM	■	■	■	■	■	■	■
19-0030962-CM	■	■	■	■	■	■	■
19-0031152-DM	■	■	■	■	■	■	■
19-0031329-DM	■	■	■	■	■	■	■

Notes: The first column on the left-hand side of the table refers to the region in which the cases originated. A gray block in a column indicates this category was not applicable.

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

In the 48 cases assessed overall as *poor* during this reporting period, the department's performance was *poor* in five of the six assessment indicators: the Office of Internal Affairs' processing and analyzing referrals from the hiring authorities; 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 attorneys) contributed to the overall *poor* ratings in some fashion.

However, we assessed the department as *satisfactory* in discovering and referring allegations of employee misconduct for the 48 cases we rated overall as *poor*. The department improved its performance in this area since the last reporting period of July through December 2019, when we assessed the department's performance as *poor*.

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

- In one case, a youth counselor allegedly directed a racial slur toward another youth counselor, failed to remove a disruptive ward from a classroom, and lied during an Office of Internal Affairs' interview. The hiring authority delayed in referring the matter to the Office of Internal Affairs. Upon receiving the case, the Office of Internal Affairs did not include all the relevant allegations. While the hiring authority sustained the allegation that the youth counselor was dishonest, the hiring authority did not sustain the other allegations and decided a 60-working-day suspension was the appropriate penalty. The OIG did not agree with the proposed penalty and elevated the matter to the hiring authority's supervisor. The hiring authority's supervisor sustained the allegations that the youth counselor lied and used a racial slur and dismissed the youth counselor. However, after the youth counselor filed an appeal with the State Personnel Board, the hiring authority, without sufficient justification, entered into a settlement agreement with the youth counselor, pursuant to which his penalty was reduced to a six-month suspension.
- The second case involved an allegation that an officer lied while testifying at a State Personnel Board hearing in order to conceal the misconduct of another officer. The hiring authority did not conduct a thorough inquiry into the allegation nor obtain relevant evidence before referring the matter to the Office of Internal Affairs. Subsequently, the Office of Internal Affairs did not make an appropriate and timely determination regarding the alleged misconduct. While the hiring authority initially sustained the allegation and decided to dismiss the officer, a subsequent

hiring authority¹² later decided to impose a 10 percent salary reduction for 12 months. The OIG did not concur with the penalty reduction and elevated the matter to the hiring authority's supervisor. The supervisor decided to offer to settle the case against the officer for a 30-working-day suspension. The OIG again did not concur and elevated the matter two more levels to an undersecretary. However, even though the OIG had elevated the matter to the undersecretary, the department attorney forwarded a settlement agreement to the officer for a 30-working-day suspension. The department settled the case for 30-working-day suspension without identifying any new evidence, flaws, or risks justifying the reduction in penalty.

- In the third case, an associate warden allegedly failed to attend multiple mandatory court proceedings pertaining to litigation involving an incarcerated person. After outside law enforcement arrested the associate warden for his failure to appear in court, the associate warden allegedly failed to report his arrest to the hiring authority and was absent from work without approval. The Office of Internal Affairs did not make reasonable efforts to promptly interview the associate warden, including providing the associate warden with an unequivocal directive to appear at the interview. The hiring authority delayed 31 days after policy required in conducting the investigative and disciplinary findings conference, did not make the correct penalty findings, and improperly entered into a settlement agreement. The department attorney did not recommend that the hiring authority sustain three allegations for failure to appear at the mandatory court hearings and impose a corresponding higher penalty. The OIG sought a higher level of review, which resulted in the hiring authority's supervisor sustaining the three allegations and imposing a two-working-day suspension. Prior to the investigative and disciplinary findings conference, the department demoted the associate warden to a supervising counselor position, pursuant to an unrelated case. After a *Skelly* hearing, the department entered into a settlement agreement and reduced the penalty for the instant case to a one-working-day suspension.

12. A new warden.

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

Pursuant to a memorandum, the Office of Internal Affairs issued on July 20, 2014, hiring authorities are required to refer matters of suspected employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct. We based our assessment in part on this procedure, as well as on departmental policy governing the responsibilities of hiring authorities, including the responsibility to conduct initial inquiries to ensure there is sufficient information before referring a matter to the Office of Internal Affairs.¹³ For the January through June 2020 reporting period, we found that hiring authorities performed overall in a *satisfactory* manner in discovering and referring allegations of employee misconduct to the Office of Internal Affairs. In five cases, we found the hiring authorities' performance in discovering and referring misconduct allegations garnered a *superior* assessment rating, whereas we found *poor* performance in 23 cases. In 125 cases, we assessed the hiring authorities' performance as *satisfactory*.

We determined that hiring authorities were still late in submitting matters to the Office of Internal Affairs, a concern we have raised in the past. During the January through June 2020 reporting period, hiring authorities submitted untimely referrals in 21 percent of the cases. Despite the continued untimeliness of referrals, hiring authorities have notably improved in this area since the July through December 2019 reporting period, when they submitted untimely referrals in 30 percent of the cases.

For the 23 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 18 cases, which is 78 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*.

Further, for all cases we closed between January and June 2020, the longest delay by a hiring authority in submitting a referral to the Office of Internal Affairs was 294 days, or more than eight months after policy required. For the cases we closed between January and June 2020, the second-longest delay was 147 days after policy required, and the shortest delay was 46 days after learning of the alleged misconduct, or one day after policy required.

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.

Indicator Score
Satisfactory
(72.06%)

Superior
5 cases

Satisfactory
125 cases

Poor
23 cases

On the other hand, hiring authorities timely referred alleged misconduct allegations to the Office of Internal Affairs in all five 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 eight days.

During the January through June 2020 reporting period, delayed referrals by hiring authorities most frequently occurred in cases that involved allegations of failure to report misconduct. Hiring authorities did not timely refer matters involving alleged failure to report misconduct in 38 percent of those cases. The following are examples of delayed referrals involving allegations of failure to report misconduct:

- In one case, a chief deputy warden allegedly failed to report to a warden that a counselor was allegedly falsifying time sheets. The hiring authority did not refer the matter to the Office of Internal Affairs until 113 days after the department learned of the alleged misconduct, 68 days after policy required.
- A second case involved a counselor who, among other allegations, allegedly used unnecessary force on an incarcerated person and failed to report his use of force. Further, a case records technician allegedly failed to report the counselor's admission that he used unnecessary force on the incarcerated person. The hiring authority did not refer the matter to the Office of Internal Affairs until 173 days after the department learned of the misconduct, 128 days after policy required.
- In a third case, an officer allegedly engaged in sexual misconduct with an incarcerated person, improperly searched for information concerning the incarcerated person in a departmental database, and failed to report, in accordance with the *Prison Rape Elimination Act*, that a second incarcerated person confronted the officer and accused him of sexual misconduct with the first incarcerated person. The hiring authority did not refer the matter to the Office of Internal Affairs until 74 days after the department learned of the alleged misconduct, 29 days after policy required.

The department is divided into different divisions including the Division of Adult Institutions and the Division of Juvenile Justice. Of the hiring authorities from the Division of Adult Institutions, which the department groups into different collectives of institutions called *missions*, all four missions improved their performance in referring suspected misconduct allegations to the Office of Internal Affairs. These missions are *General Population*, *High Security*, *Female Offender Programs and Services/Special Housing*, and *Reception Centers*. For the January through June 2020 reporting period, the Reception Centers mission improved its timeliness the most. Specifically, hiring authorities from the Reception Centers mission timely submitted 82 percent of the referrals, compared with the

prior reporting period of July through December 2019, when the same mission submitted 61 percent of the referrals in a timely manner.

Of note, for the January through June 2020 reporting period, the General Population mission reversed 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 was also 86 percent. For cases we closed during the July through December 2019 reporting period, the General Population mission timely submitted just 67 percent of the referrals. In contrast, for the current reporting period of January through June 2020, the General Population mission improved its performance slightly and submitted 69 percent of referrals in a timely manner.

For cases the OIG monitored and closed between January and June 2020, hiring authorities determined that dismissal was the appropriate penalty in 45 cases. In five of those 45 cases, or 11 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 July through December 2019, hiring authorities delayed referring such matters to the Office of Internal Affairs in five of 36 cases, or 14 percent. The percentage of delayed referrals has decreased.

In one of the cases we closed between January and June 2020 in which the hiring authority initially determined dismissal was appropriate, the hiring authority delayed 100 days after discovering the alleged misconduct and 55 days after policy required in referring the matter to the Office of Internal Affairs. After the investigation, the hiring authority sustained allegations that an officer pushed his wife, attempted to prevent her from reporting the incident, lied in a memorandum about the incident, and lied on a recorded telephone call to outside law enforcement; the hiring authority, therefore, dismissed the officer. The officer did not file an appeal with the State Personnel Board.

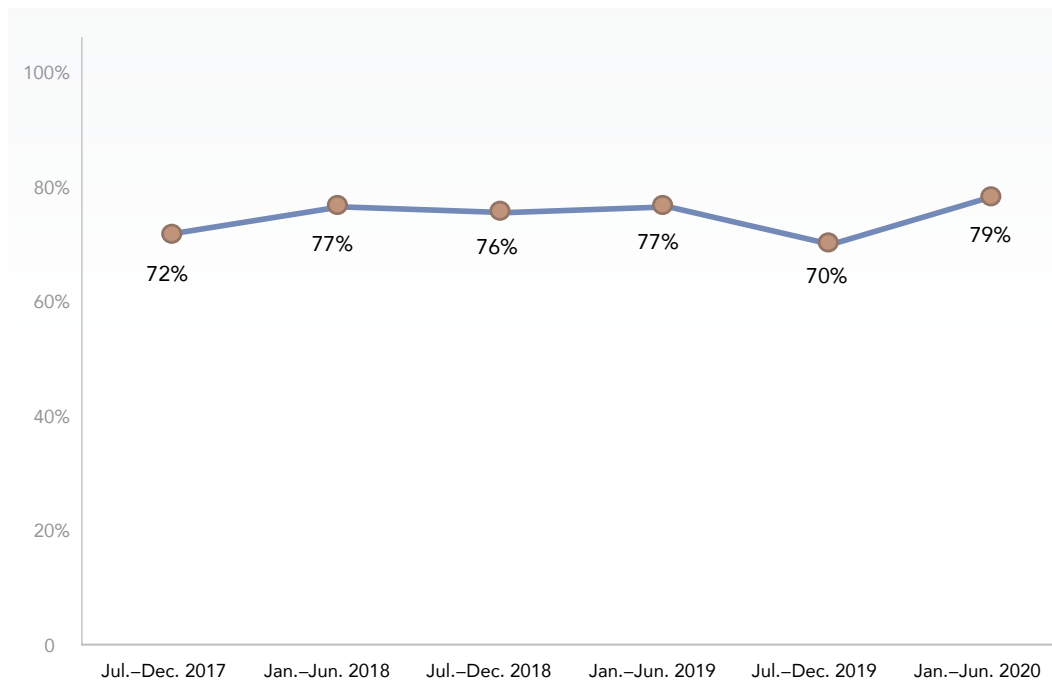
In another case in which the hiring authority initially determined dismissal was appropriate, but did not timely refer the allegations to the Office of Internal Affairs, the hiring authority ultimately suspended a youth counselor for six months. In the remaining three cases, two officers and a psychologist resigned in lieu of dismissal. For these four cases, the shortest delay was 65 days after discovery, which was 20 days after policy required, and the longest delay was 294 days after discovery, which was 249 days after policy required.

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

- In one case, an officer and a second officer allegedly placed an incarcerated person into a holding cell as punishment, left the incarcerated person unattended, failed to obtain prior supervisory approval to place the incarcerated person in the holding cell, and failed to inspect the cell or complete a holding cell log. The hiring authority did not refer the matter to the Office of Internal Affairs until 79 days after learning of the alleged misconduct, 34 days after policy required.
- In a second case, an officer allegedly video recorded himself and an office technician engaged in a sexual act and distributed the recording to a lieutenant without the office technician's knowledge or consent. The lieutenant and a sergeant allegedly failed to report the incident and also distributed the video recording. A second officer, who obtained a copy of the video recording, allegedly distributed the video recording and while on duty, played it on his personal mobile phone for an uninvolved officer. The hiring authority did not refer the suspected misconduct to the Office of Internal Affairs until 192 days after learning of the alleged misconduct, 147 days after policy required.

Figure 7 below reflects the percentages of timely hiring authority referrals statewide over the last six reporting periods.

Figure 7. Percentages of Cases Hiring Authorities Referred to the Office of Internal Affairs Within 45 Days

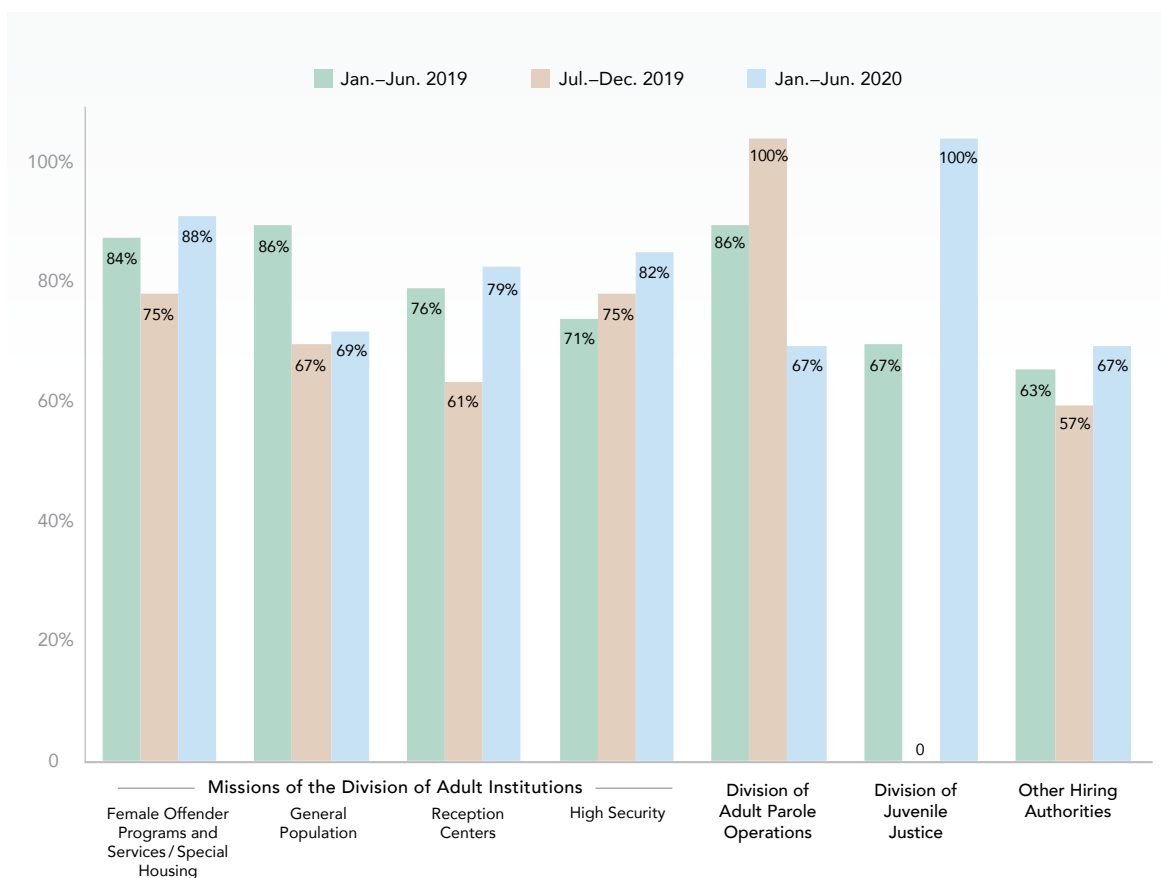


Note: This figure reflects cases that the OIG monitored and closed during the period from January through June 2020 and the five prior reporting periods.

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

Figure 8 below presents specific information regarding hiring authority referrals by divisions and also by the Division of Adult Institutions' missions, as established by the department, for the reporting period of January through June 2020, 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 8. 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 January through June 2020 and the two prior reporting periods.

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

For cases we monitored and closed between January and June 2020, hiring authorities from the Division of Adult Institutions' *General Population* mission timely referred suspected employee misconduct to the Office of Internal Affairs in 69 percent of the cases. This is a slight increase in performance compared with the July through December 2019 reporting period, during which the same hiring authorities timely referred suspected misconduct in 67 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 129 cases we monitored and closed between January and June 2020. We assessed the Office of Internal Affairs' performance as *poor* in 24 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 also consider timeliness to be critical, as timely initial determinations can impact the timeliness of any resulting investigation and the hiring authority's determination and service of discipline. Timeliness is critical because statute sets forth the deadlines by which disciplinary actions must be served, and failure to meet the deadlines could preclude the department from pursuing disciplinary action against an employee.

For cases we monitored and closed between January and June 2020, we determined the Office of Internal Affairs made a timely determination regarding hiring authority referrals in 98 percent of the cases (150 of 153 cases). Similar to the July through December 2019 reporting period in which the Office of Internal Affairs made a timely determination in 97 percent of the cases, the Office of Internal Affairs again performed

Indicator Score
Satisfactory
(71.08%)

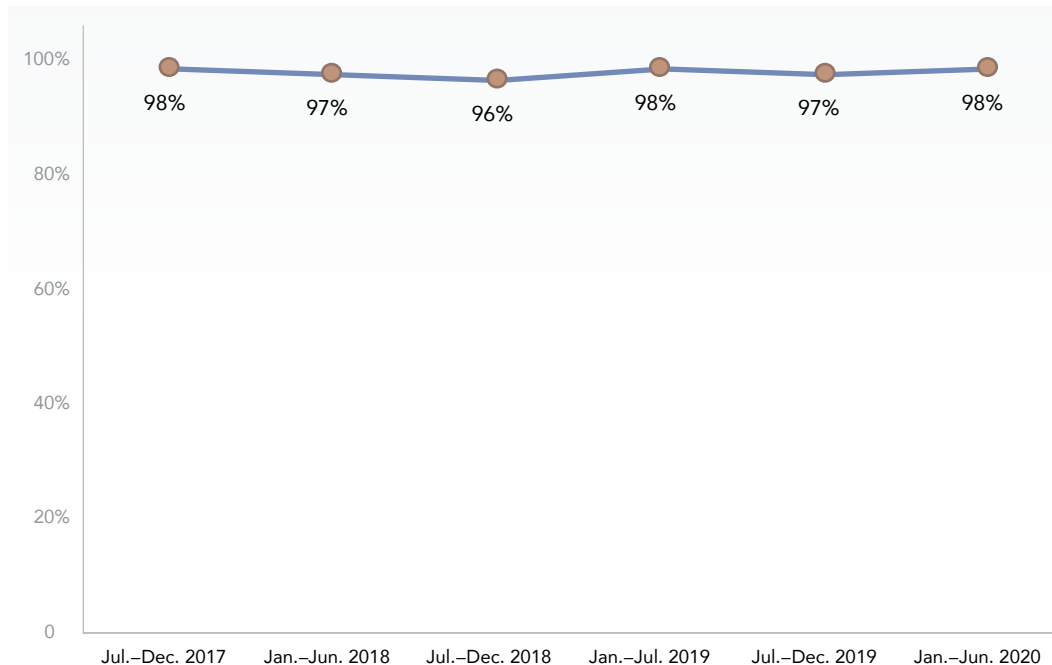
Superior
Zero cases

Satisfactory
129 cases

Poor
24 cases

very well in this area. Figure 9 below shows the percentages of cases for which the department made timely determinations over the last six reporting periods.

Figure 9. 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 January through June 2020 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 January 1, 2020, and June 30 2020, we disagreed with the Office of Internal Affairs' decisions in 102 of 1,006 cases (10 percent). In 12 of these 102 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 warrants 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 the request for an 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 102 cases in which we disagreed with the Office of Internal Affairs' decision from January 1, 2020, through June 30, 2020, we elevated two cases to the Office of Internal Affairs' management. In one case, we recommended that the Office of Internal Affairs add dishonesty allegations against the officers. In a second case, we recommended that the Office of Internal Affairs include an allegation that an officer assaulted a prostitute and open a full investigation to interview the prostitute and the officer. The Office of Internal Affairs reversed its decisions on both these cases.

For the 153 cases the OIG monitored and closed during the period of January through June 2020, the OIG disagreed with the Office of Internal Affairs in 15 cases (10 percent). Figure 10 on the next page lists these disagreements.

Figure 10.
**Disagreements With Office of Internal Affairs' Decisions
 Regarding Hiring Authority Referrals in the 153 Cases
 the OIG Monitored and Closed From January Through June 2020**

9	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)
3	OIA's decision to not open a full administrative investigation (but approved an interview of the subject)
3	OIA's decision to not add a dishonesty allegation
3	OIA's decision to not add another allegation (not dishonesty)
2	OIA's decision to either remove or not add a subject to a case
9	OIA's decision to not approve an interview of a subject
2	OIA's decision to not open an administrative investigation simultaneously with a criminal investigation
28	Total Disagreements

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

Of the 153 cases, the OIG disagreed with the Office of Internal Affairs in 15 cases. In nine of those 15 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 four of the 15 cases, the OIG disagreed with more than one decision, and in the remaining 11, we disagreed with one decision.

From January through June 2020, OIA made decisions regarding 1,006 hiring authority referrals and rejected 78 of those referrals. The OIG disagreed with eight of the rejections and elevated one of those decisions to OIA management. After reconsideration, OIA left the case rejected.

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

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 January through June 2020, we found that the Office of Internal Affairs' performance in investigating allegations of employee misconduct was *satisfactory* overall. The OIG determined that the Office of Internal Affairs' performance was *superior* in three cases, *satisfactory* in 109 cases, and *poor* in 13 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.

As noted in the Summary of this report, OIG attorneys answered a series of approximately 49 assessment questions to measure the performance of Office of Internal Affairs' special agents. Some assessment questions did not apply to certain cases. For example, some questions were applicable to only those cases in which the Office of Internal Affairs conducted criminal investigations, but not administrative investigations. If a special agent conducted a proper, thorough, and timely investigation, the Office of Internal Affairs received a *satisfactory* rating for that case. In those cases in which the Office of Internal Affairs' special agent went above and beyond what was expected of him or her, then the Office of Internal Affairs received a *superior* rating.

For cases the OIG monitored and closed between January through June 2020, the OIG concluded that special agents completed all necessary and relevant interviews in 100 percent of cases, and asked all relevant questions and used effective interviewing techniques in 98 percent of the cases. Further, special agents thoroughly and appropriately conducted investigations in 97 percent of cases. Special agents included all relevant facts and evidence in 99 percent of their reports, and addressed all appropriate allegations in all except one of their reports.

For the three cases in which we found the special agent's performance to be *superior* during the January through June 2020 reporting period, a

Indicator Score
Satisfactory
(73.00%)
<i>Superior</i>
3 cases
<i>Satisfactory</i>
109 cases
<i>Poor</i>
13 cases

number of factors contributed to that rating, including how quickly the special agent completed the investigation. In addition, in some cases, we found that special agents thoroughly prepared for all aspects of the investigations and used very effective interviewing techniques. Below are highlights from the three cases in which we identified *superior* performance:

- In one case, in addition to diligently reviewing the available video and documentary evidence, a special agent discovered additional potential misconduct involving a nurse, an officer, and a sergeant.
- In a second case, a special agent conducted an exemplary interview of a lieutenant involving allegations of battery by the lieutenant on his seven-year-old son. The special agent was extremely well prepared and methodically questioned the lieutenant about his prior statements to outside law enforcement and compared them with statements from civilian witnesses. The special agent also quickly recognized that the lieutenant provided inconsistent statements during his Office of Internal Affairs' interview and obtained an admission from the lieutenant that he provided misleading statements during the investigation conducted by outside law enforcement.
- In a third case, after three incarcerated persons attacked a fourth incarcerated person on an exercise yard, an officer allegedly fired a round from a Mini-14 rifle, striking an incarcerated person in the arm and stopping the fight. The Office of Internal Affairs opened an administrative investigation, and a special agent conducted thorough interviews and completed the investigation within one month of assignment.

The Office of Internal Affairs relaxed its time frame for completing deadly force investigations and improved its timeliness in completing those investigations.

Between January and June 2020, the OIG monitored and closed 11 cases the Office of Internal Affairs investigated regarding the use of deadly force. Six of these cases involved administrative investigations and the remaining five involved criminal investigations. The OIG assessed all 11 of these cases as *satisfactory*, despite the finding that special agents did not comply with the department's internal time frames in five of the 11 cases. Pursuant to the department's deadly force investigation procedures in place at the time of three 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.¹⁴

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

For the deadly force cases the OIG monitored and closed between January and June 2020, special agents completed deadly force investigations within 90 days of assignment in six of the 11 deadly force investigations (55 percent), but did not complete the deadly force investigations within that time frame in five of the 11 cases (45 percent). This is an improvement from the July through December 2019 reporting period during which the Office of Internal Affairs timely completed deadly force investigations in six of 15 cases, or 40 percent. Of the five deadly force investigations not completed within the required time frame between January and June 2020, the longest delay was 186 days after the incident (96 days after policy required). Three of the delays were in cases involving administrative investigations, with two involving a criminal investigation.

Concerning criminal investigations in deadly force cases we monitored and closed between January and June 2020, the Office of Internal Affairs completed all interviews within the required 72-hour time frame in two of the five criminal deadly force cases, or 40 percent. The percentage of timely interviews has decreased since our July through December 2019 report, when the percentage was 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 in which there is an investigative need for 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."¹⁵ Three of the 11 deadly force cases we monitored and closed between January and June 2020 predated both of the revisions, and of the remaining incidents that occurred after the revisions, the Office of Internal Affairs completed the investigations within the required time frame in all but three of the cases.

Of the 11 deadly force investigation cases, eight cases involved incidents in which the shooter aimed at and intended to shoot an individual, or in some cases animals (four involved dogs). In one of the cases, after two incarcerated persons attacked a third incarcerated person with weapons in a dayroom, an officer fired a round from a Mini-14 rifle, striking one of the attacking incarcerated persons and stopping the attack; the incarcerated person later died. In another incident, an incarcerated person using a weapon and wearing a protective mask, attacked three

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

officers in a dayroom. The three officers deployed pepper spray. One officer struck the incarcerated person in the head with a baton, stopping the attack. The final incident involved a lieutenant who participated in an operation with other departmental officers and with outside law enforcement to apprehend a fugitive parolee. The parolee attempted to shoot them with a revolver. The lieutenant fired eight rounds from a rifle, and an outside law enforcement officer fired four rounds from a rifle, wounding the parolee and killing a dog.



Figure 11.

Types of Deadly Force Used

	<i>Totals</i>
Shots for Effect	32
Warning Shots	0
Baton	1
Physical Force	1
Total	34



Source: Office of the Inspector General Tracking and Reporting System. Figures are for the period from January through June 2020.

Photographs courtesy of the Department of Corrections and Rehabilitation.

Figure 11 reflects the numbers and types of deadly force used in the incidents the OIG monitored and closed during the January through June 2020 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 fired three shots for effect from a Mini-14 rifle, and 25 additional officers and a sergeant fired multiple less-lethal rounds, two of which struck an incarcerated person on the jaw and a second incarcerated person on the head. In addition, in four cases, two incidents gave rise to both administrative and criminal investigations, but we only count each use of force once because there were only two incidents.

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 a 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. A hiring authority is required to review the investigative report and supporting materials within 14 days of receipt. 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 January and June 2020, 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 *satisfactory* in 69 cases, and *poor* in 63 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 and disciplinary findings conference, we assessed hiring authorities based on a 14-day time frame pursuant to our interpretation of the Department Operations Manual provision.¹⁶ However, 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. For the January through June 2020 reporting period, the OIG found that the hiring authorities conducted investigative and disciplinary findings conferences within 14 days, or attempted to schedule the conferences within 14 days and held the conferences within 30 days in only 63 percent of the cases (83 of 132). Although this is a modest improvement from the 58 percent considered timely in the

Indicator Score
Poor
(63.07%)

Superior
Zero cases

Satisfactory
69 cases

Poor
63 cases

16. DOM, Section 33030.13.

July through December 2019 reporting period, the number of delayed conferences is still of concern. Delayed conferences often resulted in untimely service of disciplinary actions.

Untimely investigative and disciplinary findings conferences and delayed service of disciplinary actions on officers were the primary reasons for *poor* assessments. This was particularly true in dishonesty cases. In the 64 cases in which at least one employee was suspected of being dishonest, the department did not conduct timely investigative and disciplinary findings conferences in 25 of the cases, or 39 percent.

Timely investigative and disciplinary findings conferences are crucial because if the hiring authority finds an employee was dishonest, the presumptive penalty would be dismissal from the department. Such delays may unnecessarily extend the payment of salary and cause the department to retain dishonest employees in positions in which they can continue to inflict harm.

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

When hiring authorities decided to dismiss employees, they often delayed in conducting investigative and disciplinary findings conferences. During the January through June 2020 reporting period, the hiring authorities delayed in conducting the investigative and disciplinary findings conferences in 12 of 45 cases, or 27 percent. This is equal to the 27 percent of cases involving dismissal in the July through December 2019 reporting period. Notably, in cases in which the hiring authorities decided to dismiss the employees, but the employees resigned or retired before the hiring authorities served disciplinary actions or prior to the effective date of the disciplinary actions, hiring authorities delayed conducting the investigative and disciplinary findings conferences in six cases.

The longest delay in conducting the investigative and disciplinary findings conferences was 110 days after policy required. In this case with the longest delay, two hiring authorities considered allegations that an officer kicked an incarcerated person in the head and lied during an Office of Internal Affairs' interview, and a recreational therapist lied during an Office of Internal Affairs' interview. However, the hiring authority for the recreational therapist did not conduct the investigative and disciplinary findings conference until 110 days after policy required. Ultimately, the hiring authority for the recreational therapist found insufficient evidence to sustain the allegation, but the OIG did not concur with this determination. Regarding the officer, the hiring authority dismissed the officer, and the officer appealed the dismissal to the State Personnel Board. After a hearing, the State Personnel Board upheld the dismissal.

The department did not serve disciplinary actions on 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 January and June 2020, the OIG found that, once again, the department did not perform well in timely serving disciplinary actions on officers.

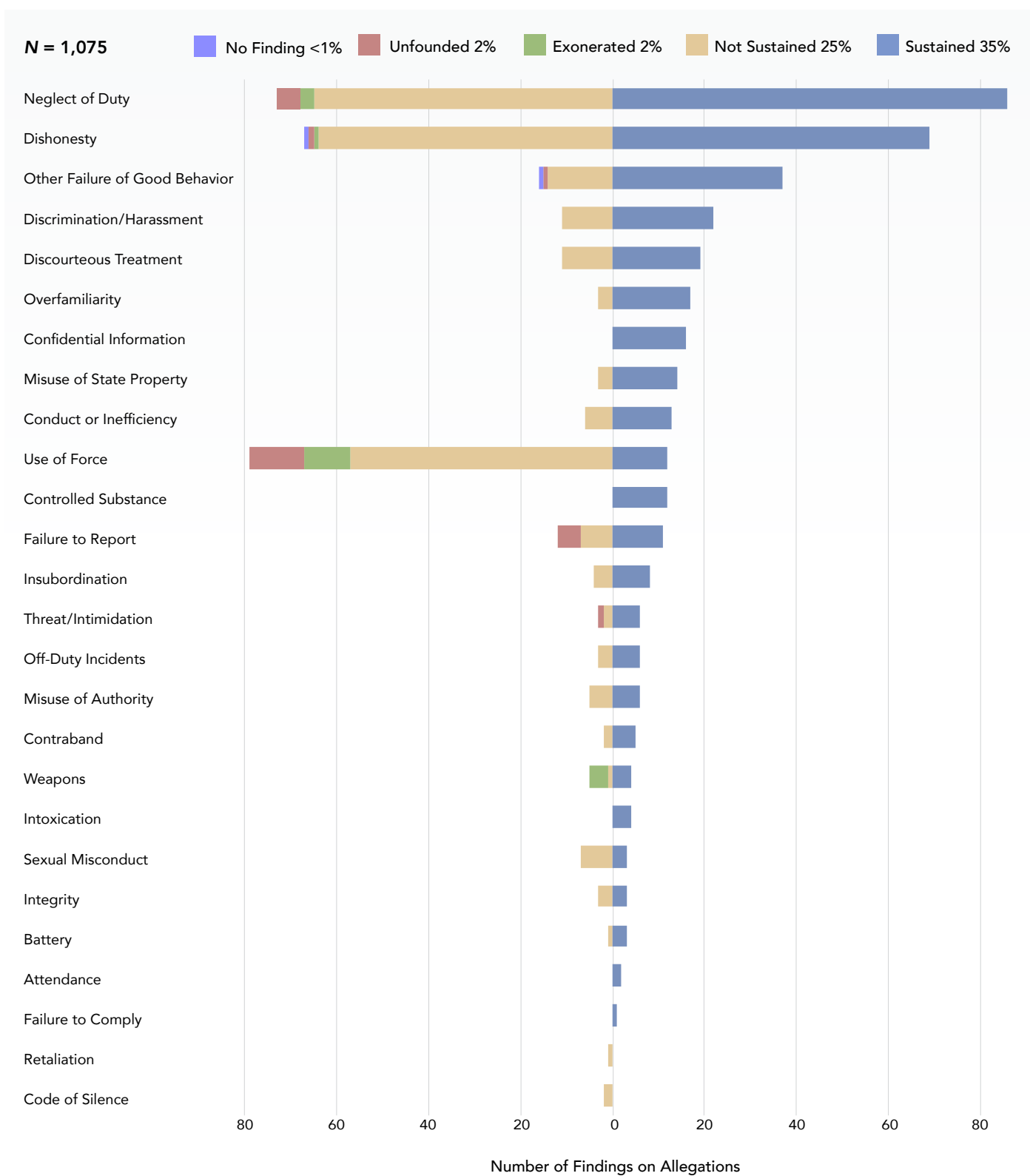
Pursuant to policy, the department is required to serve disciplinary actions on officers within 30 days of the hiring authority's decision to take disciplinary action. The hiring authority made his or her decision at an investigative and disciplinary findings conference. A department attorney, if one was assigned, attended the conference, and an OIG attorney attended in those cases we monitored.

For the January through June 2020 reporting period, the department served disciplinary actions on officers in 75 cases. Of those 75 cases, the department did not timely serve the disciplinary actions in 38 cases, or 51 percent. For the previous reporting period of July through December 2019, we found the department delayed serving disciplinary actions on officers in 38 of 66 cases, or 58 percent. Between January and June 2020, the shortest delay in serving officers with disciplinary action was 33 days after the hiring authority decided to take disciplinary action, which was three days after policy required. The longest delay was 365 days after the decision to take disciplinary action, or 335 days after policy required. While the percentage has improved slightly from the prior reporting period, the data still demonstrate 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 alleged misconduct. If the hiring authority determined further evidence was needed 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 determinations regarding the allegations and, if the allegations were sustained, whether to impose corrective action or disciplinary action.

For cases monitored and closed between January and June 2020, the OIG determined that hiring authorities identified the appropriate subjects and allegations in 98 percent of the cases, and made the appropriate findings in 94 percent of those cases. In our opinion, hiring authorities decided on the appropriate penalty in 88 percent of the cases in which they decided to impose a penalty. Figure 12 on the next page displays the findings hiring authorities made regarding allegations presented to them for review.

Figure 12. Administrative Cases: Findings Determined by Hiring Authorities

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

For cases the OIG monitored and closed from January through June 2020, the OIG determined that hiring authorities proposed unreasonable courses of action and subsequently sought review by departmental executives in six cases.

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 regarding 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.¹⁷ 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 a director, an undersecretary, or the Secretary of the department. We use the executive review process only in very limited cases (see Table 4, pages 46 and 47).

Of the 132 administrative cases the OIG monitored and closed during the January through June 2020 reporting period, the OIG sought a higher level of review in six cases. In two cases, department attorneys and a hiring authority sought a higher level of review.

In one case, a youth counselor allegedly directed a racial slur toward a second youth counselor, failed to assist the second youth counselor in removing a disruptive ward from a classroom, and allegedly lied during an Office of Internal Affairs interview. The hiring authority sustained the allegation that the youth counselor was dishonest, but not the other allegations, and decided a 60-working-day suspension was the appropriate penalty. The OIG did not agree with the proposed penalty and elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor sustained allegations that the youth counselor lied and used a racial slur and dismissed the youth counselor. The OIG concurred. The youth counselor filed an appeal with the State Personnel Board. Before the State Personnel Board hearing, the department entered into a settlement agreement with the youth counselor, reducing the penalty to a six-month suspension, and the youth counselor agreed to attend training and waive his right to appeal if he sustained a related disciplinary action within three years. The OIG did not concur with the settlement.

In another case, an officer allegedly lied while testifying at a State Personnel Board hearing in order to conceal the misconduct of another officer. The hiring authority sustained the allegation and decided to dismiss the officer. The OIG concurred. However, after a *Skelly* hearing, the hiring authority informed the OIG and the department attorney that the hiring authority was amenable to withdrawing the dismissal and

17. DOM, Section 33030.14.

instead imposed a 10 percent salary reduction for 12 months. The officer, unaware of the hiring authority's proposed offer, offered to settle the case for a 10 percent salary reduction for 24 months. The OIG did not concur and elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor decided to offer to settle the case against the officer for a 30-working-day suspension. The OIG did not concur and sought another higher level of review. At the next higher level of review, a deputy director also decided to convey an offer to settle the case for a 30-working-day suspension. The OIG elevated the matter to an undersecretary, who indicated that he was reviewing the case and the department would be taking no further action until he concluded his review. However, even though the OIG had elevated the matter to an undersecretary, the department attorney forwarded a settlement agreement to the officer for a 30-working-day suspension, and the agreement was executed by all parties. The OIG did not concur with the settlement.

In a third case, an associate warden allegedly failed to attend multiple mandatory court proceedings pertaining to litigation filed by incarcerated persons, did not report to work, and was absent without leave. In addition, outside law enforcement arrested the associate warden for his failure to appear in court and the associate warden allegedly failed to report his arrest to the hiring authority. The hiring authority sustained allegations that the associate warden was absent without leave and failed to report his arrest. The OIG concurred. However, the hiring authority did not sustain three allegations that the associate warden failed to appear for mandatory court appearances. The OIG did not concur and sought a higher level of review. At the higher level of review, the hiring authority's supervisor sustained the remaining allegations that the associate warden failed to appear for three mandatory court appearances, and imposed a two-working-day suspension. Before the investigative and disciplinary findings conference, the department demoted the associate warden to a supervising counselor position, pursuant to an unrelated employee disciplinary case. The OIG concurred with the findings on the allegations, but not the penalty. After a *Skelly* hearing, the department entered into a settlement agreement, pursuant to which the department reduced the associate warden's penalty to a one-working-day suspension. The OIG did not concur with the settlement.

Table 4. Executive Review Cases

Case No.	Summary	Initial Departmental Position	OIG Position	Final Disposition
1	An officer allegedly brought a personal mobile phone into an institution and allegedly disclosed confidential crime scene photographs to persons not involved in an investigation after a lieutenant ordered him to not do so. Three other officers allegedly disclosed the confidential crime scene photographs and allegedly failed to report the first officer provided the photographs. The first officer allegedly lied to a sergeant when he denied sharing the photographs and allegedly lied during an Office of Internal Affairs' interview.	The hiring authority sustained the allegations except that the first officer brought a mobile phone into the institution without permission and distributed confidential crime scene photographs to persons not involved in the investigation. Among other penalties, the hiring authority imposed a 10 percent salary reduction for 13 months against the second officer. After a <i>Skelly</i> hearing, the hiring authority reduced the second officer's penalty to a 5 percent salary reduction for 12 months. The second officer filed an appeal with the State Personnel Board. Thereafter, the hiring authority decided to enter into a settlement agreement with the second officer to reduce the penalty to a letter of reprimand.	The OIG did not concur with the settlement terms with the second officer.	At the higher level of review, the hiring authority's supervisor decided the proposed settlement with the second officer was appropriate, and the department entered into a settlement agreement with the second officer.
2	An associate warden allegedly failed to attend multiple mandatory court proceedings pertaining to litigation of incarcerated persons. On two days, the associate warden did not report to work and was absent without leave. Outside law enforcement arrested the associate warden for his failure to appear in court, and the associate warden allegedly failed to report his arrest to the hiring authority.	The hiring authority sustained allegations the associate warden was absent without leave and failed to report his arrest. However, the hiring authority did not sustain three allegations that the associate warden failed to appear for mandatory court appearances.	The OIG did not concur with the hiring authority's decision to not sustain three allegations regarding the associate warden failing to appear for mandatory court appearances and elevated that decision to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor sustained all three allegations and imposed a two-working-day suspension. Prior to the investigative and disciplinary findings conference, the department demoted the associate warden to a supervising counselor position. After a <i>Skelly</i> hearing, the department entered into a settlement agreement pursuant to which the department reduced the associate warden's penalty to a one-working-day suspension.
3	A youth counselor allegedly directed a racial slur toward a second youth counselor. The first youth counselor allegedly failed to assist the second youth counselor in removing a disruptive ward from a classroom and allegedly lied during an Office of Internal Affairs' interview.	The hiring authority sustained the allegation that the youth counselor was dishonest, but not the other allegations, and decided a 60-working-day suspension was the appropriate penalty.	The OIG did not agree with the proposed penalty for the youth counselor and elevated the matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor sustained the allegations the youth counselor lied and used a racial slur and dismissed the youth counselor. The youth counselor filed an appeal with the State Personnel Board. Prior to the State Personnel Board hearing, the department entered into a settlement agreement with the youth counselor reducing the penalty to a six-month suspension, and the youth counselor agreed to attend training and waive his right to appeal if he sustained a related disciplinary action within three years.

Continued on next page.

Table 4. Executive Review Cases (continued)

Case No.	Summary	Initial Departmental Position	OIG Position	Final Disposition
4	Outside law enforcement arrested an officer after he allegedly punched his girlfriend in the mouth and slammed a vehicle door on her hand, severing a thumb at a joint. The officer allegedly lied to outside law enforcement and to the Office of Internal Affairs.	The hiring authority sustained the allegations, except for the allegation that the officer severed the victim's thumb, and dismissed the officer. However, after a Skelly hearing, another hiring authority, who had replaced the original hiring authority, withdrew the disciplinary action.	The OIG did not concur with the second hiring authority's decision to withdraw the disciplinary action. The hiring authority's supervisor found insufficient evidence to sustain the allegations. The OIG did not concur and sought a next higher level of review.	At the next higher level of review, a deputy director also found insufficient evidence to sustain the allegations. The OIG did not concur and elevated the matter again. A director also found insufficient evidence to sustain the allegations.
5	While at work, a psychiatrist allegedly spent approximately 100 hours talking to a psychologist about non-work-related topics. The psychiatrist allegedly asked the psychologist to hold hands multiple times, made sexual comments to her, repeatedly requested that she spend time with him away from the institution, made inappropriate comments regarding her physical appearance, inappropriately showed her a video clip of a vulnerable woman with psychological issues, and inappropriately diagnosed her as having psychological issues. The psychiatrist allegedly declared his love for the psychologist multiple times and appeared uninvited at her residence. The psychiatrist allegedly lied to his supervisor when he said he and the psychologist shared a mutual attraction but that it was over. The psychiatrist allegedly told other staff that he was having an affair with the psychologist and the affair was mutual, when they were not having an affair. The psychiatrist allegedly violated an order from management when he sat behind the psychologist in staff meetings. The psychiatrist allegedly lied during an interview with the Office of Internal Affairs and violated an order from the Office of Internal Affairs not to discuss the investigation.	The hiring authority sustained the allegations, except for poorly worded allegations and a duplicate allegation, and decided to impose a 60-working-day suspension.	The OIG did not agree with the penalty and elevated the matter to the hiring authority's supervisor.	At the higher level of review, the hiring authority's supervisor determined dismissal was the appropriate penalty. The hiring authority served a notice of dismissal. Subsequently, pursuant to a settlement agreement, the psychologist resigned in lieu of dismissal.
6	An officer allegedly lied while testifying at a State Personnel Board hearing in order to conceal the misconduct of another officer.	The hiring authority sustained the allegation and decided to dismiss the officer. However, after a Skelly hearing, the hiring authority informed the OIG and the department attorney that the hiring authority was amenable to withdrawing the dismissal and instead imposing a 10 percent salary reduction for 12 months. The officer, unaware of the hiring authority's proposed offer, offered to settle the case for a 10 percent salary reduction for 24 months.	The OIG did not concur with the proposed settlement and elevated the matter to the hiring authority's supervisor. At the higher level of review, the hiring authority's supervisor decided to offer to settle the case against the officer for a 30-working-day suspension. The OIG did not concur and sought another higher level of review.	At the next higher level of review, a deputy director also decided to convey an offer to settle the case for a 30-working-day suspension. The OIG elevated the matter to an undersecretary, who indicated that he was reviewing the case, and the department would be taking no further action until he concluded his review. However, even though the OIG had elevated the matter to an undersecretary, the department attorney forwarded a settlement agreement to the officer for a 30-working-day suspension, and the agreement was executed by all parties.

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

Indicator Score
Satisfactory
 (70.00%)

Superior
 Zero cases

Satisfactory
 120 cases

Poor
 30 cases

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 January through June 2020, 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. We assessed 120 cases as *satisfactory* and 30 cases as *poor*. We did not find the department attorney's performance to be *superior* in any of the cases.

The department assigned attorneys to some of the cases in which the Office of Internal Affairs conducted administrative investigations, but it did not assign them to criminal investigations. The department assigned attorneys in 148 cases we monitored and closed. In 106 of the 148 cases, the Office of Internal Affairs conducted investigations or an interview of the subject alleged to have committed misconduct. In 104 of 106 cases, the legal advice was thorough and appropriate.¹⁸ Department attorneys consulted with hiring authorities regarding investigative findings in 122 cases. In 111 of these 122 cases, or 91 percent, department attorneys' consultation was appropriate. In 101 cases, department attorneys provided legal advice to hiring authorities regarding disciplinary determinations. In 85 of the 101 cases, or 84 percent, department attorneys provided appropriate advice regarding the disciplinary determinations.

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 January and June 2020, department attorneys either did not make any entry into the case management system regarding the relevant dates, or made late or incomplete entries, in 26 out of 133 cases, or 20 percent. This is nearly the same percentage we reported in the July through December 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 eight cases, or 6 percent. This is an improvement from the 8 percent of cases in which department attorneys or employee relations officers failed to correctly enter critical dates between July and December 2019.

¹⁸. Due to the uniqueness of each case, department attorneys did not necessarily perform each function assessed by the questions in Indicator 5.

Not only do other departmental units and staff rely on these dates in performing their respective duties, but the dates are critical to ensuring that 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 hiring authorities from imposing discipline.

Indicator Score

Poor

(67.99%)

Superior

Zero cases

Satisfactory

40 cases

Poor

37 cases

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 January through June 2020, we assessed department advocates' performance in providing legal representation to the department in 77 cases and concluded the overall assessment rating was *poor*. We rated the department's performance in this indicator as *satisfactory* in 40 cases and *poor* in 37 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 January through June 2020 reporting period, there were 77 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 four of the 77 cases. In these four cases, 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 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 officers, although because of some overlapping responsibilities with hiring authorities, this issue is also assessed in Indicator 4.

In all but five of the cases with a *poor* assessment rating, the hiring authorities delayed in serving disciplinary actions on officers as discussed in the section addressing the assessments for Indicator 4. Department attorneys were responsible for composing the disciplinary actions and timely providing them to hiring authorities for service on the employees. In the five cases with a *poor* assessment, despite timely disciplinary action, we based the negative assessments on a variety of issues. For example, one case involved failure to provide the OIG with a draft of a disciplinary action and consult with the OIG before serving the disciplinary action on an officer. Another example involved failure to provide the OIG with a prehearing settlement conference statement before filing it with the State Personnel Board. For the remaining three cases, we based the negative assessment on failure to provide a parole administrator with the required exhibits to a disciplinary action. This resulted in the State Personnel Board ordering the department to pay

back pay, failing to recommend sustaining allegations that the evidence supported, and recommending the department lower a penalty during settlement negotiations without any new material evidence, flaws, or risks justifying the reduction.

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 January and June 2020, department attorneys and employee relations officers prepared disciplinary actions in 76 cases. Despite the overall *poor* assessment for this indicator, we found that in 75 of the 76 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.

The Department Untimely Processed Dismissal Cases, Resulting in the Payment of Approximately \$312,584 to Ultimately Dismissed Employees During the Delays

For the January through June 2020 reporting period, the OIG again for the third reporting period in a row reviewed the department's delays in dismissal cases to determine how much the department and taxpayers paid in salary and benefits to employees during unnecessary delays in four critical junctures in the disciplinary process. We concluded that the department paid approximately \$312,584¹⁹ in salary and benefits to employees during those delays during this reporting period. Over the past three reporting periods, the department has paid approximately \$850,736 in salary and benefits to employees during the delays.

During this reporting period, the department served 27 dismissal actions in 26 separate cases in which the employee resigned after service of the action or the dismissal action was later upheld. The department delayed in serving 20 of the 27 dismissal actions, or 74 percent. Despite the *poor* performance in timely processing dismissal actions, this was a slight improvement from the last reporting period when 75 percent of the dismissal cases had delays. The delays occurred in one of the following four critical steps:

- The hiring authority's referral of allegations of employee misconduct to the Office of Internal Affairs within 45 days of discovering the alleged misconduct.
- The Office of Internal Affairs' processing of employee misconduct referrals from the hiring authority within 30 days of receipt of the case.
- The hiring authority's administration of the investigative and disciplinary findings conference within 14 days of receipt of the case from the Office of Internal Affairs. In cases in which the hiring authority made reasonable attempts to schedule the conference within 14 days, but was unsuccessful due to scheduling conflicts, the OIG did not negatively assess the department. The OIG did not negatively assess the department if the conference was ultimately held within 30 days.

19. In one case, the officer was off work due to a workers' compensation injury. Therefore, while there were significant delays in the disciplinary process, it was unclear whether these delays resulted in the department paying the officer salary and benefits that the officer would not have received as a result of the workers' compensation claim. Therefore, while the OIG includes this case when calculating the number of cases with delays, we did not include any approximation of salary paid to this officer as a result of the delays in the process in that case.

- The department's service of the disciplinary action on an officer within 30 days of making the decision to impose discipline.

Regarding these four critical steps, the OIG found the following in the 26 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 required in five cases, or 19 percent. The department's performance at this juncture declined from the previous reporting period when only 8 percent of dismissal cases had this delay. The total cumulative delay for this critical step was 616 days, and the department paid approximately \$179,476 to would-be dismissed employees during the delays. Over the past three reporting periods, the department has paid approximately \$250,191 in salary and benefits to employees due to the delay at this juncture.
- The Office of Internal Affairs did not delay processing referrals beyond the 30-day time frame policy required in any of the 26 cases. The Office of Internal Affairs also did not have any delays in processing referrals in the previous reporting period. Over the past three reporting periods, the department has paid approximately \$6,636 in salary and benefits to employees due to the delay at this juncture.
- The hiring authority delayed investigative and disciplinary conferences beyond the 14-day time frame policy required in eight cases, or 31 percent. This was a slight improvement from the last reporting period when the department had this type of delay in 33 percent of dismissal cases. The cumulative delay for this critical step was 234 days, and the department paid approximately \$39,008 to would-be dismissed employees during the delays. Over the past three reporting periods, the department has paid approximately \$230,472 in salary and benefits to employees due to the delay at this juncture.
- The department delayed serving 15 disciplinary actions on peace officers beyond the 30-day time frame policy required in 14 of 22 peace officer cases, or 64 percent. The department's performance declined from the last reporting period when the department had this type of delay in 61 percent of cases. The total cumulative delay for this critical step was 628 days, and the department paid approximately \$94,099 to would-be dismissed employees during the delays. Over the past three reporting periods, the department has paid approximately \$363,436 in salary and benefits to employees due to the delay at this juncture.

The following are notable examples of cases with extensive delays:

- In one case, an officer drove under the influence of alcohol while in possession of a loaded handgun, and drove under the influence again the next day and lied to an outside law enforcement officer. The Office of Internal Affairs determined an investigation was unnecessary and returned the matter to the hiring authority, who delayed 47 days after policy required in conducting the investigative and disciplinary findings conference, and 14 days after policy required in serving a disciplinary action for dismissal. In all, the department paid this officer approximately \$19,308 during the 61 days of unnecessary delay. The officer later entered into a settlement agreement and agreed to resign.
- In a second case, an officer video recorded himself engaging in a sexual act with an office technician and distributed the recording to a lieutenant without the office technician's knowledge or consent. The hiring authority delayed referring the matter to the Office of Internal Affairs 147 days after policy required and delayed serving the disciplinary action 27 days after policy required. In all, the department paid this officer approximately \$55,074 during the 174 days of unnecessary delay. The officer later entered into a settlement agreement and agreed to resign.
- In a third case, an officer discharged a firearm in a negligent manner while working a post where incarcerated persons and other officers were present. The hiring authority delayed serving the disciplinary action 32 days after policy required. The department paid this officer approximately \$10,129 during this unnecessary delay. The officer did not file an appeal with the State Personnel Board.

In sum, the department's unnecessary delays cost the department and taxpayers approximately \$312,584 in salary and benefits. Table 5 on the next page presents a detailed breakdown of the costs associated with unnecessary delays in dismissal cases.

Table 5. Detailed Information Regarding Costs Associated With Unnecessary Delays in Dismissal Cases

OIG Case Number	Classification	Monthly Salary at Mid-Step (\$)	Daily Rate (\$)	Total Delays							
				Critical Steps in the Investigative and Disciplinary Process							
				Referral*	OIA Processes Referral†	Hiring Authority Makes Findings‡	Hiring Authority Serves Action§	Total Days Late	Total Salary (\$)	Total Benefits (\$)	Total Cost (\$)
18-0025474-DM	Officer	\$6,110	200	55	...	112	336	503	0	0	0
18-0026277-DM	Sergeant	7,812	256	...	...	8	...	8	2,049	1,188	3,237
18-0026622-DM	Officer	6,110	200	...	...	7	16	23	4,608	2,672	7,280
18-0026781-DM	Officer	6,110	200	...	...	4	...	4	801	465	1,266
18-0027904-DM	Officer	6,110	200	...	...	19	...	19	3,806	2,208	6,014
19-0028277-DM	Officer	6,110	200	...	...	...	3	3	601	349	950
19-0028279-DM	Officer	6,110	200	...	...	...	7	7	1,402	813	2,216
19-0028521-DM	AGPA ^l	5,895	193	145	...	28	...	173	33,434	19,392	52,826
19-0028585-DM	Officer	6,110	200	...	...	47	14	61	12,220	7,088	19,308
19-0028806-DM	Officer	6,110	200	...	...	...	22	22	4,407	2,556	6,963
	Officer	6,110	200	...	...	...	36	36	7,212	4,183	11,395
19-0029111-DM	Officer	6,110	200	...	...	9	39	48	9,616	5,577	15,193
19-0029357-DM	Sergeant	7,812	256	...	...	...	19	19	4,866	2,822	7,689
19-0029480-DM	Officer	6,110	200	147	...	...	27	174	34,857	20,217	55,074
19-0030008-DM	Psychologist	9,516	312	20	...	...	...	20	6,240	3,619	9,859
19-0030260-DM	Officer	6,110	200	...	...	...	5	5	1,002	581	1,583
19-0030328-DM	Officer	6,110	200	...	...	...	26	26	5,209	3,021	8,229
19-0030480-DM	Officer	6,110	200	249	...	...	12	261	52,286	30,326	82,611
19-0031460-DM	Officer	6,110	200	...	...	...	34	34	6,811	3,950	10,762
19-0031803-DM	Officer	6,110	200	...	...	...	32	32	6,410	3,718	10,129
Totals				616	0	234	628	1,478	\$197,837	\$114,745	\$312,584

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

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

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

§ The Hiring Authority serves disciplinary action on the employee.

^l AGPA refers to **Associate Governmental Program Analyst**.

Note: The **Office of Internal Affairs** is abbreviated **OIA**.

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

The Office of Internal Affairs Delayed Opening Administrative Investigations in Cases in Which Employees Also Engaged in Alleged Criminal Activity

During the January through June 2020 reporting period, the OIG observed that the Office of Internal Affairs delayed opening administrative investigations concerning an incident until the corresponding criminal investigation was completed.²⁰ These delays were predicated on the Office of Internal Affairs' practice of waiting to open companion administrative investigations until receiving permission from the district attorney's office to do so. However, the district attorney has no authority in matters of employee discipline, and while it may be prudent for the Office of Internal Affairs to confer with the district attorney, it is not required. This blanket practice of waiting for permission resulted in exorbitant delays in opening administrative investigations. The delays were inefficient and costly, especially when dismissal was forthcoming. Pending the completion of both investigations, departmental employees were routinely placed on administrative time off from work or redirected to a mail room—they continued to be paid to either take time off or to sort mail. In some instances, the delay in opening a timely administrative investigation affected the viability of obtaining witness testimony and evidence, and taking disciplinary action. First, memories of witnesses can fade with time. Second, incarcerated persons involved in the investigation may be released and no longer beholden to the department to participate in the administrative investigation. Third, evidence of State employee misconduct can only be used against an employee within three years of the date of the incident because all State employees must be disciplined within three years of the date of misconduct.²¹

In a case we monitored during the January through June 2020 reporting period, the department began a criminal investigation on August 25, 2019, regarding an officer who conspired to introduce candy, tobacco, powdered alcohol, and nail polish into the secure perimeter of an institution. On that day, the officer reported to a sergeant that he had entered an incarcerated person's cell on several occasions while she was naked and also brought her candy bars. The officer confessed the misconduct to the sergeant because the incarcerated person was threatening to report the officer to a sergeant if the officer did not bring the incarcerated person and her cellmate narcotics and mobile

20. While this section focuses on our findings for cases we monitored and closed during the January through June 2020 reporting period, the OIG has observed that this practice existed long before this reporting period.

21. Government Code section 19635 (in pertinent part): No adverse action shall be valid against any State employee for any cause for discipline based on any civil service law of this State, unless notice of the adverse action is served within three years after the case for discipline, upon which the notice is based, first arose.

phones. The department placed the officer on administrative time off from work on August 28, 2019, and the Office of Internal Affairs concluded its criminal investigation and referred the case to a district attorney's office on May 15, 2020. The district attorney rejected the case on May 26, 2020. It was not until June 17, 2020, that the Office of Internal Affairs opened an administrative case. The department decided to dismiss the officer, and the department served a disciplinary action on the officer on August 17, 2020. The effective date of the officer's dismissal was August 26, 2020, and the officer chose to resign the day before that date of dismissal. The officer had been off work a few days shy of one year. This case highlights the problematic aspects of the department's practice of waiting for the conclusion of a criminal investigation before commencing the administrative disciplinary process on an employee who has likely committed misconduct warranting dismissal. The practice is a waste of taxpayer dollars.

In another case, the Office of Internal Affairs initiated a criminal investigation on April 26, 2019, regarding an officer who allegedly engaged in sexual acts with an incarcerated person. On April 29, 2019, the hiring authority redirected the officer to the mail room. During an interview, the incarcerated person provided credible details concerning the logistics of how she and the officer engaged in sexual activity. In addition, on August 12, 2019, the Office of Internal Affairs uncovered forensic evidence corroborating the incarcerated person's version of events.²² Nevertheless, the Office of Internal Affairs did not open an administrative investigation at that time. Following the Office of Internal Affairs' completion of the criminal investigation on May 5, 2020, the department opened an administrative investigation on May 20, 2020. The investigation is still pending as of the date of publishing this report, and the officer is still working in the mail room—more than 17 months after the department initiated a criminal investigation. This case is an example of mail room abuse. This officer is being paid an officer's salary to sort mail.

In another criminal investigation, the Office of Internal Affairs investigated an allegation that an officer illegally communicated with an incarcerated person. When the Office of Internal Affairs interviewed the officer on January 28, 2020, the officer admitted to inappropriately communicating with an incarcerated person via handwritten letters. However, the Office of Internal Affairs did not open a concurrent administrative investigation. On January 28, 2020, the date of the officer's interview, the hiring authority placed the officer on administrative time off from work. In March 2020, the Office of Internal Affairs

22. On April 26, 2019, an investigative services unit officer discovered a pair of the incarcerated person's underwear in the trash. The special agent submitted the underwear to the Department of Justice crime laboratory for testing. On August 12, 2019, the special agent received and reviewed the forensic report. The laboratory results found semen in the incarcerated person's underwear, and the criminalists were going to take another sample of the underwear in order to try and locate DNA evidence from the semen.

reviewed the officer's mobile phone data which revealed several text messages clearly indicating the officer was in a relationship with the incarcerated person and sent money, a necklace, and a planner to the incarcerated person. The officer has been on administrative time off from work for more than seven months and continued his relationship with the incarcerated person. The Office of Internal Affairs did not open an administrative investigation until August 19, 2020, and only after multiple recommendations by the OIG to do so.

In yet another case, on April 26, 2019, an institution's investigative services unit interviewed an incarcerated person who provided information regarding a counselor's inappropriate relationships with incarcerated persons. The incarcerated person reported that the counselor was conspiring with a second incarcerated person to introduce heroin and mobile phones into the institution. The incarcerated person explained that the counselor and a second incarcerated person were engaged in an inappropriate relationship and that the counselor would deposit money for the second incarcerated person into a third incarcerated person's trust account via the counselor's mother.²³ The investigative services unit audited the third incarcerated person's account and found a 100 dollar deposit made by the counselor's mother on March 3, 2017. In addition, the first incarcerated person provided detailed information about a distinct tattoo in a discreet place on the counselor's body, which was later confirmed and that supported an overfamiliarity allegation against the counselor. Based on this information, the hiring authority sent a request for investigation to the Office of Internal Affairs.

On July 17, 2019, the OIG, a department attorney, and the Office of Internal Affairs discussed the case as part of the central intake process. During this meeting, the OIG recommended that the Office of Internal Affairs add a misdemeanor allegation for illegal communication with the second incarcerated person to the criminal investigation, open an administrative investigation concurrently with the criminal investigation, and add allegations of overfamiliarity to the administrative investigation. However, the Office of Internal Affairs rejected the OIG's recommendations. The Office of Internal Affairs conducted a criminal investigation and referred the case to a district attorney's office on June 23, 2020. The district attorney rejected the case on July 14, 2020. Despite the OIG's early recommendation on July 17, 2019, that the Office of Internal Affairs open an administrative investigation, the Office of Internal Affairs did not open an administrative investigation until September 16, 2020. Consequently, some of the evidence is no

23. California prisons allow an incarcerated person to maintain a type of banking account known as a *trust account* into which monetary funds can be deposited on his or her behalf. The incarcerated person can use these funds to purchase items in the institution's commissary, which stocks various products, for example, food, clothing, hygiene supplies, entertainment items, and most important, paper, envelopes, and postage stamps.

longer suitable for use in the investigation. The funds deposited into the third incarcerated person's account were the only forensic evidence that supported the allegations of overfamiliarity between the counselor and the second incarcerated person, and corroborated the first incarcerated person's story. Had an administrative investigation been opened at the time the OIG recommended it on July 17, 2019, the evidence could have been used in support of an overfamiliarity allegation against the counselor. However, because the transaction occurred more than three years ago, it is now too late. This issue exemplifies actual harm caused by the practice of the Office of Internal Affairs' delaying opening an administrative investigation until the criminal investigation has concluded.

In another case we monitored during the January through June 2020 reporting period, outside law enforcement arrested an officer on October 31, 2018, for allegedly pouring paint on his wife's vehicle, smashing his wife's windshield with a paint can, and spitting on his wife. Outside law enforcement submitted the case to a district attorney for filing consideration on December 20, 2018. On January 2, 2019, the Office of Internal Affairs approved an interview of the officer. The administrative case tolled behind the criminal case for several months. In the interim, the Office of Internal Affairs completed no substantive investigative work. The district attorney decided to file charges on March 29, 2019. Subsequently, the hiring authority nonpunitively dismissed the officer on March 31, 2020, due to a weapons restriction resulting from his felony arrest. The officer appealed the decision, and ultimately the State Personnel Board reversed his nonpunitive dismissal. Meanwhile, the officer pled guilty to a misdemeanor violation for vandalism on August 23, 2019. The district attorney did not give "permission" to the Office of Internal Affairs to proceed with the administrative investigation until after it resolved the criminal case. As a result, the administrative investigation was on hold for approximately eight months. The Office of Internal Affairs finally submitted the case to the hiring authority on November 4, 2019, without an interview of the officer. This is noteworthy because even after the Office of Internal Affairs received authorization from the district attorney to move forward with the administrative investigation, the Office of Internal Affairs did not complete any substantive work on the case, and the hiring authority relied on the investigation completed by outside law enforcement. At the investigative and disciplinary findings conference, which was held on December 4, 2019, the hiring authority determined that dismissal was the appropriate penalty and finally served the officer with a disciplinary action for the dismissal on January 10, 2020. If the administrative investigation had proceeded at the same time as the criminal investigation, the officer could have been dismissed from the department significantly earlier. It took the department almost 15 months to serve the officer with disciplinary action.

The above cases exemplify the consequences of the Office of Internal Affairs' practice of delaying an administrative investigation until the corresponding criminal investigation has been completed. Not only does this practice waste taxpayer dollars, but the Office of Internal Affairs risks losing vital evidence that could be used in support of allegations against an employee if the administrative investigation occurred sooner.

The OIG recommends the Office of Internal Affairs not wait for the conclusion of a criminal investigation to open an administrative investigation, but instead concurrently open criminal and administrative investigations. The OIG recommends that the Office of Internal Affairs consult with the district attorney as a professional courtesy, but not predicate its decision to move forward with an administrative investigation based solely on a district attorney's preference. The OIG recommends the Office of Internal Affairs actively and consistently assess criminal cases throughout the investigation to determine whether an administrative investigation should be actively pursued, especially when the misconduct being investigated likely warrants dismissal. Finally, the OIG recommends that the Office of Internal Affairs proceed with administrative investigations concurrently with criminal investigations conducted by outside law enforcement agencies.

The Department Lacks a Policy Concerning Its Handling of Restraining Orders in Domestic Violence Cases

During the January through June 2020 reporting period, the OIG monitored 14 domestic violence cases; officers were the subject of a restraining order in 12 of those cases. Restraining orders resulting from domestic violence incidents specifically prohibit the subject of the order from possessing firearms; officers must possess firearms to perform the duties of their positions. Currently, the department has no policy on how to proceed when the hiring authority receives notification that an officer is the subject of a domestic violence restraining order. The lack of a policy can lead to a waste of State resources and to unnecessary delays in dealing with the employment status of officers who are under restraining orders that prohibit them from performing the duties of their position.

Background

Restraining orders (also called *protective orders*) are court orders that can protect someone from being physically or sexually abused, threatened, stalked, or harassed. Restraining orders can be issued from criminal courts, family courts, or civil courts: restraining orders in cases of domestic violence can originate in each of these courts. The types of restraining order include seven-day emergency restraining orders, 30-day temporary restraining orders, and permanent restraining orders, which can last up to 10 years. Restraining orders can vary in the activities they prohibit, depending on the circumstances, but all restraining orders issued in cases of domestic violence prohibit the subject of the restraining order from possessing firearms.

Officers most typically become the subject of restraining orders after their involvement in an off-duty domestic violence incident. In such cases, local law enforcement responds to the incident, determines that an emergency protective order (EPO) is necessary, obtains an order from a judge—usually while in the field or prior to arresting the subject of the restraining order—and serves the subject of the order with notice that he is under a restraining order and must keep away from his alleged victim. EPOs are meant to be an immediate protection for alleged victims of domestic violence prior to the subject of the order appearing in court; EPOs expire after seven days. Local law enforcement informs the alleged victim of domestic violence that the EPO is in effect and explains that if the alleged victim chooses to file for a restraining order beyond the seven-day period, the alleged victim must obtain a temporary restraining order (TRO) from court. Judges issue temporary restraining orders based on statements filed under penalty of perjury by the alleged victim, who is called the *complainant* of the order. TROs are issued without input from the alleged abuser, called the *subject* of the order, and expire after approximately 30 days. Courts may then issue permanent restraining

orders in one of three ways: by agreement of the parties, as a result of a full hearing, or as a result of a criminal plea.

Regardless of the length of restraining order issued, officers subject to a restraining order may not be eligible to continue their employment with the department because the order prohibits the possession of firearms. As a minimum qualification for the position of officer, the department requires that officers be legally permitted to carry firearms. If an officer lacks this qualification, the department may dismiss the officer from its employment.

Hiring Authority's Options

When the department receives notice that an officer is the subject of a restraining order and therefore cannot fill his or her own position, the hiring authority has several options to address the situation. The hiring authority may commence a nonpunitive dismissal; the hiring authority may allow the officer to remain employed at the institution while unable to meet the minimum qualifications for his or her own position, either on paid administrative leave or in a non-firearms-bearing assignment, usually in the mail room; or the hiring authority may allow the officer to remain employed at the institution if the officer obtains an exemption that allows him or her to carry a weapon on the job. Each of these options carries complexities (Figure 13, page 64).

Depending on the circumstances under which an officer becomes the subject of a restraining order, the department may open an investigation into the incident. If the restraining order was placed as a result of local law enforcement, such as during the response of law enforcement officers to a domestic violence call or after the arrest of the department officer for domestic violence, the departmental officer is required to report that involvement with outside law enforcement to his or her supervisor. That report will initiate a misconduct investigation which could lead to misconduct allegations. These allegations can lead to a hearing before the State Personnel Board and to the imposition of disciplinary action, including dismissal.

Regardless of the circumstances under which a restraining order is imposed, however, an officer subject to a restraining order must report the conditions of his or her restraining order to the department. The hiring authority must then decide what to do with an officer who cannot function and perform the duties of an officer.

The Option of Nonpunitive Dismissal

One option available to a hiring authority is nonpunitive dismissal of employment. The department maintains the right to commence

a nonpunitive dismissal²⁴ based on the officer’s inability to meet the minimum qualifications to hold the officer position. Government Code section 19585 (a) provides the following:

This section shall apply to permanent and probationary employees and may be used in lieu of adverse action and rejection during probation when the only cause for action against an employee is his or her failure to meet a requirement for continuing employment, as provided in this section.²⁵

For cases in which an officer cannot carry firearms, the department’s standard *Notice of Non-Punitive Action* form references the government code cited above and then offers a statement of facts, which cites the general qualifications for the officer’s position in both State law and departmental policy before citing the specific qualifications of the officer’s position (see Figure 14, page 66).

The option of the nonpunitive dismissal offers the department many benefits. Among these are the quick resolution to the case, the financial benefit of the officer not remaining on the payroll, the flexibility of elective reinstatement under Government Code section 19140 after the nonpunitive dismissal is finalized, and the benefit of avoiding the uncertainty of a State Personnel Board hearing. The nonpunitive dismissal process is procedurally simple and provides the department with the discretion to hire an officer back if the terms of the nonpunitive dismissal are remedied; however, the department is not mandated to do so. This elective reinstatement opportunity places the department in the position to determine the best course of action.

Option to Allow an Officer to Remain Employed at the Institution in a Non-Firearms-Bearing Assignment or on Paid Administrative Leave




During the January through June 2020 reporting period, of the 14 domestic violence cases monitored by the OIG, the department redirected officers in seven of those cases. The department frequently redirects officers to the mail room in cases where the officer is the subject of a restraining order. Although this may at times serve as a temporary solution, it can also waste taxpayer dollars and unnecessarily delay the department dealing with an officer. The following are examples of such cases:

- In one case, outside law enforcement arrested an officer who allegedly threatened to kill his wife and her friend with a gun or a knife and “make them disappear.” The officer’s wife reported a history of domestic violence issues. At the time of

24. We use the phrase *nonpunitive dismissal* to be synonymous with *nonpunitive termination*.

25. For reference, see [California Government Code section 19585 \(a\)](#).

Figure 13.
A Hiring Authority's Options When an Officer
Is Under a Restraining Order

<p>Nonpunitive Dismissal</p> 	<p><i>Serve the Officer With a Nonpunitive Dismissal</i></p> <ul style="list-style-type: none"> • Quick resolution • Officer not on payroll • Permissive reinstatement
<p>Keep the Officer Employed, but Unarmed</p> 	<p><i>Place the Officer on Paid Administrative Leave</i></p> <ul style="list-style-type: none"> • Expense of salary with no work • Backfilling armed position <p><i>Place the Officer in a Nonarmed Assignment (e.g., Mail Room)</i></p> <ul style="list-style-type: none"> • Paying the officer for clerical work • Backfilling armed position
<p>Keep the Officer Employed and Armed With a State Exemption to Carry a Weapon at Work</p> 	<p><i>Enforce an Exemption Obtained by the Officer</i></p> <ul style="list-style-type: none"> • The department may be enforcing an invalid State order because an exemption is invalid without a psychological evaluation of the officer and a court finding that the officer is not a threat <ul style="list-style-type: none"> ◦ The department may be honoring a State order obtained in violation of Federal law because Federal law prohibits anyone who is the subject of a restraining order from possessing a firearm

Source: The Office of the Inspector General.

the arrest, outside law enforcement confiscated 10 firearms from the officer's residence and served him with an emergency protective order. Because of the firearms restriction, the department assigned the officer to the mail room. The department then learned the officer was the subject of a five-year firearms restriction. The OIG recommended the immediate commencement of a nonpunitive dismissal. The hiring authority instead gave the officer an additional 30 days to allow him to obtain a waiver for the firearms restriction.

We renewed our recommendation to commence immediate nonpunitive dismissal. We pointed out to the hiring authority that the officer had already been reassigned to the mail room for 51 days at the taxpayer's expense because he did not meet the minimum qualifications for the job and that he was facing felony criminal charges for threatening to kill his wife. The officer could have used those 51 days to obtain the firearms waiver but had not done so. We noted that the nonpunitive dismissal process would still allow the officer a period where he could seek to modify the firearms restriction. The supervising attorney from the OIG pointed out that if the warden were to find after an Office of Internal Affairs' investigation that the allegations should be sustained, or if the officer were convicted in a criminal court, the hiring authority would be required to go through the State Personnel Board process to dismiss the officer; however, if the hiring authority imposed nonpunitive dismissal, the officer would be separated from the department immediately.

The hiring authority followed our recommendation for the nonpunitive dismissal. Under the conditions of nonpunitive dismissal, an officer is allowed five days to acquire a waiver to the firearms restriction. The officer tried to obtain a waiver from the court and requested from the department a 30-day extension for the nonpunitive dismissal to take effect. The hiring authority did not grant the extension and upheld the officer's dismissal, which took effect 82 days after the subject's redirection to the mail room. Although the officer eventually obtained a waiver of the firearms restriction, the hiring authority chose not to reinstate him due to pending felony charges. The department paid the officer approximately \$25,954 for the 82 days he was unable to perform his duties.²⁶

- In a second case, an officer allegedly punched his wife in the face three times with a closed fist, pushed her to the floor, and broke her mobile phone when she tried to call the police. The officer's three minor children witnessed his assault on their mother, and his 12-year-old daughter called the police. A district attorney's

26. This calculation is based on the salary and benefits in the mid-salary range of the officer's classification.

Figure 14. Excerpts From a Notice of Nonpunitive Action**STATEMENT OF FACTS**

This action is being taken pursuant to Section 19585 of the Government Code because you have failed to meet the requirement for continuing employment for the classification to which you were appointed. A statement of the specific circumstances and incidents forming the basis for your termination are as follows:

1. As a Correctional Officer you are required to maintain the ability to possess, use or have in your custody or control any firearm, firearm device, or other weapon or device authorized for use by the California Department of Corrections as set forth in:
 - a. California Code of Regulations, Title 2, Section 172 [General Qualifications], . . .
 - b. Department Operations Manual, Section 33030.3.2 [General Qualifications], . . .
 - c. Correctional Officer Specifications, which states: Under the heading, "SPECIAL REQUIREMENTS," any person prohibited by State or Federal law from possessing, using or having in his/her custody or control any firearm, firearm device, or other weapon or device authorized for use by the California Department of Corrections is not eligible to compete for, be appointed to, or continue employment in this classification.
 - d. Correctional Officer Specifications, which states: Under the heading, "DISTINGUISHING CHARACTERISTICS," assignments for this class include . . . "gun posts." Under the heading, "TYPICAL TASKS" includes: "stands watch on an armed post . . . receives, checks, and issues guns, ammunition, and other supplies and equipment; keeps firearms in good working condition; fires weapons in combat/emergency situations. . . ." Under the heading 'Knowledge & Abilities' is included: "accept the requirements of the Department and institution . . . operate departmental vehicles and equipment, including firearms. . . ."

.
5. As a Correctional Officer you are required to be able to possess, use, or have in your custody or control any firearm, firearm device, or other weapon or device authorized for use by the California Department of corrections. Your inability to possess a firearm as indicated in the DOJ Firearm Prohibition Notification renders you unable to assume all posts, per the Correctional Officer Classification Specification which include gun posts. Since you, as a Correctional Officer, are required to maintain the ability to use and possess firearms and you have failed to cure the defect that resulted in your firearms prohibition, you are being nonpunitively terminated.

Source: Example of a "Notice of Non-Punitive Action," the California Department of Corrections and Rehabilitation.

office charged the officer with one felony and five misdemeanor criminal charges. Again, the department redirected the officer to the mail room. After an investigative and disciplinary findings conference, the warden sustained three allegations involving the domestic violence incident and a failure-to-report allegation, and determined dismissal as the appropriate penalty. The department did not commence a nonpunitive dismissal in this case until after the hiring authority made a finding of dismissal in the disciplinary action.

Option to Allow the Officer to Remain Employed at the Institution in a Firearms-Bearing Assignment if the Officer Obtains a Firearms Exemption

In some cases, officers seek an exemption from the firearms restriction; this exemption can put the department in a difficult position.

California Family Code section 6389(h) establishes the requirements for obtaining an exemption: the officer must show that a firearm is a necessary condition of continued employment, that the officer cannot be reassigned to a position where a firearm is unnecessary, and that the firearm is in the officer's possession only during scheduled work hours. These requirements are easily established. The more difficult requirements of the exemption require the following:

1. A court finding by a preponderance of the evidence that the officer does not pose a threat of harm; and
2. Prior to making this finding, the court shall require a mandatory psychological evaluation of the officer.

These requirements pose a dilemma for the department because in the vast majority of cases in which an officer obtains an exemption under this State provision, the exemptions do not meet the provision requiring the mandatory psychological evaluation and the nonthreat finding for officers. The appellate courts, however, have strictly adhered to the requirement of mandatory psychological evaluations and the nonthreat finding. Without the psychological evaluation, which provides the basis for a finding that an officer does not pose a threat of harm, the firearm exemption for employment is invalid. Thus, the department's acceptance of an exemption that does not meet the requirements of State law places the department in the position of enforcing an invalid State order.

In addition, the department could be in violation of the U.S. Federal Gun Control Act, which supersedes State law in this matter. California Penal Code section 29855 also presents the opportunity for a waiver of the firearms prohibition for officers whose employment or livelihood is dependent on the ability to legally possess a firearm and who are subject to a firearms prohibition due to a domestic violence related conviction. The officer may petition the court for relief. The petition must be heard by the sentencing court, and the court must make a finding that the

petitioner is likely to use a firearm in a safe and lawful manner, that the petitioner does not have a prior similar conviction, and that such relief should be granted in the interest of justice.

The Process Followed if the Department of Justice Holds the Exemption Invalid

Problems may arise if officers obtain waivers for firearms restrictions under State exemptions. The Federal Gun Control Act restricts, among other things, the possession of firearms by people who have committed a crime of misdemeanor domestic violence or are the subject of a domestic violence, civil harassment, or criminal restraining order. United States Code Section 922, subdivision (g) provides, in relevant part, for a firearms prohibition for anyone who is the subject of a restraining order where the party had actual notice and the opportunity to participate, and to anyone convicted of a misdemeanor crime of domestic violence.

A protective order issued in the State of California should always meet the condition of U.S.C. Section 922 (g); therefore, an officer subject to the order cannot possess a firearm. Any process in California statutes, such as Family Code section 6389 or Penal Code section 29855, allowing for the possession of firearms, is invalid because of Federal law preemption. Under Federal law, an officer subject to any of these orders is no longer eligible to maintain his or her employment status.

The California State Personnel Board, in *E. G. v. CDCR* (2012) Case No. 11-1257, made the same determination. In this case, the officer suffered a misdemeanor domestic violence conviction. He sought relief from the mandatory firearms prohibition through Penal Code section 29855. The State Personnel Board administrative law judge cited the intent of the United States Congress in enacting the Federal Gun Control Act:

Existing felon-in-possession laws, Congress recognized, were not keeping firearms out of the hands of domestic abusers, because many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies. By extending the federal firearm prohibition to persons convicted of misdemeanor crime[s] of domestic violence, proponents of [the Federal Gun Control Act] sought to close this dangerous loophole.²⁷

27. *E. G. v. CDCR* (2012) Case No. 11-1257 (citing *United States v. Hayes* (2009) 555 U.S. 415, 426 (internal quotations and citations omitted)).

Table 6. Types of Restraining Orders

Type	Duration	Process
Emergency Restraining Orders (ERO)*	Between five and seven days	Judge imposes ERO on the basis of peace officer's recounting of alleged victim's statement
Temporary Restraining Orders (TRO) [†]	20 to 25 days	Judge imposes TRO on the basis of alleged victim's statement filed with the court under the penalty of perjury
Permanent Restraining Orders [‡]	Varies: up to 10 years	Judge imposes permanent restraining order: 1) by agreement of the parties, 2) as a result of a full hearing, or 3) as a result of a criminal plea

* See, for example, California Family Code section 6256.

[†] See, for example, California Family Code section 242; California Code of Civil Procedure 547.6 (7) (f).

[‡] See, for example, California Penal Code sections 273.5 (j), 136.2 (i) (1), 368 (l), 649.9 (k), California Family Code section 6345.

The State Personnel Board ultimately ruled that the department appropriately dismissed the officer from his employment by way of nonpunitive dismissal because he no longer met the requirement of being legally permitted to carry a firearm. Because the Federal Gun Control Act preempts Penal Code section 29855, the officer could not obtain relief from the firearm ban that was imposed as a result of his conviction for a misdemeanor involving domestic violence. Any statutory provisions in any other California code that would allow an exemption for firearms possession would be invalid due to the Federal law preemption.

Federal law preemption, therefore, raises another complicated issue for the department when dealing with an officer subject to a restraining order and firearms restriction. The department must decide whether to honor a State order obtained in violation of Federal law. This causes a conflicting position between the officer and the California Department of Justice, which enforces the Federal firearms prohibitions.

The Department Attorneys at Times Elevated Decisions Made by Hiring Authorities, Even When the Decisions Were Appropriate

The OIG found a disturbing trend involving department attorneys invoking executive review without being fully prepared or when they merely disagreed with a hiring authority about the weight of the evidence in a case. These trivial justifications do not align with departmental policy which specifies that the purpose of executive review in employee discipline cases is to resolve “significant disagreements between stakeholders about investigative findings, imposition of penalty, or settlement agreements.”²⁸

Moreover, in most of these cases, the department attorney argued against sustaining allegations of dishonesty and, in some cases, argued against sustaining allegations even when the weight of the evidence clearly warranted a sustained allegation and the dismissal of an officer. In cases the OIG reported on in the 18 months between January 2019 and July 2020, department attorneys made the initial invocation of executive review a total of four times. However, in cases currently being monitored or not yet reported by the OIG, in the nine months between November 2019 and July 2020, department attorneys initially invoked executive review in five other cases. In four of these other cases, the department attorneys either failed to act with even minimal diligence to determine whether their positions could be supported, failed to adequately consider the evidence that did not support their positions, or invoked executive review over a mere disagreement with a hiring authority about the weight of the evidence.

Background

The department delegates to hiring authorities the ability to make disciplinary decisions regarding matters of alleged staff misconduct at its prisons. After the Office of Internal Affairs processes a case, whether by investigation or when it approves a hiring authority to take disciplinary action without an investigation, a hiring authority conducts an investigative and disciplinary findings conference, at which the hiring authority considers the evidence submitted by the Office of Internal Affairs and determines whether each allegation will be sustained or not and, if sustained, the corrective or disciplinary penalty. When preparing for this conference, a hiring authority will often take several hours to review an investigative report, listen to the recorded interviews, and review all the exhibits. The investigative and disciplinary findings conference is attended by the hiring authority, the department attorney, who makes recommendations to the hiring authority, and the OIG attorney.

28. DOM, Section 33030.14.

To make these determinations, hiring authorities rely on their assessments of the evidence and the recommendations of the department attorney, but the hiring authority does not always agree with the department attorney. If a hiring authority decides to impose discipline on an employee, the department attorney will draft a disciplinary action. The disciplined employee has the right to appeal to the State Personnel Board, where the department attorney presents the hiring authority's case before an administrative law judge at a hearing. The State Personnel Board determines whether the evidence supports the allegations and the discipline.

If there is a significant disagreement during the investigative and findings conference, departmental policy allows for any stakeholder to invoke a process known as *executive review*, whereby the decision-making process is elevated to the direct supervisor. Executive review can be invoked at each supervisory level, all the way to the Secretary of the department.

The OIG found, however, that department attorneys and their supervisors at times invoked executive review in cases in which the disagreements were not significant: in such cases, department attorneys merely disagreed with the hiring authority's conclusion concerning the weight of the evidence or disagreed without having thoroughly prepared or researched their positions.

The OIG submitted a draft of this report to the department for its review. Prior to publication, the department objected to the OIG including attorney–client privileged communications in the following section of the report (in which we provide case examples to support our position) and advised the OIG to which specific communication it objected. Although the legal issues surrounding the attorney–client privilege are blurred due to our legal authority to provide oversight, we are honoring the department's assertions as they relate to this discussion. As a result, however, this public report leaves out those communications by department attorneys to which the department objected. As the department invoked attorney–client privilege on the legal advice we criticized, we only comment generally on the advice provided by the department attorneys in the following case examples. As such, we have revised the following section:

Below are some of the examples of the department attorneys invoking executive review:

- In one case, an officer allegedly used excessive force on an incarcerated person and lied about the force he used. While the officer denied using force, a parole agent observed the incident and gave a credible account of the incident to the Office of Internal Affairs. Despite the statement of the parole agent, who was an independent witness, and the other evidence adduced during the Office of Internal Affairs investigation, the department attorney provided extremely poor legal advice concerning the case to the hiring authority. The department

attorney did not adequately consider the circumstantial evidence supporting the parole agent's version of the events and gave undue weight to other witnesses who claimed not to have seen any use of force, but could not corroborate the officer's version of the events. The hiring authority reviewed the evidence and found the parole agent to be more credible, sustained the allegations, and dismissed the officer. Even though the hiring authority made reasonable findings based on the evidence gathered, the department attorney inappropriately invoked executive review despite the reasonable findings made by the hiring authority. At the executive review, the hiring authority's supervisor, a deputy director, reviewed the evidence. The department attorney's supervisor, an assistant chief counsel, provided poor legal advice concerning the case to the deputy director. The deputy director reviewed the evidence, found the parole agent credible, identified several pieces of circumstantial evidence which supported the parole agent's version of events, and noted the problems with the officer's statement and the statements of the other witnesses. The deputy director considered and rejected the department attorneys' arguments, sustained the allegations, and dismissed the officer. A second deputy director later entered into a settlement with the officer and reduced the penalty to a three-month suspension.

- In a second case, an officer allegedly lied to a sergeant about threats made by an incarcerated person. At an investigative and disciplinary findings conference, a supervising department attorney (an assistant chief counsel) provided unsound advice to the hiring authority, advice unexpected from a seasoned attorney. The assistant chief counsel did not adequately address several pieces of circumstantial evidence that supported the conclusion the officer lied. The hiring authority disagreed with the assistant chief counsel's analysis and recommendations, and sustained the dishonesty allegation against the officer. The assistant chief counsel invoked executive review of the hiring authority's reasonable decision. The hiring authority's supervisor, an associate director, reviewed the evidence, considered and rejected the department attorney's recommendation, and agreed that the dishonesty allegation should be sustained and dismissed the officer.
- In a third case, a hiring authority sustained allegations that an officer had been overly familiar with incarcerated persons and dishonest and, as such, decided to dismiss the officer. In a related State Personnel Board hearing involving a second officer in the case, a number of witnesses refused to testify at that hearing and, as a result, the department settled the case against the second officer. Several months later, the department attorney received a settlement offer from the first officer pursuant to which the first officer would regain employment with the department. The

department attorney presented the settlement offer to the hiring authority. The department attorney provided faulty advice to the hiring authority. The hiring authority rejected the department attorney's advice. The hiring authority decided not to accept the settlement offer from the first officer. The department attorney invoked executive review on the hiring authority's reasonable decision not to accept the settlement offer from the first officer. At the executive review, the department attorney continued to provide defective advice to the hiring authority. However, the department attorney had not exercised even a minimum level of due diligence of speaking to the witnesses before invoking executive review on a hiring authority who did not want to enter into a settlement with an officer the hiring authority found to be dishonest and overly familiar with incarcerated persons. At the executive review, the hiring authority's supervisor, an associate director, correctly decided not to rely on assumptions and decided that the department would not enter into the settlement being offered by the first officer.

- In a fourth case, a hiring authority sustained allegations against two officers for using unreasonable force on an incarcerated person. There was video evidence which established that the use of force was unnecessary. There were also photographs and medical reports which supported the allegations. However, despite the supporting evidence, at the investigative and disciplinary findings conference, the department attorney provided shoddy advice and recommendations concerning the case. The hiring authority rejected the department attorney's recommendations and decided to sustain the allegations. After the hiring authority decided to sustain the allegation, but before the hiring authority decided upon disciplinary penalties for the officers, the department attorney invoked executive review of the hiring authority's decision to sustain the allegations. The department attorney and her supervisors repeatedly disagreed with the multiple hiring authorities who reviewed this case, and the department attorney and her supervisors invoked executive review multiple times against hiring authorities (departmental executives) who independently reviewed the case and arrived at conclusions differing from those of the department attorneys. Prior to the final determination, five departmental executives reviewed the case, including a warden, an associate director, a deputy director, a director, and an undersecretary. Four executives determined the officers had committed misconduct, and three wanted to dismiss the officers. Despite the poor legal advice provided by the department attorneys, an undersecretary eventually sustained use-of-force allegations against the officers and imposed suspensions. The department eventually dramatically reduced the suspensions in settlements with the officers.

The OIG Added Value in Its Monitoring of Cases From January Through June 2020

The OIG assigns attorneys to monitor the department's internal investigations and employee disciplinary process. OIG attorneys are experienced in various fields of the law, including criminal prosecution, civil rights litigation, administrative law, civil law, and appellate litigation. Throughout our monitoring between January and June 2020, we contemporaneously monitored the performances of hiring authorities, Office of Internal Affairs' special agents, and department attorneys. We believe the OIG attorneys made a positive impact in several cases, a few of which we highlight below.

- In one case, the OIG received a complaint alleging inappropriate conduct by a youth counselor. After an inquiry and based on the OIG's referral, the Office of Internal Affairs opened an investigation into allegations that the youth counselor allegedly directed a racial slur toward a second youth counselor, failed to assist him in removing a disruptive ward from a classroom, and lied during an Office of Internal Affairs' interview. As a result of the investigation, the hiring authority sustained the allegation that the youth counselor lied and initially dismissed him. However, the hiring authority later agreed to settle with the youth counselor for a six-month suspension if the youth counselor agreed to attend training, and waived any right to appeal if he sustained a related disciplinary action within three years.
- 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 lied while testifying at a State Personnel Board hearing to conceal the misconduct of another officer. The OIG initially recommended the Office of Internal Affairs open an administrative investigation based on credible evidence from the department attorney and employee relations officer present during the hearing. The Office of Internal Affairs instead rejected the matter and asked the hiring authority to obtain the audio recording of the State Personnel Board hearing. The hiring authority submitted an appeal, which included the audio recording, but the special agent recommended rejecting the matter a second time. The OIG again recommended opening an administrative investigation, and the Office of Internal Affairs agreed. The hiring authority sustained the allegation and decided to dismiss the officer. However, the department eventually settled with the officer for a 30-working-day suspension. The OIG did not concur with the settlement agreement.

- In a third case, a parole agent involved in a vehicle accident while driving her daughter to school in a State vehicle without authorization, failed to disclose on a State accident report that her daughter was in the vehicle at the time of the accident. In addition, she lied in a State accident report, lied on a workers' compensation claim form, lied to outside law enforcement, lied to a supervising parole agent, lied during a workers' compensation interview, and lied in an interview with the Office of Internal Affairs. At the conclusion of the investigation, the OIG attended a conference with the special agent and the hiring authority, and persuaded the special agent to conduct further investigation to gather more information regarding the dishonesty allegations. After further investigation, the hiring authority dismissed the officer, and after a hearing, the State Personnel Board upheld the dismissal.

(This page left blank for reproduction purposes.)

Recommendations

For the January through June 2020 reporting period, we offer the following recommendations to the department:

Nº 1. The OIG recommends that the department develop and implement a policy that the Office of Internal Affairs will concurrently open an administrative case in those instances in which a corresponding criminal investigation is also pending and that it not wait until the conclusion of the criminal investigation to actively conduct the administrative investigation. The OIG also recommends the policy specify that, although the Office of Internal Affairs will consult with a prosecuting agency (such as a district attorney's office) concerning whether to conduct investigative work on an administrative case in those instances in which there is also a corresponding criminal investigation, that the Office of Internal Affairs not relegate its decision to the prosecuting agency.

Nº 2. The OIG recommends that the department formulate a policy concerning how it will manage employees who are subject to domestic violence restraining orders, including whether and in which instances such employees will be nonpunitively dismissed, redirected to another post, or placed on administrative time off from work, and the time frames for the hiring authorities to make such decisions.

Nº 3. The OIG recommends the department modify its executive review policy to restrict a department attorney's ability to elevate or invoke executive review against a hiring authority's decision in employee discipline cases to cases in which one of the following criteria is met:

- A hiring authority clearly ignored critical evidence and was not able to logically explain the finding he or she made; or
- No reasonable person could have made the investigative or disciplinary finding the hiring authority made; or
- The department attorney has a reasonable belief that the hiring authority is acting contrary to departmental policy or the law.

We further recommend that the department attorney be required to declare which of the above factor(s) forms the basis for the executive review; to inform the hiring authority, the OIG, and the hiring authority's supervisor of that basis; and to provide a written analysis supporting the invocation of executive review. Finally, to address the situation where

some department attorneys hold a position vehemently opposed to a hiring authority’s decision to move forward with discipline—and have posited during executive reviews that they either do not believe in a case; that there is no chance or minimal chance that the department will prevail before the State Personnel Board; and that, after the case is lost, the department will be responsible for back pay—we recommend that the department immediately reassign the case to another department attorney, one who will advocate the hiring authority’s position to the State Personnel Board.

OFFICE OF THE SECRETARY

P.O. Box 942883
Sacramento, CA 94283-0001



November 20, 2020

Mr. Roy Wesley
Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Dear Mr. Wesley:

The California Department of Corrections and Rehabilitation (Department) submits this letter in response to the Office of the Inspector General's (OIG) draft *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. The Department has reviewed the draft report and would like to note the below:

In regard to information found on pages 44-45:

In its draft report, at pages 44-45, OIG appears to claim that a Department attorney improperly forwarded a settlement agreement to a party, after the OIG had elevated the case to an Undersecretary. The OIG's statement does not accurately reflect what transpired.

On or about January 17, 2020, counsel for the Department informed SAIG [REDACTED] that the Warden decided "to offer a 30 day suspension without pay" and he would "be making this offer unless OIG invokes executive review..." That same day, SAIG [REDACTED] replied "We will be invoking executive review." Thereafter, the parties held a first-level Executive Review. On or about March 12, 2020, the parties held a second-level Executive Review before a Deputy Director. Following that review, on or about March 12, 2020, OIG advised the Department that it would not seek further review, and instructed the Department to work with a designated SAIG to finalize the settlement agreement: "Although the OIG disagrees with your decision to settle this case for a 30 day suspension, the OIG will not seek a higher level of review.... As always, please continue to communicate with and provide draft documentation to SAIG [REDACTED] in accordance with DOM."

On or about March 24, 2020, the attorney sent the draft settlement agreement to SAIG [REDACTED]. After a few email exchanges regarding minor changes, on or about April 2, 2020, SAIG [REDACTED] approved the draft settlement agreement for the employee's signature. The employee thereafter signed the settlement agreement. On or about April 10, 2020, OIG advised the Employment Advocacy and Prosecution Team, for the first time, that it was going to seek a higher level of review, in effect, withdrawing its earlier representation that it would not seek a higher level of review and after approving the settlement agreement. The Department's attorney relied on OIG's representations and approval of the settlement agreement when he forwarded the agreement for signature.

1

Roy Wesley, Office of the Inspector General

Page 2

In regard to information found on pages 50-51:

Indicator 6: It is unclear from OIG's ratings among the cases rated "poor" due to delays in service of the Notice of Adverse Action: (1) distinctions between significant delays and short delays; (2) distinctions between delays within the attorney's control and those that were not; and (3) distinctions between the source of the delay (e.g., attorney drafting, lengthy OIG review, delays in Hiring Authority review, and delays in ERO service). Without identifying this information, the Department does not believe it is accurate and appropriate to rate an attorney's representation in a matter as "poor" (especially when all other representation during the litigation process was satisfactory).


In regard to information found on pages 70-73:

As a preliminary matter, throughout the discussion regarding the Department's attorneys' use of the executive review process, the OIG repeatedly discloses the advice given by the Department's attorneys, including statements and discussions surrounding their advice. These discussions are privileged communication. **The Department objects to the OIG's disclosure of attorney-client privileged communication, and insists that OIG remove the communication from its report.**

The Department disagrees with the OIG's characterizations of the disputes that led to EAPT invoking executive review. The OIG characterizes the disputes as mere disagreements. However, in several of the matters cited by the OIG the attorneys believed that the evidence would be insufficient to establish the causes of action for discipline, whether it be the quality of the evidence, credibility of the witnesses, or other considerations. These cases all involved termination-level conduct, and an inadequately supported termination creates significant liability for the Department. The Department's attorneys owe certain duties to their client – the Department. The executive review process is the means by which the attorneys can address these significant risks with the Department. Thus, the OIG's characterization that the attorneys "merely disagreed" with the hiring authority is not supported.

Thank you for the opportunity to review and comment on the draft report. If you have further questions, please contact me at (916) 323-6001.

Sincerely,



KATHLEEN ALLISON
Secretary

The Office of the Inspector General's Comments Concerning the Response Received From the Department of Corrections and Rehabilitation

To provide clarity and perspective, we comment on the California Department of Corrections and Rehabilitation's (the department) response to the OIG's draft report titled *Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation*. The numbers below correspond with the numbers we have placed in the margin of the department's response.

1. The department's comments pertain to a case we are reporting on in the instant report, but also one in which we reported on in a Sentinel Case, published on June 11, 2020, titled *The Department Settled a Case Against an Officer Who Was Dishonest at a State Personnel Board Hearing Regarding Another Officer's Misconduct*. The department provides an incomplete procedural history of the case. More detail may be found in our Sentinel Report. As we noted in that report, the OIG never agreed with the department's decision to settle the case. The department held several meetings to discuss the disciplinary decision in this case. At each meeting, the OIG expressed disagreement with the department's disciplinary decision. The final meeting occurred on March 12, 2020, at which time a deputy director decided that the department would enter into a settlement agreement to settle the case against the dishonest officer for a 30-working-day suspension. Once again, the OIG disagreed. That day we sent an email to the department indicating that the OIG would not be seeking further executive review. However, immediately thereafter, an OIG executive discussed the issue with an undersecretary during a regularly-scheduled meeting and the undersecretary indicated that he would review the case.

On March 30, 2020, department attorneys forwarded a draft copy of the settlement agreement to the OIG for review. As the OIG disagreed with the substance of the settlement agreement, we reviewed it for *form* only, meaning that the OIG reviewed the proposed settlement agreement to verify that the form of the written agreement complied with policy and that it accurately reflected the disciplinary decision made by the department. The OIG was not a signatory to the agreement. In fact, the OIG never agreed with the substance of the settlement agreement, had already discussed with an undersecretary the OIG's disagreement with the disciplinary decision, and was waiting to hear back from the undersecretary concerning his review of the case.

On April 10, 2020, after further discussions with the undersecretary, the undersecretary informed the OIG executive that he was “still reviewing” the case and had not determined the department’s course of action. The OIG contacted the department attorney regarding the information provided by the undersecretary and noted that the undersecretary was still reviewing the case. The department attorney responded that he was unaware that the undersecretary was still reviewing the case and advised that he had already sent the proposed settlement agreement to the officer and his attorney and they had signed it. The warden then signed the settlement agreement on April 13, 2020, and the department attorney signed it on April 14, 2020. Therefore, despite the OIG’s objection and a pending review of the disciplinary decision before an undersecretary, the department settled the case.

2. The department objects to the OIG’s discussion regarding Indicator 6 for three reasons, namely: “It is unclear from OIG’s ratings among the cases rated “poor” due to delays in service of the Notice of Adverse Action: (1) distinctions between significant delays and short delays; (2) distinctions between delays within the attorney’s control and those that were not; and (3) distinctions between the source of the delay (e.g., attorney drafting, lengthy OIG review, delays in Hiring Authority review, and delays in ERO service). Without identifying this information, the Department does not believe it is accurate and appropriate to rate an attorney’s representation in a matter as ‘poor’ (especially when all other representation during the litigation process was satisfactory).”

In response to objection (1), foremost, the department’s objection is without merit because, whether the department’s delays were “significant” or “short” delays, they were nevertheless delays and in violation of departmental policy. Secondly, the OIG publishes on its website (www.oig.ca.gov) case summaries for each case we monitor and close. The case summaries form the basis for our findings in this report. Each individual case summary specifies in detail an overall case rating and case ratings for each indicator, including Indicator 6. If we rate a case or an indicator as *poor*, we identify the specific reasons for the rating. When the OIG identified that a department attorney was responsible for the delay in service of the disciplinary action, the OIG provided specific information, including the length of the delay, in the case summary. We publish the case summaries on our website on a monthly basis. However, before we do so, we provide the case summaries to the department for review and feedback. Therefore, the department’s objection that it is unclear which cases had “significant” or “short” delays is untrue and without merit.

In response to objections (2) and (3), the OIG found that in most cases where the service of the disciplinary action was delayed beyond what policy required, the department attorney and the hiring authority were equally responsible for delays in service. A hiring authority can and should elevate the issue of a department attorney who delays drafting the disciplinary action to the department attorney's supervisor, and a department attorney can and should elevate the issue of a delay by an employee relations officer (acting on behalf of a hiring authority) in serving a drafted disciplinary action on an employee who is to be disciplined. Furthermore, it is significant to note that, in the department's response, the department does not provide a single example of a delay that was outside of the department attorney's control, nor an example of any cases where the department wished to shift the blame of the delay from the department attorney on to the hiring authority, employee relations officer, or the OIG. The department's objection is without merit.

3. After the OIG provided a draft copy of this report to the department for its review, the department objected to the OIG including attorney–client privileged communications in the section of our report subtitled “The Department Attorneys at Times Elevated Decisions Made by Hiring Authorities, Even When the Decisions Were Appropriate” (page 72). The department identified which specific communications it was objecting to and did not want released in the report. Although the legal issues surrounding the attorney–client privilege are blurred due to the OIG's legal authority to provide oversight, we are honoring the department's assertions as they relate to this discussion. As a result, we have removed those sections of the report to which the department objected and have revised that section of the report.
4. Further, the department disagreed with our characterizations of the cases and the disputes that led to the department attorneys invoking executive reviews on its own hiring authorities. The Secretary of the department delegates to hiring authorities (not department attorneys) the ability to discipline staff under his or her control. The department has, therefore, entrusted hiring authorities to make these decisions. The cases the OIG cited are ones in which, the OIG's opinion, the department's hiring authorities (such as wardens, associate directors, directors, etc.) made the correct decisions concerning employee discipline cases. In these cases, the hiring authorities listened to and considered the department attorneys' arguments concerning the quality of the evidence, the credibility of witnesses, risks associated with the cases, and other considerations and, after consideration of those arguments, the hiring authorities

disagreed with their department attorneys and reached different conclusions. In each of these instances, in the OIG’s opinion, the hiring authorities’ decisions were reasonable and well-grounded. Yet the department attorneys still challenged these hiring authorities. The department’s response to this report included an assertion that the cases cited by the OIG are ones in which the department “attorneys believe the evidence would be insufficient to establish the causes of action for discipline, whether it be the quality of the evidence, credibility of the witnesses, or other considerations.” However, in the noted cases, after considering these arguments, the hiring authorities rejected the department attorneys’ arguments and arrived at different conclusions concerning the state of the evidence in those cases. In affixing her signature to the department’s response, the Secretary has affirmed that the department attorneys reached the correct conclusion in those cases and that the departmental hiring authorities—who were entrusted to make these decisions—did not. However, the OIG disagrees with this conclusion and affirms its position that the department hiring authorities made the correct decisions in those cases, not the department attorneys.

Therefore, the OIG stands by its proposition that at times department attorneys invoked executive review because they merely disagreed with hiring authorities about the weight of the evidence. We cited examples which clearly articulate instances where a hiring authority appropriately evaluated the evidence revealed during the investigation and sustained allegations. The department attorneys fulfilled their duties to advise their clients as to their opinions concerning the weight of the evidence and related matters. However, in reviewing and rejecting the opinions of the department attorneys, the hiring authorities made reasonable decisions in the cases we cited. As such, the OIG affirms its recommendation that the department modify its policy to limit a department attorney’s ability to invoke executive review on an employee discipline decision made by one of its hiring authorities.

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

*Semiannual Report
January–June 2020*

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE of CALIFORNIA
December 2020

OIG